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SB-1106 Criminal resentencing: restitution. (2021-2022)

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Date Published: 10/03/2022 02:00 PM

Senate Bill No. 1106

CHAPTER 734

An act to amend Sections 17, 1203.4, 1203.4a, 1203.4b, 1203.41, 1203.42, and 1203.45 of, to add Section 1210.6 to, and to repeal Section 11177.2 of, the Penal Code, relating to resentencing.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1106, Wiener. Criminal resentencing: restitution.

Existing law requires a court to order a defendant who is convicted of a crime in this state to pay full restitution to the victim and a separate restitution fine, as specified.

Existing law, in specified cases, including when the defendant has successfully completed probation or successfully participated in the California Conservation Camp program, requires a court to dismiss the accusation, as described, thus releasing the person of any penalties and disabilities of conviction, except as otherwise provided. Existing law authorizes the court, in its discretion and in the interest of justice, in specified cases to provide that relief to a defendant who does not meet the stated requirements.

This bill would prohibit a petition for relief, whether statutorily authorized or in the court's discretion, from being denied due to an unfulfilled order of restitution or restitution fine.

Existing law prohibits a parolee or inmate from being released on parole to reside in another receiving state if the parolee or inmate is subject to an unsatisfied order for restitution to a victim or a restitution fine with the sending state, except as specified.

This bill would remove that prohibition.

Vote: majority Appropriation: no Fiscal Committee: no 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) In California, people convicted of crimes are often ordered to pay restitution and restitution fines to compensate survivors for damages or harm caused.

(b) While our restitution system attempts to address financial loss, it does not adequately address harm and community healing and further penalizes some of our state's most vulnerable communities.

(c) 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.

- (d) 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.
- (e) Approximately 80 percent of Californians in the criminal legal system are indigent and many enter the system due to the criminalization of their poverty.
- (f) Because judges are not required to take a person's ability to pay into consideration when ordering restitution, most people with restitution debt cannot afford to pay it.
- (g) Counties have spent millions of dollars during the last decade to employ costly collection practices, recovering just 13 percent of direct restitution amounts ordered in the process.
- (h) People who cannot afford to pay restitution, and restitution fines, are subject to harsher and prolonged punitive outcomes that often create long-lasting harm for individuals and their families.
- (i) 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.
- (j) 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.
- (k) Because debt stemming from restitution never expires and cannot be discharged in bankruptcy proceedings, many Californians live with this debt for the rest of their lives.
- (l) People released from jail and prison face high rates of unemployment and homelessness, due in part to their criminal conviction and racial discrimination.
- (m) Expungement of criminal records can lead to increased employment and housing opportunities as well as greater earning capacity, increased tax revenue, and reduction of reliance on public assistance payments. A 2014 study by Stanford University and the San Jose State University Record Clearance Project found that the estimated benefits of expungement outweigh costs by about \$5,800, per person, in one year-nearly \$6,500 in today's dollars.
- (n) 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.
- (o) 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.

SEC. 2. Section 17 of the Penal Code is amended to read:

17. (a) A felony is a crime that is punishable with death, by imprisonment in the state prison, or, notwithstanding any other law, by imprisonment in a county jail under the provisions of subdivision (h) of Section 1170. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170.

(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 in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.

(5) When, at or before the preliminary examination or prior to filing an order pursuant to Section 872, the magistrate determines that the offense is a misdemeanor, in which event the case shall proceed as if the defendant had been arraigned on a

misdemeanor complaint.

(c) When a defendant is committed to the Division of Juvenile Justice for a crime punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county jail not exceeding one year, the offense shall, upon the discharge of the defendant from the Division of Juvenile Justice, thereafter be deemed a misdemeanor for all purposes.

(d) A violation of any code section listed in Section 19.8 is an infraction subject to the procedures described in Sections 19.6 and 19.7 in either of the following cases:

(1) The prosecutor files a complaint charging the offense as an infraction unless the defendant, at the time they are arraigned, after being informed of their rights, elects to have the case proceed as a misdemeanor.

(2) The court, with the consent of the defendant, determines that the offense is an infraction, in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint.

(e) This section does not authorize a judge to relieve a defendant of the duty to register as a sex offender pursuant to Section 290 if the defendant is charged with an offense for which registration as a sex offender is required pursuant to Section 290, and for which the trier of fact has found the defendant guilty.

(f) When the court exercises its discretion under this section, an unfulfilled order of restitution or a restitution fine shall not be grounds for denial of a request or application for reduction.

SEC. 3. Section 1203.4 of the Penal Code is amended to read:

1203.4. (a) (1) When a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interest of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if they are not then serving a sentence for an offense, on probation for an offense, or charged with the commission of an offense, be permitted by the court to withdraw their plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if they have 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 except as noted below, the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which they have been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in their probation papers, of this right and privilege and the right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, 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 probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve them of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.

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

(3) 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.

(4) Dismissal of an accusation or information pursuant to this section does not release the defendant from the terms and conditions of an unexpired criminal protective order that has been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

(5) This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to a misdemeanor that is within the provisions of Section 42002.1 of the Vehicle Code, to a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 287 or of former Section 288a, Section 288.5, subdivision (j) of Section 289, Section 311.1, 311.2, 311.3, or 311.11, or a felony conviction pursuant to subdivision (d) of Section 261.5, or to an infraction.

(c) (1) Except as provided in paragraph (2), subdivision (a) does not apply to a person who receives a notice to appear or is otherwise charged with a violation of an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle

Code.

(2) If a defendant who was convicted of a violation listed in paragraph (1) petitions the court, the court in its discretion and in the interest of justice, may order the relief provided pursuant to subdivision (a) to that defendant.

(3) (A) A petition for relief under this section shall not be denied due to an unfulfilled order of restitution or restitution fine.

(B) 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.

(C) When the court considers a petition for relief 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.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars (\$150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars (\$150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars (\$150). Ability to make this reimbursement shall be determined by the court and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement when the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the costs for services established pursuant to this subdivision.

(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. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

(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.

(g) Notwithstanding the above provisions or any other law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 287 or of former Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

SEC. 4. Section 1203.4a of the Penal Code is amended to read:

1203.4a. (a) Every defendant convicted of a misdemeanor and not granted probation, and every defendant convicted of an infraction shall, at any time after the lapse of one year from the date of pronouncement of judgment, if they have fully complied with and performed the sentence of the court, are not then serving a sentence for an offense and are not under charge of commission of a crime, and have, since the pronouncement of judgment, lived an honest and upright life and have conformed to and obeyed the laws of the land, be permitted by the court to withdraw their plea of guilty or nolo contendere and enter a plea of not guilty; or if they have been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall dismiss the accusatory pleading against the defendant, who shall be released from all penalties and disabilities resulting from the offense of which they have been convicted, except as provided in Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of this code or Section 13555 of the Vehicle Code.

(b) If a defendant does not satisfy all the requirements of subdivision (a), after a lapse of one year from the date of pronouncement of judgment, a court, in its discretion and in the interest of justice, may grant the relief available pursuant to subdivision (a) to a defendant convicted of an infraction, or of a misdemeanor and not granted probation, or both, if the defendant has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense, and is not under charge of commission of a crime.

(c) (1) The defendant shall be informed of the provisions of this section, either orally or in writing, at the time they are sentenced. The defendant may make an application and change of plea in person or by attorney, or by the probation officer authorized in writing, provided that, 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 relief had not been granted pursuant to this section.

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

(3) Dismissal of an accusatory pleading 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.

(4) Dismissal of an accusation or information pursuant to this section does not release the defendant from the terms and conditions of an unexpired criminal protective order that has been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

(d) This section applies to a conviction specified in subdivision (a) or (b) that occurred before, as well as those occurring after, the effective date of this section, except that this section does not apply to the following:

(1) A misdemeanor violation of subdivision (c) of Section 288.

(2) A misdemeanor falling within the provisions of Section 42002.1 of the Vehicle Code.

(3) An infraction falling within the provisions of Section 42001 of the Vehicle Code.

(e) (1) A petition for relief under this section shall not be denied due to an unfulfilled order of restitution or restitution fine.

(2) An unfulfilled order of restitution or a restitution fine shall not be grounds for 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 not conformed to and obeyed the laws of the land.

(3) When the court considers a petition for relief 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.

(f) A petition for dismissal of an infraction pursuant to this section shall be by written declaration, except upon a showing of compelling need. Dismissal of an infraction shall not be granted under this section unless the prosecuting attorney has been given at least 15 days' notice of the petition for dismissal. It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(g) Any determination of amount made by a court under this section shall be valid only if either (1) made under procedures adopted by the Judicial Council or (2) approved by the Judicial Council.

SEC. 5. Section 1203.4b of the Penal Code is amended 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) A felony punishable by death or imprisonment in the state prison for life.

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

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

(H) Arson.

(2) 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 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 interest 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 dismiss the accusations or information against the defendant and the defendant shall 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.

(4) (A) A petition for relief under this section shall not be denied due to an unfulfilled order of restitution or restitution fine.

(B) An unfulfilled order of restitution or a restitution fine shall not be grounds for 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.

(C) When the court considers a petition for relief 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.

(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 a 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 a 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.

(5) Dismissal of an accusation or information pursuant to this section does not release the defendant from the terms and conditions of any unexpired criminal protective order that has been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These

protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

(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.

SEC. 6. Section 1203.41 of the Penal Code is amended to read:

1203.41. (a) If a defendant is sentenced pursuant to paragraph (5) of subdivision (h) of Section 1170, the court, in its discretion and in the interest of justice, may order the following relief, subject to the conditions of subdivision (b):

(1) The court 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 dismiss the accusations or information against the defendant and the defendant shall be released from all penalties and disabilities resulting from the offense of which they have been convicted, except as provided in Section 13555 of the Vehicle Code.

(2) The relief available under this section may be granted only after the lapse of one year following the defendant's completion of the sentence, if the sentence was imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, or after the lapse of two years following the defendant's completion of the sentence, if the sentence was imposed pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170.

(3) The relief available under this section may be granted only if the defendant is not under supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, and is not serving a sentence for, on probation for, or charged with the commission of, an offense.

(4) The defendant shall be informed, either orally or in writing, of the provisions of this section and of the right, if any, to petition for a certificate of rehabilitation and pardon at the time of sentencing.

(5) The defendant may make the application and change of plea in person or by attorney, or by a probation officer authorized in writing.

(b) Relief granted pursuant to subdivision (a) 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 a direct question contained in a questionnaire or application for public office, for licensure by a state or local agency, 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 their custody or control a firearm or prevent a 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.

(c) This section applies to any conviction specified in subdivision (a) that occurred before, on, or after January 1, 2014.

(d) When the court considers a petition for relief 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.

(e) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars (\$150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars (\$150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars (\$150). Ability to make this reimbursement shall be determined by the court

and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement when the petitioner appears to have the ability to pay, without undue hardship, all or a portion of the costs for services established pursuant to this subdivision.

(f) (1) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

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

(g) If, after receiving notice pursuant to subdivision (f), 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.

SEC. 7. Section 1203.42 of the Penal Code is amended to read:

1203.42. (a) If a defendant was sentenced prior to the implementation of the 2011 Realignment Legislation for a crime for which the defendant would otherwise have been eligible for sentencing pursuant to subdivision (h) of Section 1170, the court, in its discretion and in the interest of justice, may order the following relief, subject to the conditions of subdivision (b):

(1) The court may permit the defendant to withdraw their 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 be released from all penalties and disabilities resulting from the offense of which they have been convicted, except as provided in Section 13555 of the Vehicle Code.

(2) The relief available under this section may be granted only after the lapse of two years following the defendant's completion of the sentence.

(3) The relief available under this section may be granted only if the defendant is not under supervised release, and is not serving a sentence for, on probation for, or charged with the commission of, an offense.

(4) The defendant may make the application and change of plea in person or by attorney, or by a probation officer authorized in writing.

(b) Relief granted pursuant to subdivision (a) is subject to the following conditions:

(1) In a 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 a direct question contained in a questionnaire or application for public office, for licensure by a state or local agency, 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 their custody or control a firearm or prevent a 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.

(c) When the court considers a petition for relief 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.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars (\$150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars (\$150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars (\$150). Ability to make this reimbursement shall be determined by the court and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement when the petitioner appears to have the ability to pay, without undue hardship, all or a portion of the costs for services established pursuant to this subdivision.

(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. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

(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.

SEC. 8. Section 1203.45 of the Penal Code is amended to read:

1203.45. (a) When a person was under 18 years of age at the time of commission of a misdemeanor and is eligible for, or has previously received, the relief provided by Section 1203.4 or 1203.4a, that person, in a proceeding under Section 1203.4 or 1203.4a, or a separate proceeding, may petition the court for an order sealing the record of conviction and other official records in the case, including records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether the defendant was acquitted or charges were dismissed. If the court finds that the person was under 18 years of age at the time of the commission of the misdemeanor, and is eligible for relief under Section 1203.4 or 1203.4a or has previously received that relief, it may issue its order granting the relief prayed for. Thereafter the conviction, arrest, or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence.

(b) This section applies to convictions that occurred before, as well as those that occur after, the effective date of this section.

(c) This section shall not apply to offenses for which registration is required under Section 290, to violations of Division 10 (commencing with Section 11000) of the Health and Safety Code, or to misdemeanor violations of the Vehicle Code relating to operation of a vehicle or of a local ordinance relating to operation, standing, stopping, or parking of a motor vehicle.

(d) This section does not apply to a person convicted of more than one offense, whether the second or additional convictions occurred in the same action in which the conviction as to which relief is sought occurred or in another action, except in the following cases:

(1) One of the offenses includes the other or others.

(2) The other conviction or convictions were for the following:

(A) Misdemeanor violations of Chapters 1 (commencing with Section 21000) to 9 (commencing with Section 22500), inclusive, Chapter 12 (commencing with Section 23100), or Chapter 13 (commencing with Section 23250) of Division 11 of the Vehicle Code, other than Section 23103, 23104, 23105, 23152, 23153, or 23220.

(B) Violation of a local ordinance relating to the operation, stopping, standing, or parking of a motor vehicle.

(3) The other conviction or convictions consisted of any combination of paragraphs (1) and (2).

(e) This section shall apply in a case in which a person was under 21 years of age at the time of the commission of an offense as to which this section is made applicable if that offense was committed prior to March 7, 1973.

(f) (1) A petition for relief under this section shall not be denied due to an unfulfilled order of restitution or restitution fine.

(2) 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.

(3) When the court considers a petition for relief 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.

(g) In an action or proceeding based upon defamation, a court, upon a showing of good cause, may order the records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(h) A person who is 26 years of age or older and petitions for an order sealing a record under this section may be required to reimburse the court for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court, not to exceed one hundred fifty dollars (\$150), and to reimburse the county for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors, not to exceed one hundred fifty dollars (\$150), and to reimburse any city for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council, not to exceed one hundred fifty dollars (\$150). Ability to make this reimbursement shall be determined by the court and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement when the petitioner appears to have the ability to pay, without undue hardship, all or a portion of the cost for services established pursuant to this subdivision.

SEC. 9. Section 1210.6 is added to the Penal Code, to read:

1210.6. (a) When the court considers a petition for relief under this chapter, in its discretion and in the interests of justice, an unfulfilled order of restitution or restitution fine shall not be grounds to deny relief under this chapter to a person whose probation was conditioned on making victim restitution, if the person otherwise qualifies for relief pursuant to this chapter.

(b) An unfulfilled order of restitution or restitution fine shall not be grounds for finding that a defendant did not fulfill the conditions of probation for the entire period of probation.

(c) An unfulfilled order of restitution or restitution fine shall not be grounds for finding that a defendant did not fully comply with, and perform the sentence of, the court or finding that a defendant has not lived an honest and upright life and has not conformed to and obeyed the laws of the land.

SEC. 10. Section 11177.2 of the Penal Code is repealed.