

AMENDED IN ASSEMBLY JULY 8, 2003

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE MARCH 26, 2003

**SENATE BILL**

**No. 631**

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**Introduced by Senator McPherson**  
(Principal coauthor: Assembly Member Matthews)

February 21, 2003

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An act to amend Sections 1202.4, 1202.45, ~~and 1214~~ 1214, and 2085.5 of, and to add Section 1202.44 to, the Penal Code, relating to restitution, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 631, as amended, McPherson. Restitution.

(1) Under existing law, in every case where a person is convicted of a crime, the court is required to impose a restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

~~This bill would prohibit a court from staying this restitution fine after it is imposed.~~

~~(2) Under Existing law also provides for restitution for economic losses to victims of crime directly from any defendant convicted of the crime, as specified.~~

*Under existing law, a victim restitution order or restitution fine is enforceable as a civil judgment, and continues to be collectible after probation and parole has terminated. Existing law requires a defendant to prepare a disclosure of assets, income and liabilities as of the date of*

arrest for the crime for which restitution may be ordered, and requires the disclosure be made available to the victim, as specified.

This bill would require a defendant who has an unpaid balance on a restitution order or fine at the time of his or her release from probation or parole to submit a current financial disclosure statement to his or her probation or parole officer. This bill would require that both this disclosure statement and the initial disclosure statement be made available to the victim ~~or~~ *and* to the California Victim Compensation and Government Claims Board.

~~(3) Existing law permits the board of supervisors of any county to impose a fee to cover the actual administrative cost of collecting a restitution fine, not to exceed 10% of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.~~

~~This bill would replace these provisions with an authorization for every entity responsible for collecting restitution fines, fees, and related orders, including parole revocation restitution fines, probation violation restitution fines, and diversion restitution fees as discussed below, to impose a 10% administrative fee to cover the costs of collection. It would specify that the remaining 90% of funds received in satisfaction should be applied to the debt, and that probationers, if ordered by the court, shall make payments in a manner consistent with obligations for work, accounting, and payment specified in existing law.~~

~~(4)~~

(2) Existing law provides that restitution is to be made to the Restitution Fund to the extent that the victim of the crime has received assistance from the Victim Compensation and Government Claims Board. Existing law requires that a victim in a criminal case be notified of sentencing proceedings, of the right to civil recovery, and of the opportunity for compensation from the Restitution Fund. However, existing law does not explicitly address the circumstance in which an order is made for restitution to the Victim Compensation and Government Claims Board.

This bill would require a court clerk to notify the Victim Compensation and Government Claims Board within 90 days of an order requiring a defendant to pay restitution to the board *due to the victim receiving compensation from the fund* by mailing a copy of the



order to the board, and would allow this to be done periodically by bulk mail.

(5)

(3) Under existing law, a restitution fine is deposited into the Restitution Fund for expenditure by the Victim Compensation and Government Claims Board as awards to victims of crime, as specified. ~~For~~ Existing law separately defines “victims” for purposes of the provisions authorizing adult restitution fines and orders, and includes in that definition “derivative victims,” as specified.

*This bill would delete the language that adds “derivative victims” to the definition of “victims” for purposes of adult restitution fines and orders, and instead add specified persons who have sustained economic loss as the result of a crime, and persons eligible for awards to victims of crime to those deemed “victims” for these purposes.*

(4) For cases in which a sentence is imposed that includes a period of parole, existing law provides that an additional restitution fine shall be ordered, in the same amount as the primary restitution fine, to be suspended unless the person’s parole is revoked. Existing law does not provide for a similar suspended fine for probationers.

~~This bill would state that the parole revocation restitution fine becomes effective on revocation of parole, and cannot be waived or reduced by the court. The bill also specifies~~ *would specify* that parole revocation restitution fines are to be deposited in the Restitution Fund in the State Treasury. It would also provide for a probation ~~violation~~ *revocation* restitution fine, also in the same amount as the primary restitution fine, to be ~~ordered~~ *assessed* by the court and ~~assessed each time to become effective when a person’s probation is violated~~ *revoked*. This probation ~~violation~~ *revocation* restitution fine ~~also~~ could not be waived or reduced by the court *absent compelling and extraordinary reasons stated on the record*, and would be deposited in the Restitution Fund.

(6)

(5) Existing law provides that a fine or restitution fine may be enforced in the manner of civil judgments generally, specifies that the Victims Compensation and Government Claims Board may collect restitution fine balances after the termination of a term of probation or parole, authorizes disclosure of specified information to the board to assist the board in collecting restitution fines, and exempts restitution fines from the statutes limiting the time permitted for enforcing judgments.



Existing law establishes diversion programs in categories of cases involving drug and other charges that, upon successful completion, lead to the dismissal of criminal charges. For most of these categories, the court is required to impose a diversion restitution fee on the defendant, as specified.

This bill would specify that a diversion restitution fee or a restitution fine imposed upon parole revocation or probation ~~violation~~ *revocation* may also be enforced in the manner of civil judgments generally. It ~~provides~~ *would provide* that parole revocation restitution fines, probation revocation restitution fines, and diversion restitution fees are also subject to collection by the board after the termination of parole *or probation* or *the* completion of diversion, and that the same disclosures authorized to assist the board in collecting restitution fines may be given to the board to assist in collecting these parole *and probation* revocation restitution fines and diversion restitution fees. This bill would also exempt diversion restitution fees from the time limitations on enforcing judgments.

~~(7)~~

(6) Under existing law, the former State Board of Control has been renamed the *California Victim Compensation and Government Claims Board*.

This bill would correct obsolete references to the State Board of Control and correct a related cross reference.

~~(8)~~

(7) *Existing law requires the Director of Corrections, in any case in which a prisoner owes a restitution order or a restitution fine assessed in criminal court, to deduct specified amounts from the wages and trust account deposits of the prisoner unless prohibited by federal law, and to transfer those amounts to the State Board of Control for direct payment to the victim or deposit in the Restitution Fund. Existing law also authorizes the Director of Corrections to collect from a parolee any moneys owing on a restitution order or a restitution fine assessed in adult court unless prohibited by federal law, and requires the director to transfer those amounts to the State Board of Control for direct payment to the victim or deposit in the Restitution Fund.*

*This bill would make these same provisions applicable to restitution orders and restitution fines assessed in juvenile court for persons under the jurisdiction of the Director of Corrections.*

(8) Existing provisions of the Government Code continuously appropriate money in the Restitution Fund to the California Victim



Compensation and Government Claims Board for expenditure on indemnifying victims of crime, as specified. Because this bill would increase the amount of money deposited into this fund, it would make an appropriation.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. 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 1202.4 of the Penal Code is amended to  
2 read:

3 1202.4. (a) (1) It is the intent of the Legislature that a victim  
4 of crime who incurs any economic loss as a result of the  
5 commission of a crime shall receive restitution directly from any  
6 defendant convicted of that crime.

7 (2) Upon a person being convicted of any crime in the State of  
8 California, the court shall order the defendant to pay a fine in the  
9 form of a penalty assessment in accordance with Section 1464.

10 (3) The court, in addition to any other penalty provided or  
11 imposed under the law, shall order the defendant to pay both of the  
12 following:

13 (A) A restitution fine in accordance with subdivision (b).

14 (B) Restitution to the victim or victims, if any, in accordance  
15 with subdivision (f), which shall be enforceable as if the order  
16 were a civil judgment.

17 (b) In every case where a person is convicted of a crime, the  
18 court shall impose a separate and additional restitution fine, unless  
19 it finds compelling and extraordinary reasons for not doing so, and  
20 states those reasons on the record.

21 (1) The restitution fine shall be set at the discretion of the court  
22 and commensurate with the seriousness of the offense, but shall  
23 not be less than two hundred dollars (\$200), and not more than ten  
24 thousand dollars (\$10,000), if the person is convicted of a felony,  
25 and shall not be less than one hundred dollars (\$100), and not more  
26 than one thousand dollars (\$1,000), if the person is convicted of  
27 a misdemeanor.

28 (2) In setting a felony restitution fine, the court may determine  
29 the amount of the fine as the product of two hundred dollars (\$200)



1 multiplied by the number of years of imprisonment the defendant  
2 is ordered to serve, multiplied by the number of felony counts of  
3 which the defendant is convicted.

4 (c) The court shall impose the restitution fine unless it finds  
5 compelling and extraordinary reasons for not doing so, and states  
6 those reasons on the record. A defendant's inability to pay shall not  
7 be considered a compelling and extraordinary reason not to impose  
8 a restitution fine. Inability to pay may be considered only in  
9 increasing the amount of the restitution fine in excess of the  
10 two-hundred-dollar (\$200) or one-hundred-dollar (\$100)  
11 minimum. ~~The court shall not stay the restitution fine after it is~~  
12 ~~imposed.~~

13 (d) In setting the amount of the fine pursuant to subdivision (b)  
14 in excess of the two-hundred-dollar (\$200) or one-hundred-dollar  
15 (\$100) minimum, the court shall consider any relevant factors  
16 including, but not limited to, the defendant's inability to pay, the  
17 seriousness and gravity of the offense and the circumstances of its  
18 commission, any economic gain derived by the defendant as a  
19 result of the crime, the extent to which any other person suffered  
20 any losses as a result of the crime, and the number of victims  
21 involved in the crime. Those losses may include pecuniary losses  
22 to the victim or his or her dependents as well as intangible losses,  
23 such as psychological harm caused by the crime. Consideration of  
24 a defendant's inability to pay may include his or her future earning  
25 capacity. A defendant shall bear the burden of demonstrating his  
26 or her inability to pay. Express findings by the court as to the  
27 factors bearing on the amount of the fine shall not be required. A  
28 separate hearing for the fine shall not be required.

29 (e) The restitution fine shall not be subject to penalty  
30 assessments as provided in Section 1464, and shall be deposited in  
31 the Restitution Fund in the State Treasury.

32 (f) In every case in which a victim has suffered economic loss  
33 as a result of the defendant's conduct, the court shall require that  
34 the defendant make restitution to the victim or victims in an  
35 amount established by court order, based on the amount of loss  
36 claimed by the victim or victims or any other showing to the court.  
37 If the amount of loss cannot be ascertained at the time of  
38 sentencing, the restitution order shall include a provision that the  
39 amount shall be determined at the direction of the court. The court  
40 shall order full restitution unless it finds compelling and



1 extraordinary reasons for not doing so, and states them on the  
2 record.

3 (1) The defendant has the right to a hearing before a judge to  
4 dispute the determination of the amount of restitution. The court  
5 may modify the amount, on its own motion or on the motion of the  
6 district attorney, the victim or victims, or the defendant. If a  
7 motion is made for modification of a restitution order, the victim  
8 shall be notified of that motion at least 10 days prior to the  
9 proceeding held to decide the motion.

10 (2) Determination of the amount of restitution ordered  
11 pursuant to this subdivision shall not be affected by the  
12 indemnification or subrogation rights of any third party.  
13 Restitution ordered pursuant to this subdivision shall be ordered  
14 to be deposited to the Restitution Fund to the extent that the victim,  
15 as defined in subdivision (k), has received assistance from the  
16 Victims of Crime Program pursuant to Article 1 (commencing  
17 with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title  
18 2 of the Government Code.

19 (3) To the extent possible, the restitution order shall be  
20 prepared by the sentencing court, shall identify each victim and  
21 each loss to which it pertains, and shall be of a dollar amount that  
22 is sufficient to fully reimburse the victim or victims for every  
23 determined economic loss incurred as the result of the defendant's  
24 criminal conduct, including, but not limited to, all of the  
25 following:

26 (A) Full or partial payment for the value of stolen or damaged  
27 property. The value of stolen or damaged property shall be the  
28 replacement cost of like property, or the actual cost of repairing the  
29 property when repair is possible.

30 (B) Medical expenses.

31 (C) Mental health counseling expenses.

32 (D) Wages or profits lost due to injury incurred by the victim,  
33 and if the victim is a minor, wages or profits lost by the minor's  
34 parent, parents, guardian, or guardians, while caring for the  
35 injured minor. Lost wages shall include any commission income  
36 as well as any base wages. Commission income shall be  
37 established by evidence of commission income during the  
38 12-month period prior to the date of the crime for which restitution  
39 is being ordered, unless good cause for a shorter time period is  
40 shown.



1 (E) Wages or profits lost by the victim, and if the victim is a  
2 minor, wages or profits lost by the minor's parent, parents,  
3 guardian, or guardians, due to time spent as a witness or in assisting  
4 the police or prosecution. Lost wages shall include any  
5 commission income as well as any base wages. Commission  
6 income shall be established by evidence of commission income  
7 during the 12-month period prior to the date of the crime for which  
8 restitution is being ordered, unless good cause for a shorter time  
9 period is shown.

10 (F) Noneconomic losses, including, but not limited to,  
11 psychological harm, for felony violations of Section 288.

12 (G) Interest, at the rate of 10 percent per annum, that accrues  
13 as of the date of sentencing or loss, as determined by the court.

14 (H) Actual and reasonable attorney's fees and other costs of  
15 collection accrued by a private entity on behalf of the victim.

16 (I) Expenses incurred by an adult victim in relocating away  
17 from the defendant, including, but not limited to, deposits for  
18 utilities and telephone service, deposits for rental housing,  
19 temporary lodging and food expenses, clothing, and personal  
20 items. Expenses incurred pursuant to this section shall be verified  
21 by law enforcement to be necessary for the personal safety of the  
22 victim or by a mental health treatment provider to be necessary for  
23 the emotional well-being of the victim.

24 (J) Expenses to install or increase residential security incurred  
25 related to a crime, as defined in subdivision (c) of Section 667.5,  
26 including, but not limited to, a home security device or system, or  
27 replacing or increasing the number of locks.

28 (K) Expenses to retrofit a residence or vehicle, or both, to make  
29 the residence accessible to or the vehicle operational by the victim,  
30 if the victim is permanently disabled, whether the disability is  
31 partial or total, as a direct result of the crime.

32 (4) (A) If, as a result of the defendant's conduct, the  
33 Restitution Fund has provided assistance to or on behalf of a victim  
34 or derivative victim pursuant to Article 1 (commencing with  
35 Section ~~13959~~ 13950) of Chapter 5 of Part 4 of Division 3 of Title  
36 2 of the Government Code, the amount of assistance provided shall  
37 be presumed to be a direct result of the defendant's criminal  
38 conduct and shall be included in the amount of the restitution  
39 ordered.



1 (B) The amount of assistance provided by the Restitution Fund  
2 shall be established by copies of bills submitted to the *California*  
3 Victim Compensation and Government Claims Board reflecting  
4 the amount paid by the board and whether the services for which  
5 payment was made were for medical or dental expenses, funeral  
6 or burial expenses, mental health counseling, wage or support  
7 losses, or rehabilitation. Certified copies of these bills provided by  
8 ~~the Victim Compensation and Government Claims Board~~ *board*  
9 and redacted to protect the privacy and safety of the victim or any  
10 legal privilege, together with a statement made under penalty of  
11 perjury by the custodian of records that those bills were submitted  
12 to and were paid by the ~~Victim Compensation and Government~~  
13 ~~Claims Board~~ *board*, shall be sufficient to meet this requirement.

14 (C) If the defendant offers evidence to rebut the presumption  
15 established by this paragraph, the court may release additional  
16 information contained in the records of the ~~Victim Compensation~~  
17 ~~and Government Claims Board~~ *board* to the defendant only after  
18 reviewing that information in camera and finding that the  
19 information is necessary for the defendant to dispute the amount  
20 of the restitution order.

21 (5) Except as provided in paragraph (6), in any case in which  
22 an order may be entered pursuant to this subdivision, the defendant  
23 shall prepare and file a disclosure identifying all assets, income,  
24 and liabilities in which the defendant held or controlled a present  
25 or future interest as of the date of the defendant's arrest for the  
26 crime for which restitution may be ordered. If a defendant has any  
27 remaining unpaid balance on a restitution order or fine at the time  
28 of his or her release from probation or parole, the defendant shall  
29 submit a current financial disclosure statement to his or her  
30 probation or parole officer. The financial disclosure statements  
31 shall be made available to the victim ~~or the Victim Compensation~~  
32 ~~and Government Claims Board~~ *and the board* pursuant to Section  
33 1214, ~~and any use the court may make of the disclosure shall be~~  
34 ~~subject to the restrictions of subdivision (g).~~ The disclosure shall  
35 be signed by the defendant upon a form approved or adopted by  
36 the Judicial Council for the purpose of facilitating the disclosure.  
37 Any defendant who willfully states as true any material matter that  
38 he or she knows to be false on the disclosure required by this  
39 subdivision is guilty of a misdemeanor, unless this conduct is



1 punishable as perjury or another provision of law provides for a  
2 greater penalty.

3 (6) A defendant who fails to file the financial disclosure  
4 required in paragraph (5), but who has filed a financial affidavit or  
5 financial information pursuant to subdivision (c) of Section 987,  
6 shall be deemed to have waived the confidentiality of that affidavit  
7 or financial information as to a victim in whose favor the order of  
8 restitution is entered pursuant to subdivision (f). The affidavit or  
9 information shall serve in lieu of the financial disclosure required  
10 in paragraph (5), and paragraphs (7) to (10), inclusive, shall not  
11 apply.

12 (7) Except as provided in paragraph (6), the defendant shall file  
13 the disclosure with the clerk of the court no later than the date set  
14 for the defendant's sentencing, unless otherwise directed by the  
15 court. The disclosure may be inspected or copied as provided by  
16 subdivision (b), (c), or (d) of Section 1203.05.

17 (8) In its discretion, the court may relieve the defendant of the  
18 duty under paragraph (7) of filing with the clerk by requiring that  
19 the defendant's disclosure be submitted as an attachment to, and  
20 be available to, those authorized to receive the following:

21 (A) Any report submitted pursuant to subparagraph (C) of  
22 paragraph (2) of subdivision (b) of Section 1203 or subdivision (g)  
23 of Section 1203.

24 (B) Any stipulation submitted pursuant to paragraph (4) of  
25 subdivision (b) of Section 1203.

26 (C) Any report by the probation officer, or any information  
27 submitted by the defendant applying for a conditional sentence  
28 pursuant to subdivision (d) of Section 1203.

29 (9) The court may consider a defendant's unreasonable failure  
30 to make a complete disclosure pursuant to paragraph (5) as any of  
31 the following:

32 (A) A circumstance in aggravation of the crime in imposing a  
33 term under subdivision (b) of Section 1170.

34 (B) A factor indicating that the interests of justice would not be  
35 served by admitting the defendant to probation under Section  
36 1203.

37 (C) A factor indicating that the interests of justice would not be  
38 served by conditionally sentencing the defendant under Section  
39 1203.



1 (D) A factor indicating that the interests of justice would not be  
2 served by imposing less than the maximum fine and sentence fixed  
3 by law for the case.

4 (10) A defendant's failure or refusal to make the required  
5 disclosure pursuant to paragraph (5) shall not delay entry of an  
6 order of restitution or pronouncement of sentence. In appropriate  
7 cases, the court may do any of the following:

8 (A) Require the defendant to be examined by the district  
9 attorney pursuant to subdivision (h).

10 (B) If sentencing the defendant under Section 1170, provide  
11 that the victim shall receive a copy of the portion of the probation  
12 report filed pursuant to Section 1203.10 concerning the  
13 defendant's employment, occupation, finances, and liabilities.

14 (C) If sentencing the defendant under Section 1203, set a date  
15 and place for submission of the disclosure required by paragraph  
16 (5) as a condition of probation or suspended sentence.

17 (g) The court shall order full restitution unless it finds  
18 compelling and extraordinary reasons for not doing so, and states  
19 those reasons on the record. A defendant's inability to pay shall not  
20 be considered a compelling and extraordinary reason not to impose  
21 a restitution order, nor shall inability to pay be a consideration in  
22 determining the amount of a restitution order.

23 (h) The district attorney may request an order of examination  
24 pursuant to the procedures specified in Article 2 (commencing  
25 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part  
26 2 of the Code of Civil Procedure, in order to determine the  
27 defendant's financial assets for purposes of collecting on the  
28 restitution order.

29 (i) A restitution order imposed pursuant to subdivision (f) shall  
30 be enforceable as if the order were a civil judgment.

31 (j) The making of a restitution order pursuant to subdivision (f)  
32 shall not affect the right of a victim to recovery from the  
33 Restitution Fund as otherwise provided by law, except to the extent  
34 that restitution is actually collected pursuant to the order.  
35 Restitution collected pursuant to this subdivision shall be credited  
36 to any other judgments for the same losses obtained against the  
37 defendant arising out of the crime for which the defendant was  
38 convicted.

39 (k) For purposes of this section, "victim" shall include all of  
40 the following:



1 (1) The immediate surviving family of the actual victim.

2 (2) Any corporation, business trust, estate, trust, partnership,  
3 association, joint venture, government, governmental  
4 subdivision, agency, or instrumentality, or any other legal or  
5 commercial entity when that entity is a direct victim of a crime.

6 ~~(3) “Derivative victims” as defined in Section 13951 of the  
7 Government Code.~~

8 ~~(l) The entities responsible for collecting restitution fines, fees,  
9 and orders imposed pursuant to this section, Sections 1202.44,  
10 1202.45, and 1001.90 may impose an administrative fee to cover  
11 the cost of collection. The administrative fee shall be in the amount  
12 of 10 percent of any amount received toward satisfaction of the  
13 restitution fine, fee, or order. The remaining 90 percent of funds  
14 received in satisfaction of the restitution fine, fee, or order shall be  
15 applied to the debt owed in a manner consistent with the provisions  
16 of subdivision (d) of Section 1203.1, if applicable.~~

17 ~~If the entity responsible for collecting restitution fines, fees, and  
18 orders is a county, the administrative fee may be imposed only  
19 upon approval of the county’s board of supervisors.~~

20 ~~The administrative fee authorized by this section shall not apply  
21 to debts collected pursuant to Section 2085.5, or Sections 1752.81  
22 and 1752.82 of the Welfare and Institutions Code.~~

23 (3) *Any person who has sustained economic loss as the result  
24 of a crime and who satisfies any of the following conditions:*

25 (A) *At the time of the crime was the parent, grandparent,  
26 sibling, spouse, child, or grandchild of the victim.*

27 (B) *At the time of the crime was living in the household of the  
28 victim.*

29 (C) *At the time of the crime was a person who had previously  
30 lived in the household of the victim for a period of not less than two  
31 years in a relationship substantially similar to a relationship listed  
32 in subparagraph (A).*

33 (D) *Is another family member of the victim, including, but not  
34 limited to, the victim’s fiance or fiancée, and who witnessed the  
35 crime.*

36 (E) *Is the primary caretaker of a minor victim, but was not the  
37 primary caretaker at the time of the crime.*

38 (4) *Any person who is eligible to receive assistance from the  
39 Restitution Fund pursuant to Article 1 (commencing with Section*



1 13950) of Chapter 5 of Part 4 of Division 3 of Title 2 of the  
2 Government Code.

3 (l) At its discretion, the board of supervisors of any county may  
4 impose a fee to cover the actual administrative cost of collecting  
5 the restitution fine, not to exceed 10 percent of the amount ordered  
6 to be paid, to be added to the restitution fine and included in the  
7 order of the court, the proceeds of which shall be deposited in the  
8 general fund of the county.

9 (m) In every case in which the defendant is granted probation,  
10 the court shall make the payment of restitution fines and orders  
11 imposed pursuant to this section a condition of probation. Any  
12 portion of a restitution order that remains unsatisfied after a  
13 defendant is no longer on probation shall continue to be  
14 enforceable by a victim pursuant to Section 1214 until the  
15 obligation is satisfied.

16 (n) If the court finds and states on the record compelling and  
17 extraordinary reasons why a restitution fine or full restitution order  
18 should not be required, the court shall order, as a condition of  
19 probation, that the defendant perform specified community  
20 service, unless it finds and states on the record compelling and  
21 extraordinary reasons not to require community service in addition  
22 to the finding that restitution should not be required. Upon  
23 revocation of probation, the court shall impose restitution pursuant  
24 to this section.

25 (o) The provisions of Section 13966.01 of the Government  
26 Code shall apply to restitution imposed pursuant to this section.

27 (p) (1) This section shall become operative on January 1,  
28 2000, except when all of the following apply:

29 (A) A majority of judges of a court apply to the Judicial Council  
30 for an extension.

31 (B) The judicial application described in paragraph (1)  
32 documents the need for time to adjust restitution procedures and  
33 practices, as well as to facilitate judicial education and training in  
34 direct restitution to victims under subdivision (f).

35 (C) The Judicial Council grants the extension upon finding  
36 good cause.

37 (2) Upon the grant of an extension pursuant to the application  
38 of a court under this subdivision, the provisions of former Section  
39 1214 shall continue to apply with respect to that court. The



1 extension may be for any period of time set by the Judicial Council,  
2 but shall not exceed January 1, 2002, in any case.

3 (q) The court clerk shall notify the *California* Victim  
4 Compensation and Government Claims Board within 90 days of  
5 an order of restitution being imposed if the defendant is ordered  
6 to pay restitution to the ~~Victim Compensation and Government~~  
7 ~~Claims Board~~ *board due to the victim receiving compensation*  
8 *from the Restitution Fund*. Notification shall be accomplished by  
9 mailing a copy of the court order to the ~~Victim Compensation and~~  
10 ~~Government Claims Board~~ *board*, which may be done  
11 periodically by bulk mail.

12 SEC. 2. Section 1202.44 is added to the Penal Code, to read:  
13 1202.44. In every case in which a person is convicted of a  
14 crime and ~~is granted probation~~ *whose sentence includes a period*  
15 *of probation*, the court shall at the time of imposing the restitution  
16 fine pursuant to subdivision (b) of Section 1202.4 ~~make an order~~  
17 ~~that each time that probation is violated, an additional restitution~~  
18 ~~fine shall be assessed~~ *assess an additional probation revocation*  
19 *restitution fine* in the same amount as that imposed pursuant to  
20 subdivision (b) of Section 1202.4. This *additional* probation  
21 ~~violation~~ *revocation* restitution fine shall ~~be assessed each time~~  
22 ~~that probation is violated~~ *become effective upon the revocation of*  
23 *probation*, and shall not be waived or reduced by the court.  
24 ~~Probation violation~~, *absent compelling and extraordinary reasons*  
25 *stated on record*. Probation revocation restitution fines shall be  
26 deposited in the Restitution Fund in the State Treasury.

27 SEC. 3. Section 1202.45 of the Penal Code is amended to  
28 read:

29 1202.45. In every case where a person is convicted of a crime  
30 and whose sentence includes a period of parole, the court shall at  
31 the time of imposing the restitution fine pursuant to subdivision (b)  
32 of Section 1202.4, assess an additional parole revocation  
33 restitution fine in the same amount as that imposed pursuant to  
34 subdivision (b) of Section 1202.4. This additional parole  
35 revocation restitution fine shall be suspended unless the person's  
36 parole is revoked. ~~The parole revocation restitution fine shall~~  
37 ~~become effective upon that revocation, and shall not be waived or~~  
38 ~~reduced by the court~~. Parole revocation restitution fine moneys  
39 shall be deposited in the Restitution Fund in the State Treasury.

40 SEC. 4. Section 1214 of the Penal Code is amended to read:



1 1214. (a) If the judgment is for a fine, including a restitution  
2 fine ordered pursuant to Section 1202.4, 1202.44, or 1202.45, or  
3 Section 1203.04 as operative on or before August 2, 1995, or  
4 Section 13967 of the Government Code, as operative on or before  
5 September 28, 1994, with or without imprisonment, or a diversion  
6 restitution fee ordered pursuant to Section 1001.90, the judgment  
7 may be enforced in the manner provided for the enforcement of  
8 money judgments generally. Any portion of a restitution fine or  
9 restitution fee that remains unsatisfied after a defendant is no  
10 longer on probation or parole or has completed diversion is  
11 enforceable by the Victim Compensation and Government Claims  
12 Board pursuant to this section. Notwithstanding any other  
13 provision of law prohibiting disclosure, the state, as defined in  
14 Section 900.6 of the Government Code, a local public entity, as  
15 defined in Section 900.4 of the Government Code, or any other  
16 entity, may provide the Victim Compensation and Government  
17 Claims Board any and all information to assist in the collection of  
18 unpaid portions of a restitution fine for terminated probation or  
19 parole cases, or of a restitution fee for completed diversion cases.  
20 For purposes of the preceding sentence, “state, as defined in  
21 Section 900.6 of the Government Code,” and “any other entity”  
22 shall not include the Franchise Tax Board.

23 (b) In any case in which a defendant is ordered to pay  
24 restitution, the order to pay restitution (1) is deemed a money  
25 judgment if the defendant was informed of his or her right to have  
26 a judicial determination of the amount and was provided with a  
27 hearing, waived a hearing, or stipulated to the amount of the  
28 restitution ordered, and (2) shall be fully enforceable by a victim  
29 as if the restitution order were a civil judgment, and enforceable  
30 in the same manner as is provided for the enforcement of any other  
31 money judgment. Upon the victim’s request, the court shall  
32 provide the victim in whose favor the order of restitution is entered  
33 with a certified copy of that order and a copy of the defendant’s  
34 disclosure pursuant to paragraph (4) of subdivision (f) of Section  
35 1202.4, affidavit or information pursuant to paragraph (5) of  
36 subdivision (f) of Section 1202.4, or report pursuant to paragraph  
37 (7) of subdivision (f) of Section 1202.4. The court also shall  
38 provide this information to the district attorney upon request in  
39 connection with an investigation or prosecution involving perjury  
40 or the veracity of the information contained within the defendant’s



1 financial disclosure. In addition, upon request, the court shall  
2 provide the Victim Compensation and Government Claims Board  
3 with a certified copy of any order imposing a restitution fine or  
4 order and a copy of the defendant's disclosure pursuant to  
5 paragraph (4) of subdivision (f) of Section 1202.4, affidavit or  
6 information pursuant to paragraph (5) of subdivision (f) of Section  
7 1202.4, or report pursuant to paragraph (7) of subdivision (f) of  
8 Section 1202.4. A victim shall have access to all resources  
9 available under the law to enforce the restitution order, including,  
10 but not limited to, access to the defendant's financial records, use  
11 of wage garnishment and lien procedures, information regarding  
12 the defendant's assets, and the ability to apply for restitution from  
13 any fund established for the purpose of compensating victims in  
14 civil cases. Any portion of a restitution order that remains  
15 unsatisfied after a defendant is no longer on probation or parole is  
16 enforceable by the victim pursuant to this section. Victims and the  
17 Victim Compensation and Government Claims Board shall inform  
18 the court whenever an order to pay restitution is satisfied.

19 (c) Except as provided in subdivision (d), and notwithstanding  
20 the amount in controversy limitation of Section 85 of the Code of  
21 Civil Procedure, a restitution order or restitution fine that was  
22 imposed pursuant to Section 1202.4 in any of the following cases  
23 may be enforced in the same manner as a money judgment in a  
24 limited civil case:

25 (1) In a misdemeanor case.

26 (2) In a case involving violation of a city or town ordinance.

27 (3) In a noncapital criminal case where the court has received  
28 a plea of guilty or nolo contendere.

29 (d) Chapter 3 (commencing with Section 683.010) of Division  
30 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply  
31 to a judgment for any fine or restitution ordered pursuant to  
32 Section 1202.4 or Section 1203.04 as operative on or before  
33 August 2, 1995, or Section 13967 of the Government Code, as  
34 operative on or before September 28, 1994, or to a diversion  
35 restitution fee ordered pursuant to Section 1001.90.

36 (e) (1) This section shall become operative on January 1, 2000,  
37 and shall be applicable to all courts, except when all of the  
38 following apply:

39 (A) A majority of judges of a court apply to the Judicial Council  
40 for an extension.



1 (B) The judicial application described in paragraph (1)  
2 documents the need for time to adjust restitution procedures and  
3 practices, as well as to facilitate judicial education and training in  
4 direct restitution to victims under subdivision (f) of Section  
5 1202.4.

6 (C) The Judicial Council grants the extension upon finding  
7 good cause.

8 (2) Upon the grant of an extension pursuant to the application  
9 of a court under this subdivision, the provisions of former Section  
10 1202.4 shall continue to apply with respect to that court. The  
11 extension may be for any period of time set by the Judicial Council,  
12 but shall not exceed January 1, 2002, in any case.

13 SEC. 5. *Section 2085.5 of the Penal Code is amended to read:*

14 2085.5. (a) In any case in which a prisoner owes a restitution  
15 fine imposed pursuant to subdivision (a) of Section 13967 of the  
16 Government Code, as operative prior to September 28, 1994,  
17 *subdivision (b) of Section 730.6 of the Welfare and Institutions*  
18 *Code*, or subdivision (b) of Section 1202.4, the Director of  
19 Corrections shall deduct a minimum of 20 percent or the balance  
20 owing on the fine amount, whichever is less, up to a maximum of  
21 50 percent from the wages and trust account deposits of a prisoner,  
22 unless prohibited by federal law, and shall transfer that amount to  
23 the California Victim Compensation and Government Claims  
24 Board for deposit in the Restitution Fund in the State Treasury.  
25 Any amount so deducted shall be credited against the amount  
26 owing on the fine. The sentencing court shall be provided a record  
27 of the payments.

28 (b) In any case in which a prisoner owes a restitution order  
29 imposed pursuant to subdivision (c) of Section 13967 of the  
30 Government Code, as operative prior to September 28, 1994,  
31 *subdivision (h) of Section 730.6 of the Welfare and Institutions*  
32 *Code*, or subdivision (f) of Section 1202.4, the Director of  
33 Corrections shall deduct a minimum of 20 percent or the balance  
34 owing on the order amount, whichever is less, up to a maximum  
35 of 50 percent from the wages and trust account deposits of a  
36 prisoner, unless prohibited by federal law. If the restitution is owed  
37 to a person who has filed an application with the Victims of Crime  
38 Program, the director shall transfer that amount to the California  
39 Victim Compensation and Government Claims Board for direct  
40 payment to the victim, or payment shall be made to the Restitution



1 Fund to the extent that the victim has received assistance pursuant  
2 to that program. No deductions shall be made on behalf of victims  
3 who have not filed an application with the Victims of Crime  
4 Program. The sentencing court shall be provided a record of the  
5 payments made to victims and of the payments deposited to the  
6 Restitution Fund pursuant to this subdivision.

7 (c) The director shall deduct and retain from the wages and trust  
8 account deposits of a prisoner, unless prohibited by federal law, an  
9 administrative fee that totals 10 percent of any amount transferred  
10 to the California Victim Compensation and Government Claims  
11 Board pursuant to subdivision (a) or (b). The director shall deduct  
12 and retain from any prisoner settlement or trial award, an  
13 administrative fee that totals 5 percent of any amount paid from the  
14 settlement or award to satisfy an outstanding restitution order or  
15 fine pursuant to subdivision (j), unless prohibited by federal law.  
16 The director shall deposit the administrative fee moneys in a  
17 special deposit account for reimbursing administrative and  
18 support costs of the restitution program of the Department of  
19 Corrections. The director, at his or her discretion, may retain any  
20 excess funds in the special deposit account for future  
21 reimbursement of the department's administrative and support  
22 costs for the restitution program or may transfer all or part of the  
23 excess funds for deposit in the Restitution Fund.

24 (d) In any case in which a parolee owes a restitution fine  
25 imposed pursuant to subdivision (a) of Section 13967 of the  
26 Government Code, as operative prior to September 28, 1994,  
27 *subdivision (b) of Section 730.6 of the Welfare and Institutions*  
28 *Code*, or subdivision (b) of Section 1202.4, the Director of  
29 Corrections may collect from the parolee any moneys owing on the  
30 restitution fine amount, unless prohibited by federal law, ~~and~~. *The*  
31 *director* shall transfer that amount to the California Victim  
32 Compensation and Government Claims Board for deposit in the  
33 Restitution Fund in the State Treasury. Any amount so deducted  
34 shall be credited against the amount owing on the fine. The  
35 sentencing court shall be provided a record of the payments.

36 (e) In any case in which a parolee owes a direct order of  
37 restitution, imposed pursuant to subdivision (c) of Section 13967  
38 of the Government Code, as operative prior to September 28,  
39 1994, *subdivision (h) of Section 730.6 of the Welfare and*  
40 *Institutions Code*, or paragraph (3) of subdivision (a) of Section



1 1202.4, the Director of Corrections may collect from the parolee  
2 any moneys owing, unless prohibited by federal law. If the  
3 restitution is owed to a person who has filed an application with  
4 the Victims of Crime Program, the director shall transfer that  
5 amount to the California Victim Compensation and Government  
6 Claims Board for direct payment to the victim, or payment shall  
7 be made to the Restitution Fund to the extent that the victim has  
8 received assistance pursuant to that program. No deductions shall  
9 be made on behalf of victims who have not filed an application  
10 with the Victims of Crime Program. The sentencing court shall be  
11 provided a record of the payments made by the offender pursuant  
12 to this subdivision.

13 (f) The director may deduct and retain from any moneys  
14 collected from parolees an administrative fee that totals 10 percent  
15 of any amount transferred to the California Victim Compensation  
16 and Government Claims Board pursuant to subdivision (d) or (e),  
17 unless prohibited by federal law. The director shall deduct and  
18 retain from any settlement or trial award of a parolee an  
19 administrative fee that totals 5 percent of any amount paid from the  
20 settlement or award to satisfy an outstanding restitution order or  
21 fine pursuant to subdivision (j), unless prohibited by federal law.  
22 The director shall deposit the administrative fee moneys in a  
23 special deposit account for reimbursing administrative and  
24 support costs of the restitution program of the Department of  
25 Corrections. The director, at his or her discretion, may retain any  
26 excess funds in the special deposit account for future  
27 reimbursement of the department's administrative and support  
28 costs for the restitution program or may transfer all or part of the  
29 excess funds for deposit in the Restitution Fund.

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

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

36 (i) If an inmate is housed at an institution that requires food to  
37 be purchased from the institution canteen for unsupervised  
38 overnight visits, and if the money for the purchase of this food is  
39 received from funds other than the inmate's wages, that money  
40 shall be exempt from restitution deductions. This exemption shall



1 apply to the actual amount spent on food for the visit up to a  
2 maximum of fifty dollars (\$50) for visits that include the inmate  
3 and one visitor, seventy dollars (\$70) for visits that include the  
4 inmate and two or three visitors, and eighty dollars (\$80) for visits  
5 that include the inmate and four or more visitors.

6 (j) Any compensatory or punitive damages awarded by trial or  
7 settlement to any inmate or parolee in connection with a civil  
8 action brought against any federal, state, or local jail, prison, or  
9 correctional facility, or any official or agent thereof, shall be paid  
10 directly, after payment of reasonable attorney's fees and litigation  
11 costs approved by the court, to satisfy any outstanding restitution  
12 orders or restitution fines against that person. The balance of any  
13 award shall be forwarded to the payee after full payment of all  
14 outstanding restitution orders and restitution fines, subject to  
15 subdivisions (c) and (f). The Department of Corrections shall  
16 make all reasonable efforts to notify the victims of the crime for  
17 which that person was convicted concerning the pending payment  
18 of any compensatory or punitive damages.

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

28 (2) In any case in which a victim cannot be located, the  
29 restitution revenues received by the California Victim  
30 Compensation and Government Claims Board on behalf of the  
31 victim shall be held in trust in the Restitution Fund until the end  
32 of the state fiscal year subsequent to the state fiscal year in which  
33 the funds were deposited or until the time that the victim has  
34 provided current address information, whichever occurs sooner.  
35 Amounts remaining in trust at the end of the specified period of  
36 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 California Victim Compensation  
3 and Government Claims Board shall transmit the restitution  
4 revenues to the victim in accordance with the provisions of  
5 subdivision (b).

6 *SEC. 6.* This act is an urgency statute necessary for the  
7 immediate preservation of the public peace, health, or safety  
8 within the meaning of Article IV of the Constitution and shall go  
9 into immediate effect. The facts constituting the necessity are:

10 In order to effectuate the collection of revenue for the  
11 Restitution Fund and to pay claims submitted by victims of crime  
12 to end their financial hardship as soon as possible, it is necessary  
13 for this act to take immediate effect.

