

ASSEMBLY BILL

No. 1003

Introduced by Assembly Member Frommer

February 23, 2001

An act to amend Section 2085.5 of the Penal Code, relating to criminal restitution, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1003, as introduced, Frommer. Criminal restitution.

Pursuant to existing law, any compensatory or punitive damages awarded by trial or settlement to a prisoner in connection with a civil action brought against a federal, state or local jail, prison, or correctional facility, or its official or agent, excluding reasonable attorney's fees and litigation costs approved by the court, must be paid directly to satisfy any outstanding restitution orders or fines. The director is permitted to deduct and retain an administrative fee in specified circumstances.

This bill would require compensatory or punitive damages, excluding attorney's fees and litigation costs approved by the court, awarded in this type of action to a parolee or person formerly under the jurisdiction of the director to be paid to satisfy outstanding restitution orders or fines. The bill would allow the director to deduct and retain an administrative fee of 5% of the amount paid from a settlement or trial award to satisfy an outstanding restitution order. Because the bill would increase revenue deposited in the Restitution Fund, a continuously appropriated fund, the bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 2085.5 of the Penal Code is amended to
2 read:
3 2085.5. (a) In any case in which a prisoner owes a restitution
4 fine imposed pursuant to subdivision (a) of Section 13967 of the
5 Government Code, as operative prior to September 28, 1994, or
6 subdivision (b) of Section 1202.4, the Director of Corrections shall
7 deduct a minimum of 20 percent or the balance owing on the fine
8 amount, whichever is less, up to a maximum of 50 percent from
9 the wages and trust account deposits of a prisoner, unless
10 prohibited by federal law, and shall transfer that amount to the
11 State Board of Control for deposit in the Restitution Fund in the
12 State Treasury. Any amount so deducted shall be credited against
13 the amount owing on the fine. The sentencing court shall be
14 provided a record of the payments.
15 (b) In any case in which a prisoner owes a restitution order
16 imposed pursuant to subdivision (c) of Section 13967 of the
17 Government Code, as operative prior to September 28, 1994, or
18 subdivision (f) of Section 1202.4, the Director of Corrections shall
19 deduct a minimum of 20 percent or the balance owing on the order
20 amount, whichever is less, up to a maximum of 50 percent from
21 the wages and trust account deposits of a prisoner, unless
22 prohibited by federal law. If the restitution is owed to a person who
23 has filed an application with the Victims of Crime Program, the
24 director shall transfer that amount to the State Board of Control for
25 direct payment to the victim, or payment shall be made to the
26 Restitution Fund to the extent that the victim has received
27 assistance pursuant to that program. No deductions shall be made
28 on behalf of victims who have not filed an application with the
29 Victims of Crime Program. The sentencing court shall be provided
30 a record of the payments made to victims and of the payments
31 deposited to the Restitution Fund pursuant to this subdivision.
32 (c) The director shall deduct and retain from the wages and trust
33 account deposits of a prisoner, unless prohibited by federal law, an
34 administrative fee that totals 10 percent of any amount transferred
35 to the State Board of Control pursuant to subdivision (a) or (b). The
36 director shall deduct and retain from any prisoner settlement or
37 trial award, an administrative fee that totals 5 percent of any
38 amount paid from the settlement or award to satisfy an outstanding



1 restitution order or fine pursuant to subdivision (j), unless
2 prohibited by federal law. The director shall deposit the
3 administrative fee moneys in a special deposit account for
4 reimbursing administrative and support costs of the restitution
5 program of the Department of Corrections. The director, at his or
6 her discretion, may retain any excess funds in the special deposit
7 account for future reimbursement of the department's
8 administrative and support costs for the restitution program or may
9 transfer all or part of the excess funds for deposit in the Restitution
10 Fund.

11 (d) In any case in which a parolee owes a restitution fine
12 imposed pursuant to subdivision (a) of Section 13967 of the
13 Government Code, as operative prior to September 28, 1994, or
14 subdivision (b) of Section 1202.4, the Director of Corrections may
15 collect from the parolee any moneys owing on the restitution fine
16 amount, unless prohibited by federal law, and shall transfer that
17 amount to the State Board of Control for deposit in the Restitution
18 Fund in the State Treasury. Any amount so deducted shall be
19 credited against the amount owing on the fine. The sentencing
20 court shall be provided a record of the payments.

21 (e) In any case in which a parolee owes a *direct order of*
22 ~~restitution fine, subject to an order,~~ imposed pursuant to
23 subdivision (c) of Section 13967 of the Government Code, as
24 operative prior to September 28, 1994, or paragraph (3) of
25 subdivision (a) of Section 1202.4, the Director of Corrections may
26 collect from the parolee any moneys owing, unless prohibited by
27 federal law. If the restitution is owed to a person who has filed an
28 application with the Victims of Crime Program, the director shall
29 transfer that amount to the State Board of Control for direct
30 payment to the victim, or payment shall be made to the Restitution
31 Fund to the extent that the victim has received assistance pursuant
32 to that program. No deductions shall be made on behalf of victims
33 who have not filed an application with the Victims of Crime
34 Program. The sentencing court shall be provided a record of the
35 payments made by the offender pursuant to this subdivision.

36 (f) The director may deduct and retain from any moneys
37 collected from parolees an administrative fee that totals 10 percent
38 of any amount transferred to the State Board of Control pursuant
39 to subdivision (d) or (e), unless prohibited by federal law. *The*
40 *director shall deduct and retain from any settlement or trial award*



1 of a parolee or a person formerly under the jurisdiction of the
2 director an administrative fee that totals 5 percent of any amount
3 paid from the settlement or award to satisfy an outstanding
4 restitution order or fine pursuant to subdivisions (j) and (k), unless
5 prohibited by federal law. The director shall deposit the
6 administrative fee moneys in a special deposit account for
7 reimbursing administrative and support costs of the restitution
8 program of the Department of Corrections. The director, at his or
9 her discretion, may retain any excess funds in the special deposit
10 account for future reimbursement of the department's
11 administrative and support costs for the restitution program or may
12 transfer all or part of the excess funds for deposit in the Restitution
13 Fund.

14 (g) When a prisoner has both a restitution fine and a restitution
15 order from the sentencing court, the Department of Corrections
16 shall collect the restitution order first pursuant to subdivision (b).

17 (h) When a parolee has both a restitution fine and order from
18 the sentencing court, the Department of Corrections may collect
19 the restitution order first, pursuant to subdivision (e).

20 (i) If an inmate is housed at an institution that requires food to
21 be purchased from the institution canteen for unsupervised
22 overnight visits, and if the money for the purchase of this food is
23 received from funds other than the inmate's wages, that money
24 shall be exempt from restitution deductions. This exemption shall
25 apply to the actual amount spent on food for the visit up to a
26 maximum of fifty dollars (\$50) for visits that include the inmate
27 and one visitor, seventy dollars (\$70) for visits that include the
28 inmate and two or three visitors, and eighty dollars (\$80) for visits
29 that include the inmate and four or more visitors.

30 (j) Any compensatory or punitive damages awarded by trial or
31 settlement to ~~a prisoner~~ any inmate or parolee in connection with
32 a civil action brought against any federal, state, or local jail, prison,
33 or correctional facility, or any official or agent thereof, shall be
34 paid directly, after payment of reasonable attorney's fees and
35 litigation costs approved by the court, to satisfy any outstanding
36 restitution orders or restitution fines against ~~the prisoner that~~
37 ~~person~~. The balance of any award shall be forwarded to ~~the~~
38 ~~prisoner~~ the payee after full payment of all outstanding restitution
39 orders and restitution fines, subject to ~~subdivision~~ subdivisions (c)
40 and (f). The Department of Corrections shall make all reasonable



1 efforts to notify the victims of the crime for which ~~the prisoner that~~
2 *person* was convicted concerning the pending payment of any
3 compensatory or punitive damages. ~~This subdivision shall apply~~
4 ~~to cases settled or awarded on or after April 26, 1996, pursuant to~~
5 ~~Sections 807 and 808 of the federal Prison Litigation Reform Act~~
6 ~~of 1995 (Title 8, P.L. 104-134).~~

7 (k) *Any compensatory or punitive damages awarded by trial or*
8 *settlement to a person formerly under the jurisdiction of the*
9 *Director of Corrections in connection with a civil action brought*
10 *against the Department of Corrections, or any correctional*
11 *facility, official or agent thereof, shall be paid directly, after*
12 *payment of reasonable attorney's fees and litigation costs*
13 *approved by the court, to satisfy any outstanding restitution orders*
14 *or restitution fines against that person. The balance of any award*
15 *shall be forwarded to the payee after full payment of all*
16 *outstanding restitution orders and restitution fines, subject to*
17 *subdivision (f). The Department of Corrections shall make all*
18 *reasonable efforts to notify the victims of the crime for which the*
19 *original restitution was ordered concerning the pending payment*
20 *of any compensatory or punitive damages.*

21 (l) (1) Amounts transferred to the State Board of Control for
22 payment of direct orders of restitution shall be paid to the victim
23 within 60 days from the date the restitution revenues are received
24 by the State Board of Control. If the restitution payment to a victim
25 is less than fifty dollars (\$50), then payment need not be forwarded
26 to that victim until the payment reaches fifty dollars (\$50) or until
27 180 days from the date the first payment is received, whichever
28 occurs sooner.

29 (2) In any case in which a victim cannot be located, the
30 restitution revenues received by the State Board of Control on
31 behalf of the victim shall be held in trust in the Restitution Fund
32 until the end of the state fiscal year subsequent to the state fiscal
33 year in which the funds were deposited or until such time as the
34 victim has provided current address information, whichever
35 occurs sooner. Amounts remaining in trust at the end of the
36 specified period of time shall revert to the Restitution Fund.

37 (3) Any victim failing to provide a current address within the
38 period of time specified in paragraph (2) may provide
39 documentation to the Department of Corrections, which in turn
40 shall verify that moneys were in fact collected on behalf of the



1 victim. Upon receipt of that verified information from the
2 Department of Corrections, the State Board of Control shall
3 transmit the restitution revenues to the victim in accordance with
4 the provisions of subdivision (b).

O

