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Indigency Exemption for Paying Filing Fees **AB 1803**

Adds Penal Code §1203.426

Beginning January 1, 2023, any person seeking some petitioned record relief and who meets certain criteria indicating indigency will *not* be required to pay any fee or cost associated with their petition. This is true whether the petition is granted or denied.

Which Petitions Are Covered?¹

Pen. Code §1203.4	Record relief for misdemeanor or felony convictions where probation was <u>granted and successfully completed</u>	<i>Form CR-180</i>
Pen. Code §1203.41 (The law before 1/1/2023)	Record relief for felony convictions where time was served in county jail or <u>on mandatory supervision</u>	<i>Form CR-180</i>
Pen. Code §1203.41 (The expanded law after 1/1/2023)	Record relief for felony convictions where time was served in county jail, on mandatory supervision, or in state prison	<i>Form CR-180 will be updated to add language for state prison sentences</i>
Pen. Code §1203.42	Record relief for felony convictions where, if the felony had been committed after 2011, time would have been served in county jail (instead of <u>prison</u>)	<i>Form CR-180</i>
Pen. Code §1203.45	Record sealing relief for juvenile misdemeanor convictions	<i>Form JV-595</i>

¹The text of Penal Code §1203.426 specifically lists sections “1203.4, 1203.41, 1203.42, and 1203.45”.

What are the Criteria That Indicate Indigency (inability to pay)?

Any of the following persons will be entitled to file their petition *without paying*²:

1. Anyone who **receives public benefits** under one or more of the following: 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); Supplemental Nutrition Assistance Program (SNAP); California Food Assistance Program; General Relief (GR) or General Assistance (GA); Cash Assistance Program for Aged, Blind & Disabled Legal Immigrants (CAPI); In-Home Supportive Services (IHSS); and Medi-Cal
2. Anyone whose monthly income is 200% or less of the current poverty guidelines³
3. Anyone who cannot pay court fees without using moneys that would normally pay for the common necessities of life for them and their family (must be determined by the Judge)

If a person falls in one of those three categories, they **cannot** be required to pay any fine, fee, or cost associated with filing a record relief petition.

²Gov. Code §68632.

³Federal Register by the U.S. Dept. of Health and Human Services (United States Code Title 42, Section 9902, paragraph (2).)

FREQUENTLY ASKED QUESTIONS

The following is not legal advice. It is your responsibility to do legal research or contact a lawyer if you need legal advice.

Q: How I do to let the court know I am indigent?

A: The law does not state **how** a person is supposed to tell the court they are indigent. Currently, people fill out a “Request to Waive Court Fees” (form FW-001) if they cannot pay the costs associated with a record relief petition. This form appears to include the same considerations as Pen. Code §1203.426.

Q: How do I know if my monthly income is 200% of the current poverty guideline?

A: The “poverty guidelines” discussed in Pen. Code §1203.426 come from the Federal Poverty Guidelines created each year by the U.S. Department of Health and Human Services. These guidelines are periodically updated, and as of November 2022 (when this reference sheet was written) the “200% of the Federal Poverty Level Guidelines” were⁴:

200% of the Federal Poverty Level Guidelines

Family Size	Annual	Monthly	Weekly
1	\$27,180	\$2,265	\$523
2	\$36,620	\$3,052	\$704
3	\$46,060	\$3,839	\$886
4	\$55,500	\$4,625	\$1,067
5	\$64,940	\$5,412	\$1,249
6	\$74,380	\$6,199	\$1,430
7	\$83,820	\$6,985	\$1,612
8	\$93,260	\$7,772	\$1,793
Each Add'l	\$9,440	\$787	\$182

To qualify for a fee waiver, your **monthly** income needs to be at 200% of the poverty guidelines or less.

⁴ www.masslegalservices.org/content/federal-poverty-guidlines-2022

Assembly Bill No. 1803

CHAPTER 494

An act to add Sections 1203.426 and 1203.427 to the Penal Code, relating to court fees.

[Approved by Governor September 23, 2022. Filed with Secretary of State September 23, 2022.]

legislative counsel's digest

AB 1803, Jones-Sawyer. Court fees: ability to pay.

Existing law allows certain persons convicted of a criminal offense who have successfully completed the term of probation, or term of imprisonment and supervision, to petition the court to withdraw their plea of guilty or nolo contendere and enter a plea of not guilty or, if convicted after a plea of not guilty, petition the court to set aside the verdict of guilty and dismiss the accusatory pleading, except as specified, and in the case of certain convictions that occurred when the person was under 18 years of age, to petition the court to seal the records of arrest and conviction. Under existing law, a person granted relief pursuant to these provisions is released from all penalties and disabilities resulting from the offense, except as specified. Existing law authorizes the court to impose specified fees and costs on a person who petitions for a change of plea or setting aside of a verdict pursuant to these provisions. Existing law requires the court to grant a waiver of court fees and costs to an applicant at any stage of the proceedings at both the appellate and trial court levels if the applicant meets specified standards of eligibility and application requirements, including a person who is receiving certain public benefits, such as Supplemental Security Income or Medi-Cal, or who has a monthly income of 125% or less of the current poverty guidelines, as specified.

This bill would exempt a person who meets specified criteria from being obligated to pay these fees, as specified. The bill would prohibit a court from denying relief under these provisions to an otherwise qualified person, and who meets the criteria for a waiver of court fees and costs, solely on the basis that the person has not satisfied their restitution obligations.

The bill would make certain of its provisions inoperative if Senate Bill 1106 is enacted and becomes operative.

The people of the State of California do enact as follows:

SECTION 1. Section 1203.426 is added to the Penal Code, immediately following Section 1203.425, to read:

1203.426. A 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.

SEC. 2. Section 1203.427 is added to the Penal Code, to read: 1203.427.

Notwithstanding any other law, 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.

SEC. 3. Section 2 of this bill shall not become operative if Senate Bill 1106 of the 2021–22 Regular Session is enacted and becomes operative.