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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** AB 1803                      **Hearing Date:** June 21, 2022  
**Author:** Jones-Sawyer  
**Version:** May 19, 2022  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Court fees: ability to pay*

### HISTORY

**Source:** Coalition of California Welfare Rights Organizations

**Prior Legislation:** AB 143 (Budget Committee, 2021), Chapter 79, Stats. 2021  
AB 927 (Jones-Sawyer) 2019 vetoed.  
AB 227 (Jones-Sawyer) 2019 held in Assembly Appropriations.  
AB 2177 (Jones-Sawyer) held in Senate Appropriations 2018  
AB 1115 (Jones-Sawyer), Chapter 207, Stats. 2017,  
SB 504 (Lara) Chapter 388, Stats. 2015  
AB 651 (Bradford, 2013), Chapter 787, Stats. 2013,  
SB 881 (Hertzberg) Chapter 779, Stats. 2016  
SB 366 (Wright) held Senate Appropriations 2013

**Support:** California Attorneys for Criminal Justice; California Public Defenders  
Association; Initiate Justice; National Association of Social Workers, California  
Chapter

**Opposition:** None known

**Assembly Floor Vote:** 51 - 17

### PURPOSE

*The purpose of this bill is to exempt a person who meets the criteria for a waiver of court fees and costs from being obligated to pay the filing fee for specified expungement petitions, and prohibits a court from denying expungement relief to an otherwise qualified person, and who meets the criteria, as specified, for a waiver of court fees and costs, solely on the basis that the person has not yet satisfied their restitution obligations.*

*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, and 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. (Penal Code § 1203.4 (a) & (b).)

*Existing law* specifies that if expungement relief is granted, the person is released from the penalties and disabilities resulting from the conviction, except as specified. (Penal Code, § 1203.4, (a) & (c).)

*Existing law* states that a person who petitions for expungement may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted, at a rate to be determined by the court, not to exceed \$150. (Penal Code § 1203.4 (d).)

*Existing law* states that a person who petitions for expungement may be required to reimburse the county for the actual costs of services rendered, whether or not the petition is granted, at a rate to be determined by the county board of supervisors, not to exceed \$150. (Penal Code § 1203.4 (d).)

*Existing law* states that a person who petitions for expungement may be required to reimburse the city for the actual costs of services rendered, whether or not the petition is granted, at a rate to be determined by the city council, not to exceed \$150. (Penal Code § 1203.4 (d).)

*Existing law* authorizes the court to 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. (Penal Code § 1203.4 (d).)

*Existing law* provides that the ability to pay the reimbursement fees for expungement shall not be a prerequisite to a person's eligibility for expungement. (Penal Code § 1203.4 (d).)

*Existing law* provides that the ability to pay the reimbursement fees for expungement shall be determined by the court using the following standards:

- a) The defendant's present financial position;
- b) The defendant's reasonably discernible future financial position, as specified;
- c) The likelihood that the defendant will be able to obtain employment within a six-month period from the date of the hearing; and
- d) Any other factor that may bear upon the defendant's financial capability to reimburse the county for the costs of the legal assistance provided to the defendant. (Penal Code, §§ 1203.4 (d); 987.8(g)(2).)

*Existing law* permits the following persons to proceed without paying court fees and costs because of their financial conditions, in specified court proceedings:

- a) A person who is receiving public benefits under one or more specified programs including, Supplemental Security Income (SSI), State Supplementary Payment (SSP), California Work Opportunity and Responsibility to Kids Act (CalWORKs), federal Tribal Temporary Assistance for Needy Families (Tribal TANF) grant program, Supplemental Nutrition Assistance Program (SNAP), the California Food Assistance Program, County Relief, General Relief (GR), or General Assistance (GA), Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI), In-Home Supportive Services (IHSS), and Medi-Cal;

- b) A person whose monthly income is 125 percent or less of the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of paragraph (2) of Section 9902 of Title 42 of the United States Code; and,
- c) A person who, as individually determined by the court, cannot pay court fees without using moneys that normally would pay for the common necessities of life for the person and the person's family, as specified. (Government Code § 68632.)

*Existing law* prohibits the imposition of excessive fines. (Cal. Const., art. 1, § 17.)

*Existing law* states that the Legislature finds and declares that our legal system cannot provide “equal justice under law” unless all persons have access to the courts without regard to their economic means; that California law and court procedures should ensure that court fees are not a barrier to court access for those with insufficient economic means to pay those fees; that fiscal responsibility should be tempered with concern for litigants’ rights to access the justice system; that the procedure for allowing the poor to use court services without paying ordinary fees must be one that applies rules fairly to similarly situated persons, is accessible to those with limited knowledge of court processes, and does not delay access to court services; and that the procedure for determining if a litigant may file a lawsuit without paying a fee must not interfere with court access for those without the financial means to do so. (Gov. Code § 68630.)

*Existing law* requires, in addition to any other penalty imposed, the defendant to pay both, a restitution fine and restitution to the victim, which is enforceable as a civil judgment. (Penal Code, § 1202.4 (a)(3).)

*Existing law* 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 one thousand dollars \$1,000. (Penal Code § 1202.4 (b)(1).)

*Existing law* states that a defendant’s inability to pay shall not be considered a reason not to impose a 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. (Penal Code § 1202.4 (c), (d).)

*Existing law* exempts the restitution fine from various penalty assessments. (Penal Code, § 1202.4 (e).)

*Existing law* allows the county board of supervisors to impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount of the restitution fine. (Penal Code § 1204.4 (l).)

*Existing law* provides that a crime victim who incurs an economic loss as a result of the crime shall receive restitution directly from a defendant convicted of the crime. (Penal Code § 1202.4 (a).)

*Existing law* provides that a 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. (Pena; Code § 1204.5 (f)(3).)

*Existing law* provides that a defendant's inability to pay shall not be a consideration in determining the amount of a restitution order. (Penal Code § 1204.5 (g).)

*Existing law* requires, in every case in which the defendant is granted probation, the court to make the payment of restitution fines and restitution orders a condition of probation. (Penal Code § 1204.4 (m).)

*Existing law* prohibits the imposition of excessive fines. (U.S. Const., 8th Amend.)

*Existing law* provides that no one shall be "deprived of life, liberty or property without due process of law." (U.S. Const., 5th Amend.)

*Existing law* 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.)

*This bill* provides that person seeking relief pursuant to Sections 1203.4, 1203.41, 1203.42, and 1203.45, and who meets the criteria set forth in Section 68632 of the Government Code shall not be required to reimburse the court, the county, or any city for the actual costs of services rendered, whether or not the petition is granted and records are sealed or expunged.

*This bill* also provides that if a person otherwise qualifies to have their records sealed or expunged pursuant to this chapter, relief under this chapter shall not be denied to a person who meets the criteria set forth in Section 68632 of the Government Code and whose probation was conditioned on making victim restitution, solely on the basis that the person has not satisfied their restitution obligation.

## COMMENTS

### 1. Need for This Bill

According to the author:

California courts charge fees and costs in addition to the penalties resulting from criminal convictions. However, these added financial penalties are not reinvested into rehabilitative purposes, and the state has also acknowledged only a *fraction* of fees can be collected since there are defendants who do not have the means to pay. Adding fees on top of already-served criminal penalties further punishes low-income Californians and impedes access to services, such as petitioning for expungement.

In 2019, a state appeals court ruled that charging defendants fees without first assessing their ability-to-pay violates both the state and U.S. Constitutions. Consequently, individuals who petition for expungement can have their court fees waived if they would face an undue financial hardship. However, petitioners must prove their inability to pay at a separate hearing. This not only adds to courts'

operational costs and prolongs the expungement process, but also increases financial burdens to petitioners, such as requiring them to take time off from work or find accommodations for transportation.

By guaranteeing court fee waivers to petitioners who face undue financial hardship, California would eliminate the need to hold a separate ability-to-pay hearing. In doing so, this will bring parity with the current practice of providing financial relief to individuals with low-income, and remove the extra, burdensome time and operational costs associated with holding a hearing that results in the petitioner not having to pay court fees and costs in the first place.

AB 1803 streamlines the ability-to-pay process by guaranteeing court fees are waived if a petitioner seeking expungement meets the requirements of Government Code §68632. This includes individuals receiving: Medi-Cal; Food Stamps, i.e. California Food Assistance Program, CalFresh Program, or SNAP; State Supplemental Payment (SSP) and State Supplemental Security Income (SSI); County Relief (CR), General Relief (GR), or General Assistance (GA); In-Home Supportive Services; Tribal Temporary Assistance for Needy Families (TANF); Cash Assistance Program for Aged, Blind, or Disabled Legal Immigrants; and, Individuals whose monthly income is 125% or less of the current poverty guidelines.

Further, to be clear, this bill does **not** waive restitution payments – it merely waives the administrative court fees. As such, this bill ensures low-income petitioners seeking the fee waiver will still need to meet existing requirements to receive expungement, and petitioners who do receive the fee waiver will still be required by law to continue making restitution payments.

## **2. Waiver of fees for expungement**

There are a number of Penal Code Sections which allow a person to file a petition to have their record expunged or sealed after they have finished probation, served their sentence, or were a juvenile when the offense was committed, provided specified criteria has been met. For any of the motions that are file, the court charges a filing fee, this is in addition to any legal or other fees the person may incur. Under existing law, the fee can be waived but the process can require a separate ability to pay hearing, which the author and sponsor argue is onerous and can be inconsistent. This bill would provide a fee waiver for any person who meets the criteria set forth in the Government Code, generally the person qualifies for other specified Government assistance programs. The fee shall not be collected even if the petition is denied.

## **3. Record sealed or expunged even if restitution outstanding**

This bill also provides that a person’s petition to have their records sealed or expunged should not be denied even if they have not paying the victim restitution that was a condition of probations. Any unpaid restitution can be collected as a civil judgement so it is unnecessary to deny relief because it hasn’t been paid. (Penal Code Section 1214) A person who is granted expungement relief may have a better opportunity to pay any restitution as they should have a better opportunity for employment.

**4. Argument in Support**

California Attorneys for Criminal Justice support this bill saying:

In some counties, court clerks refuse to accept petitions for relief unless a fee is paid in advance, or require the petitioner to submit an application for a fee waiver before the petition is officially filed with the court and a hearing is set.

AB 1803 would prevent the court from denying relief based on ability to pay if the petitioner is receiving certain public benefits, such as Supplemental Security Income or Medi-Cal, or has a monthly income of 125% or less of the current poverty guidelines.

**-- END --**