
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 1106 **Hearing Date:** March 22, 2022
Author: Wiener
Version: March 10, 2022
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Criminal resentencing: restitution*

HISTORY

Source: Debt Free Justice Coalition

Prior Legislation: AB 2147 (Reyes), Ch. 60, Stats. 2020
AB 1421 (Bauer-Kahan), Ch. 111, Stats. 2019
AB 817 (Hoge), Ch. 313, Stats. 1995

Support: Alameda County Public Defender; California Catholic Conference; California Attorneys for Criminal Justice; California Public Defenders Association; Californians for Safety and Justice; Californians for Safety and Justice - Timedone; Californians United for a Responsible Budget; Center for Responsible Lending; Communities United for Restorative Youth Justice; Community Legal Services in East Palo Alto; Criminal Justice Clinic, UC Irvine School of Law; Debt Collective; Dignity and Power Now; East Bay Community Law Center; Ella Baker Center for Human Rights; Essie Justice Group; Freedom 4 Youth; 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 Prisoners with Children; Mental Health Advocacy Services; National Consumer Law Center; PolicyLink; Public Counsel; Root & Rebound; Rubicon Programs; San Francisco Financial Justice Project; San Francisco Public Defender; Smart Justice California; Uncommon Law; United Core Alliance; Underground Grit; Western Center on Law and Poverty; Yerba Buena Center for the Arts; Young Women’s Freedom Center

Opposition: California District Attorneys Association

PURPOSE

The purpose of this bill is to provide that an unfulfilled order of restitution or a restitution fine shall not be grounds for: 1) denial of a petition for specified expungement relief; 2) denial of release on parole to another state; or 3) denial of a petition for reduction of a conviction.

Existing law states that, in addition to any other penalty provided or imposed under the law, the court shall order the defendant to pay both a restitution fine and restitution to the victim or victims, if any. (Pen. Code § 1202.4, subd. (a)(3).)

Existing law specifies that a 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. Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order and a copy of the defendant's financial disclosure. (Pen. Code, §§ 1202.4, subd. (i), & 1214, subd. (b).)

Existing law states that any portion of a restitution fine or restitution fee 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. (Pen. Code, § 1214, subd. (a).)

Existing law 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).)

Existing law 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).)

This bill specifies that when a court exercises its discretion to reduce an offense from a felony to a misdemeanor, or 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.

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 and mandatory supervision pursuant to criminal justice realignment legislation of 2011 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 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 expungement relief. (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).)

This bill specifies that a petition for expungement relief pursuant to the above provisions shall not be denied due to an unfulfilled order of restitution or restitution fine.

This bill provides that when the court considers a petition for expungement relief pursuant to the above provisions, in its discretion and in the interest of justice, an unpaid order of restitution or restitution fine shall not be grounds for denial of the petition for relief.

This bill states that an unfulfilled order of restitution or a restitution fine shall not be grounds for:

- Finding that a defendant did not fulfil the condition of probation for the entire period of probation;
- Finding that 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; or,
- Finding that 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.

Existing law authorizes a person who was under 18 years of age at the time of commission of a misdemeanor and who is eligible for expungement relief, or previously received expungement relief, to petition the court for an order sealing the record of conviction and arrest, and other official records in the case. (Pen. Code, § 1203.45, subd. (a).)

This bill states that a petition for sealing of records pursuant to the above provision shall not be denied due to an unfulfilled order of restitution or restitution fine and an unfulfilled order of restitution or a restitution fine shall not be grounds for finding that a defendant did not fulfil the conditions of probation for the entire period of probation.

This bill provides that when the court considers a petition for sealing of records under this section, in its discretion and in the interest of justice, an unpaid order of restitution or restitution fine shall not be grounds for denial of the petition for relief.

Existing law authorizes states to enter into compacts with other states “for cooperative effort and mutual assistance in the prevention of crime and for other purposes.” (Pen. Code, § 11177.)

Existing law provides that these states agree to allow a sending state who is a party to the compact to permit any 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 this 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
- Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there. (Pen. Code, § 11177.)

Existing law authorizes the receiving state to assume duties of visitation and supervision over the probationer or parolee and provides that the sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. (Pen. Code, § 11177.)

Existing law 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).)

Existing law states that the parolee or inmate may be granted an exception to the above prohibition if the parolee or inmate posts a bond for the amount of the restitution order. (Pen. Code, § 11177.2, subd. (b).)

Existing law states that a parolee or inmate may petition the court for a hearing to determine whether, in the interests of justice, the prohibition against leaving the state should be waived. This section shall not be construed to allow the reduction or waiver of a restitution order or fine. (Pen. Code, § 11177.2, subd. (c).)

This bill repeals Penal Code section 11177.2.

This bill contains Legislative findings and declarations which include the following:

- A 2021 study of restitution data from 15 California counties found that people ordered to pay restitution are expected to pay a median amount of \$10,000 in direct payments and \$2,000 in additional fines;
- Courts impose restitution against Black and Brown people at disproportionate rates. For example, in Los Angeles County, Black people make up 8 percent of the population but were charged 20 percent of all dollars owed in restitution. Similarly, data shows that women are ordered to pay restitution in amounts that are 2.5 times greater than men;
- Approximately 80 percent of Californians in the criminal legal system are indigent and many enter the system due to the criminalization of their poverty;

- Payment of restitution is often ordered as a condition of probation and can be a barrier to future expungement or record sealing, even when all other conditions have been met;
- Direct restitution orders and restitution fines can be converted into civil judgments which are enforced via wage garnishment, tax refund intercept, and bank account levy, and impacts a person's ability to qualify for credit or loans;
- Even though courts have the discretion to grant expungement petitions for people who may still owe restitution and restitution fines, in practice, people are routinely denied dismissal and reduction relief on the basis of unpaid restitution and restitution fines, including individuals who otherwise meet all the requirements for mandatory dismissals; and,
- Because ensuring that people with past convictions are able to successfully reenter society benefits and improves public safety, expungement should be accessible to people who have been ordered to pay direct restitution or restitution fines.

COMMENTS

1. Need for This Bill

According to the author of this bill:

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. Constitutional Right to Victim Restitution

In 1982, Proposition 8 was approved by California voters to amend the California Constitution to establish the right of crime victims to receive restitution. The initiative provided that "It is the unequivocal intention of the People of the State of California that all persons who suffer losses as

a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary.” (Cal. Const., art. I, sec. 28, subd. (b).)

A trial court is required to order defendant to pay full restitution to victims of a crime “unless it finds compelling and extraordinary reasons for not doing so and states them on the record.” (Pen. Code, § 1202.4, subd. (f).) If the amount of restitution cannot be ascertained at the time of sentencing, the court shall include a provision in the restitution order that the restitution amount shall be determined at a future time. (*Id.*) The trial court must incorporate the restitution order in the defendant's conditions of probation. (Pen. Code, § 1202.4, subd. (m).)

When the court grants probation, payment of restitution must be made a condition of probation. (Pen. Code, 1202.4, subd. (m).) If part of a restitution order has not been paid after a defendant is no longer on probation, it remains enforceable by the victim as though it were a civil judgment. (Pen. Code, 1202.4, subd. (m); Pen. Code, § 1214.) Additionally, if the defendant is unable to pay full restitution within the initial term of probation, the court can modify and extend the period of probation to allow the defendant to pay off all restitution within the probation term. (Pen. Code, §1203.3, subd. (b)(4); *People v. Cookson* (1991) 54 Cal.3d 1091, 1097.) Generally, the probation term may be extended up to, but not beyond, the maximum probation period allowed for the offense. (*People v Medeiros* (1994) 25 Cal.App.4th 1260, 1267–1268.)

This bill prohibits the denial of a petition for expungement or petition for sealing of juvenile misdemeanor records due to an unpaid order of restitution or restitution fine. This bill also repeals existing law that prohibits release on parole to another state when victim restitution or restitution fine is owed within the sending state. As discussed above, the obligation to pay victim restitution and restitution fines continues beyond the completion of a sentence and periods of supervision.

3. Restitution Fines

A convicted defendant must pay a restitution fine. (Pen. Code, § 1202.4, subd. (b).) The fine can only be waived if the court finds compelling and extraordinary reasons not to impose it, and inability to pay does not qualify as a compelling and extraordinary reason to waive the fine. (Pen. Code, § 1202.4, subd. (c).)

The amount of the fine varies in the trial court's discretion, ranging from a minimum of \$300 up to \$10,000 for felony convictions, and \$150 to \$1,000 for misdemeanor convictions. (Pen. Code, § 1202.4, subd. (b)(1).) The court may determine the amount of the fine by multiplying the minimum fine by the number of years of imprisonment to which the defendant is sentenced, and then by the number of convictions. (Pen. Code, § 1202.4, subd. (b)(2).) In this calculation, the court is permitted to consider the defendant's ability to pay although this factor is only to be considered in determining whether to set the fine in excess of the statutory minimum. (Pen. Code, § 1202.4, subd. (c).)

A restitution fine is not paid by the defendant directly to the victim. Instead, the fine is deposited in the Restitution Fund from which crime victims may obtain compensation. (Pen. Code, § 1202.4, subd. (e).) Similar to victim restitution, a defendant's obligation to pay a restitution fine does not expire once the sentence is completed or probation has ended. (Pen. Code, § 1202.4,

subd. (f); Pen. Code, § 1214.) The California Victim Compensation Board is authorized with collecting any restitution fines that the defendant is ordered to pay. (Pen. Code, § 1214.)

4. Expungement Relief Generally

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.)

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.*)

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.)

Some types of expungement relief is mandatory meaning if a defendant meets all of the statutory requirements, the court must grant the petition and some are discretionary meaning the court may grant the petition in the interests of justice. Mandatory expungement requires the defendant to have successfully completed all terms of probation or that the defendant’s probation has been

terminated before the period of probation has expired. (*Ibid.*). Because victim restitution may be ordered as a term of probation, unpaid restitution could be deemed as the defendant failing to fully complete the terms of probation thus leading to a denial of the petition. (*People v. Chandler* (1988) 203 Cal.App.3rd 782). However, a court may not deny mandatory expungement relief for a defendant who has been discharged from probation prior to the end of the period of probation due to the failure to fully pay victim compensation. (*People v. Seymour* (2015) 239 Cal.App.4th 1418.)

This bill provides that a person's petition for expungement relief pursuant to existing expungement statutes shall not be denied due to an unfulfilled order of restitution or restitution fine. This prohibition would apply to both mandatory and discretionary expungement. Additionally, this bill provides that an unfulfilled order of restitution or restitution fine shall not be grounds to deny a petition for sealing of juvenile misdemeanor records. As discussed in Note 2 above, restitution orders remain in effect after a person's sentence and probation period has ended and may be enforced like a civil judgment order. (Pen. Code, § 1202.4; Pen. Code, § 1214.)

5. Motions for Reduction Pursuant to Penal Code Section 17

Existing law authorizes a court, in their 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, also known as 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 judgment, 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 provides 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.

6. 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 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 repeals Penal Code section 11177.2.

7. Argument in Support

According to the California Public Defenders Association:

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.

8. Argument in Opposition

According to the California District Attorneys Association:

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.

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