

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 576

Introduced by Assembly Member Torres

February 25, 2009

An act to amend Sections 594 and 1202.4 of the Penal Code, *and to amend Section 730.6 of the Welfare and Institutions Code*, relating to vandalism.

LEGISLATIVE COUNSEL'S DIGEST

AB 576, as amended, Torres. Vandalism: graffiti: recovery of costs.

Existing law, amended by Proposition 21, an initiative measure enacted by voters at the March 7, 2000, statewide primary election that requires a statute passed in each house by a $\frac{2}{3}$ vote for legislative amendment, makes a person who maliciously commits specified destructive acts with respect to another's property guilty of vandalism. Existing law establishes punishments for acts of vandalism in the form of fine or imprisonment or by both a fine and imprisonment. Existing law requires the court, when appropriate and feasible, to order a defendant who is convicted of violating this provision, or to order the offender and his or her parents, if the offender is a minor, to clean up, repair, or replace the damaged property or keep the damaged property or another specified property in the community free of graffiti for up to one year.

This bill would additionally require the court, regarding any person who is convicted of, or any person regarding whom a petition is sustained for a violation of, specified acts of vandalism, to order the defendant or juvenile offender to pay ~~all costs incurred by any law enforcement agency in identifying and apprehending the defendant a~~

\$50 fee, provided that the court determines that the defendant or juvenile offender has the ability to pay. *This bill would also require that the county collecting the \$50 dollar fee deposit that fee into the county's Graffiti Intelligence and Technology Fund, a special account to be used exclusively to pay for certain related law enforcement costs and costs incurred by the county for the administration of the fund.*

Under existing law, in every case in which a victim, as defined, has suffered economic loss as a result of the defendant's *or the juvenile offender's* conduct, the court is required to impose an order upon the defendant *or the juvenile offender* to make restitution to the victim or victims, as specified.

This bill would add to ~~the definition~~ *those definitions* of victim any governmental entity responsible for repairing, replacing, or restoring graffiti vandalized property, both publicly and privately owned, who has sustained an economic loss as the result of specified violations.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 594 of the Penal Code is amended to
2 read:

3 594. (a) Every person who maliciously commits any of the
4 following acts with respect to any real or personal property not his
5 or her own, in cases other than those specified by state law, is
6 guilty of vandalism:

- 7 (1) Defaces with graffiti or other inscribed material.
- 8 (2) Damages.
- 9 (3) Destroys.

10 Whenever a person violates this subdivision with respect to real
11 property, vehicles, signs, fixtures, furnishings, or property
12 belonging to any public entity, as defined by Section 811.2 of the
13 Government Code, or the federal government, it shall be a
14 permissive inference that the person neither owned the property
15 nor had the permission of the owner to deface, damage, or destroy
16 the property.

17 (b) (1) If the amount of defacement, damage, or destruction is
18 four hundred dollars (\$400) or more, vandalism is punishable by
19 imprisonment in the state prison or in a county jail not exceeding
20 one year, or by a fine of not more than ten thousand dollars

1 (\$10,000), or if the amount of defacement, damage, or destruction
2 is ten thousand dollars (\$10,000) or more, by a fine of not more
3 than fifty thousand dollars (\$50,000), or by both that fine and
4 imprisonment.

5 (2) (A) If the amount of defacement, damage, or destruction is
6 less than four hundred dollars (\$400), vandalism is punishable by
7 imprisonment in a county jail not exceeding one year, or by a fine
8 of not more than one thousand dollars (\$1,000), or by both that
9 fine and imprisonment.

10 (B) If the amount of defacement, damage, or destruction is less
11 than four hundred dollars (\$400), and the defendant has been
12 previously convicted of vandalism or affixing graffiti or other
13 inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6,
14 or 640.7, vandalism is punishable by imprisonment in a county
15 jail for not more than one year, or by a fine of not more than five
16 thousand dollars (\$5,000), or by both that fine and imprisonment.

17 (c) (1) Any person who is convicted of, or any person regarding
18 whom a petition is sustained for, a violation under this section for
19 acts of vandalism consisting of defacing property with graffiti or
20 other inscribed materials, the court shall, when appropriate and
21 feasible, in addition to any punishment imposed under subdivision
22 (b), order the defendant to clean up, repair, or replace the damaged
23 property himself or herself, or order the defendant, and his or her
24 parents or guardians if the defendant is a minor, to keep the
25 damaged property or another specified property in the community
26 free of graffiti for up to one year. Participation of a parent or
27 guardian is not required under this subdivision if the court deems
28 this participation to be detrimental to the defendant, or if the parent
29 or guardian is a single parent who must care for young children.
30 If the court finds that graffiti cleanup is inappropriate, the court
31 shall consider other types of community service, where feasible.

32 (2) The court shall, in regards to any person who is convicted
33 of, or any person regarding whom a petition is sustained for, ~~acts~~
34 ~~of vandalism pursuant to Sections 594, 594.3, 594.4, 640.5, 640.6,~~
35 ~~or 640.7 of the Penal Code~~ *a violation under this section for acts*
36 *of vandalism consisting of defacing property with graffiti or other*
37 *inscribed materials*, in addition to any punishment imposed under
38 subdivision (b), ~~order the defendant or juvenile offender to pay all~~
39 ~~costs incurred by any law enforcement agency in identifying and~~
40 ~~apprehending the defendant, provided that the court determines~~

1 ~~that the defendant or juvenile offender has the ability to pay. The~~
2 ~~law enforcement agency shall provide evidence of, and bear the~~
3 ~~burden of establishing, the reasonable costs that it incurred in~~
4 ~~identifying and apprehending the defendant or juvenile offender.~~
5 *provided that the court determines that the defendant or juvenile*
6 *offender has the ability to pay, order the defendant or juvenile*
7 *offender to pay a fifty dollar (\$50) fee, for each separate offense,*
8 *to the Graffiti Intelligence and Technology Fund of the county*
9 *where the offense occurred.*

10 *(3) Notwithstanding Sections 1463 and 1464, the fifty-dollar*
11 *(\$50) fee collected by any county pursuant to paragraph (2) shall*
12 *be deposited with that county treasurer into the Graffiti Intelligence*
13 *and Technology Fund, a special account that shall be created in*
14 *each county exclusively to fund the following:*

15 *(A) Costs incurred by any law enforcement agency with*
16 *jurisdiction in that county for the development and maintenance*
17 *of technology for identifying graffiti offenders in connection with*
18 *criminal investigations conducted within both the incorporated or*
19 *unincorporated portions of the county.*

20 *(B) The purchase and maintenance of equipment necessary to*
21 *use the technology.*

22 *(C) Continuing education and training required to use the*
23 *technology.*

24 *(D) Reasonable administrative costs incurred by the county to*
25 *maintain the fund.*

26 *Moneys deposited in the Graffiti Intelligence and Technology*
27 *Fund shall be in addition to any allocations made for these*
28 *purposes pursuant to existing law.*

29 ~~(3)~~

30 *(4) The law enforcement costs authorized to be paid pursuant*
31 *to this subdivision are in addition to any other costs incurred or*
32 *recovered by the law enforcement agency and payment of these*
33 *costs does not in any way limit, preclude, or restrict any other*
34 *right, remedy, or action otherwise available to the law enforcement*
35 *agency.*

36 *(d) If a minor is personally unable to pay a fine or restitution,*
37 ~~*including law enforcement costs, or both a fine and restitution,*~~
38 ~~*including law enforcement costs,*~~ *levied for acts prohibited by this*
39 *section, the parent of that minor shall be liable for payment of the*
40 *fine or restitution, including law enforcement costs, or both if so*

1 levied. A court may waive payment of the fine or restitution, or
2 any part thereof, by the parent upon a finding of good cause.

3 (e) As used in this section, the term “graffiti or other inscribed
4 material” includes any unauthorized inscription, word, figure,
5 mark, or design, that is written, marked, etched, scratched, drawn,
6 or painted on real or personal property.

7 (f) The court may order any person ordered to perform
8 community service or graffiti removal pursuant to paragraph (1)
9 of subdivision (c) to undergo counseling.

10 (g) This section shall become operative on January 1, 2002.

11 SEC. 2. Section 1202.4 of the Penal Code is amended to read:

12 1202.4. (a) (1) It is the intent of the Legislature that a victim
13 of crime who incurs any economic loss as a result of the
14 commission of a crime shall receive restitution directly from any
15 defendant convicted of that crime.

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

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

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

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

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

30 (1) The restitution fine shall be set at the discretion of the court
31 and commensurate with the seriousness of the offense, but shall
32 not be less than two hundred dollars (\$200), and not more than ten
33 thousand dollars (\$10,000), if the person is convicted of a felony,
34 and shall not be less than one hundred dollars (\$100), and not more
35 than one thousand dollars (\$1,000), if the person is convicted of
36 a misdemeanor.

37 (2) In setting a felony restitution fine, the court may determine
38 the amount of the fine as the product of two hundred dollars (\$200)
39 multiplied by the number of years of imprisonment the defendant

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

3 (c) The court shall impose the restitution fine unless it finds
4 compelling and extraordinary reasons for not doing so, and states
5 those reasons on the record. A defendant's inability to pay shall
6 not be considered a compelling and extraordinary reason not to
7 impose a restitution fine. Inability to pay may be considered only
8 in increasing the amount of the restitution fine in excess of the two
9 hundred-dollar (\$200) or one hundred-dollar (\$100) minimum.
10 The court may specify that funds confiscated at the time of the
11 defendant's arrest, except for funds confiscated pursuant to Section
12 11469 of the Health and Safety Code, be applied to the restitution
13 fine if the funds are not exempt for spousal or child support or
14 subject to any other legal exemption.

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

31 (e) The restitution fine shall not be subject to penalty
32 assessments authorized in Section 1464 or Chapter 12
33 (commencing with Section 76000) of Title 8 of the Government
34 Code, or the state surcharge authorized in Section 1465.7, and
35 shall be deposited in the Restitution Fund in the State Treasury.

36 (f) Except as provided in subdivisions (q) and (r), in every case
37 in which a victim has suffered economic loss as a result of the
38 defendant's conduct, the court shall require that the defendant
39 make restitution to the victim or victims in an amount established
40 by court order, based on the amount of loss claimed by the victim

1 or victims or any other showing to the court. If the amount of loss
2 cannot be ascertained at the time of sentencing, the restitution
3 order shall include a provision that the amount shall be determined
4 at the direction of the court. The court shall order full restitution
5 unless it finds compelling and extraordinary reasons for not doing
6 so, and states them on the record. The court may specify that funds
7 confiscated at the time of the defendant's arrest, except for funds
8 confiscated pursuant to Section 11469 of the Health and Safety
9 Code, be applied to the restitution order if the funds are not exempt
10 for spousal or child support or subject to any other legal exemption.

11 (1) The defendant has the right to a hearing before a judge to
12 dispute the determination of the amount of restitution. The court
13 may modify the amount, on its own motion or on the motion of
14 the district attorney, the victim or victims, or the defendant. If a
15 motion is made for modification of a restitution order, the victim
16 shall be notified of that motion at least 10 days prior to the
17 proceeding held to decide the motion.

18 (2) Determination of the amount of restitution ordered pursuant
19 to this subdivision shall not be affected by the indemnification or
20 subrogation rights of any third party. Restitution ordered pursuant
21 to this subdivision shall be ordered to be deposited to the
22 Restitution Fund to the extent that the victim, as defined in
23 subdivision (k), has received assistance from the Victim
24 Compensation Program pursuant to Chapter 5 (commencing with
25 Section 13950) of Part 4 of Division 3 of Title 2 of the Government
26 Code.

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

33 (A) Full or partial payment for the value of stolen or damaged
34 property. The value of stolen or damaged property shall be the
35 replacement cost of like property, or the actual cost of repairing
36 the property when repair is possible.

37 (B) Medical expenses.

38 (C) Mental health counseling expenses.

39 (D) Wages or profits lost due to injury incurred by the victim,
40 and if the victim is a minor, wages or profits lost by the minor's

1 parent, parents, guardian, or guardians, while caring for the injured
2 minor. Lost wages shall include any commission income as well
3 as any base wages. Commission income shall be established by
4 evidence of commission income during the 12-month period prior
5 to the date of the crime for which restitution is being ordered,
6 unless good cause for a shorter time period is shown.

7 (E) Wages or profits lost by the victim, and if the victim is a
8 minor, wages or profits lost by the minor's parent, parents,
9 guardian, or guardians, due to time spent as a witness or in assisting
10 the police or prosecution. Lost wages shall include any commission
11 income as well as any base wages. Commission income shall be
12 established by evidence of commission income during the
13 12-month period prior to the date of the crime for which restitution
14 is being ordered, unless good cause for a shorter time period is
15 shown.

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

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

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

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

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

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

38 (4) (A) If, as a result of the defendant's conduct, the Restitution
39 Fund has provided assistance to or on behalf of a victim or
40 derivative victim pursuant to Chapter 5 (commencing with Section

1 13950) of Part 4 of Division 3 of Title 2 of the Government Code,
2 the amount of assistance provided shall be presumed to be a direct
3 result of the defendant's criminal conduct and shall be included
4 in the amount of the restitution ordered.

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

17 (C) If the defendant offers evidence to rebut the presumption
18 established by this paragraph, the court may release additional
19 information contained in the records of the board to the defendant
20 only after reviewing that information in camera and finding that
21 the information is necessary for the defendant to dispute the amount
22 of the restitution order.

23 (5) Except as provided in paragraph (6), in any case in which
24 an order may be entered pursuant to this subdivision, the defendant
25 shall prepare and file a disclosure identifying all assets, income,
26 and liabilities in which the defendant held or controlled a present
27 or future interest as of the date of the defendant's arrest for the
28 crime for which restitution may be ordered. The financial disclosure
29 statements shall be made available to the victim and the board
30 pursuant to Section 1214. The disclosure shall be signed by the
31 defendant upon a form approved or adopted by the Judicial Council
32 for the purpose of facilitating the disclosure. Any defendant who
33 willfully states as true any material matter that he or she knows to
34 be false on the disclosure required by this subdivision is guilty of
35 a misdemeanor, unless this conduct is punishable as perjury or
36 another provision of law provides for a greater penalty.

37 (6) A defendant who fails to file the financial disclosure required
38 in paragraph (5), but who has filed a financial affidavit or financial
39 information pursuant to subdivision (c) of Section 987, shall be
40 deemed to have waived the confidentiality of that affidavit or

1 financial information as to a victim in whose favor the order of
2 restitution is entered pursuant to subdivision (f). The affidavit or
3 information shall serve in lieu of the financial disclosure required
4 in paragraph (5), and paragraphs (7) to (10), inclusive, shall not
5 apply.

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

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

15 (A) Any report submitted pursuant to subparagraph (C) of
16 paragraph (2) of subdivision (b) of Section 1203 or subdivision
17 (g) of Section 1203.

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

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

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

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

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

30 (C) A factor indicating that the interests of justice would not be
31 served by conditionally sentencing the defendant under Section
32 1203.

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

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

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

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

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

10 (11) If a defendant has any remaining unpaid balance on a
11 restitution order or fine 120 days prior to his or her scheduled
12 release from probation or 120 days prior to his or her completion
13 of a conditional sentence, the defendant shall prepare and file a
14 new and updated financial disclosure identifying all assets, income,
15 and liabilities in which the defendant holds or controls or has held
16 or controlled a present or future interest during the defendant's
17 period of probation or conditional sentence. The financial
18 disclosure shall be made available to the victim and the board
19 pursuant to Section 1214. The disclosure shall be signed and
20 prepared by the defendant on the same form as described in
21 paragraph (5). Any defendant who willfully states as true any
22 material matter that he or she knows to be false on the disclosure
23 required by this subdivision is guilty of a misdemeanor, unless
24 this conduct is punishable as perjury or another provision of law
25 provides for a greater penalty. The financial disclosure required
26 by this paragraph shall be filed with the clerk of the court no later
27 than 90 days prior to the defendant's scheduled release from
28 probation or completion of the defendant's conditional sentence.

29 (g) The court shall order full restitution unless it finds
30 compelling and extraordinary reasons for not doing so, and states
31 those reasons on the record. A defendant's inability to pay shall
32 not be considered a compelling and extraordinary reason not to
33 impose a restitution order, nor shall inability to pay be a
34 consideration in determining the amount of a restitution order.

35 (h) The district attorney may request an order of examination
36 pursuant to the procedures specified in Article 2 (commencing
37 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part
38 2 of the Code of Civil Procedure, in order to determine the
39 defendant's financial assets for purposes of collecting on the
40 restitution order.

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

3 (j) The making of a restitution order pursuant to subdivision (f)
4 shall not affect the right of a victim to recovery from the Restitution
5 Fund as otherwise provided by law, except to the extent that
6 restitution is actually collected pursuant to the order. Restitution
7 collected pursuant to this subdivision shall be credited to any other
8 judgments for the same losses obtained against the defendant
9 arising out of the crime for which the defendant was convicted.

10 (k) For purposes of this section, “victim” shall include all of
11 the following:

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

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

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

19 (A) At the time of the crime was the parent, grandparent, sibling,
20 spouse, child, or grandchild of the victim.

21 (B) At the time of the crime was living in the household of the
22 victim.

23 (C) At the time of the crime was a person who had previously
24 lived in the household of the victim for a period of not less than
25 two years in a relationship substantially similar to a relationship
26 listed in subparagraph (A).

27 (D) Is another family member of the victim, including, but not
28 limited to, the victim’s fiancé or fiancée, and who witnessed the
29 crime.

30 (E) Is the primary caretaker of a minor victim.

31 (4) Any person who is eligible to receive assistance from the
32 Restitution Fund pursuant to Chapter 5 (commencing with Section
33 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

34 (5) Any governmental entity responsible for repairing, replacing,
35 or restoring graffiti vandalized property, both publicly and privately
36 owned, which has sustained an economic loss as the result of a
37 violation of Sections 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of
38 the Penal Code.

39 (l) At its discretion, the board of supervisors of any county may
40 impose a fee to cover the actual administrative cost of collecting

1 the restitution fine, not to exceed 10 percent of the amount ordered
2 to be paid, to be added to the restitution fine and included in the
3 order of the court, the proceeds of which shall be deposited in the
4 general fund of the county.

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

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

21 (o) The provisions of Section 13963 of the Government Code
22 shall apply to restitution imposed pursuant to this section.

23 (p) The court clerk shall notify the California Victim
24 Compensation and Government Claims Board within 90 days of
25 an order of restitution being imposed if the defendant is ordered
26 to pay restitution to the board due to the victim receiving
27 compensation from the Restitution Fund. Notification shall be
28 accomplished by mailing a copy of the court order to the board,
29 which may be done periodically by bulk mail or electronic mail.

30 (q) Upon conviction for a violation of Section 236.1, the court
31 shall, in addition to any other penalty or restitution, order the
32 defendant to pay restitution to the victim in any case in which a
33 victim has suffered economic loss as a result of the defendant's
34 conduct. The court shall require that the defendant make restitution
35 to the victim or victims in an amount established by court order,
36 based on the amount of loss claimed by the victim or victims or
37 any other showing to the court. In determining restitution pursuant
38 to this section, the court shall base its order upon the greater of the
39 following: the gross value of the victim's labor or services based
40 upon the comparable value of similar services in the labor market

1 in which the offense occurred, or the value of the victim's labor
2 as guaranteed under California law, or the actual income derived
3 by the defendant from the victim's labor or services or any other
4 appropriate means to provide reparations to the victim.

5 (r) In addition to any other penalty or fine, the court shall order
6 any person who has been convicted of any violation of Section
7 653h, 653s, 653u, or 653w to make restitution to any owner or
8 lawful producer, or trade association acting on behalf of the owner
9 or lawful producer, of a phonograph record, disc, wire, tape, film,
10 or other device or article from which sounds or visual images are
11 derived that suffered economic loss resulting from the violation.
12 For the purpose of calculating restitution, the value of each
13 nonconforming article or device shall be based on the aggregate
14 wholesale value of lawfully manufactured and authorized devices
15 or articles from which sounds or visual images are devised, unless
16 a higher value can be proved in the case of (1) an unreleased audio
17 work, or (2) an audiovisual work that, at the time of unauthorized
18 distribution, has not been made available in copies for sale to the
19 general public in the United States on a digital versatile disc. The
20 order of restitution shall also include reasonable costs incurred as
21 a result of any investigation of the violation undertaken by the
22 owner, lawful producer, or trade association acting on behalf of
23 the owner or lawful producer. "Aggregate wholesale value" means
24 the average wholesale value of lawfully manufactured and
25 authorized sound or audiovisual recordings. Proof of the specific
26 wholesale value of each nonconforming device or article is not
27 required.

28 *SEC. 3. Section 730.6 of the Welfare and Institutions Code is*
29 *amended to read:*

30 730.6. (a) (1) It is the intent of the Legislature that a victim
31 of conduct for which a minor is found to be a person described in
32 Section 602 who incurs any economic loss as a result of the minor's
33 conduct shall receive restitution directly from that minor.

34 (2) Upon a minor being found to be a person described in
35 Section 602, the court shall consider levying a fine in accordance
36 with Section 730.5. In addition, the court shall order the minor to
37 pay, in addition to any other penalty provided or imposed under
38 the law, both of the following:

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

1 (B) Restitution to the victim or victims, if any, in accordance
2 with subdivision (h).

3 (b) In every case where a minor is found to be a person described
4 in Section 602, the court shall impose a separate and additional
5 restitution fine. The restitution fine shall be set at the discretion
6 of the court and commensurate with the seriousness of the offense
7 as follows:

8 (1) If the minor is found to be a person described in Section 602
9 by reason of the commission of one or more felony offenses, the
10 restitution fine shall not be less than one hundred dollars (\$100)
11 and not more than one thousand dollars (\$1,000). A separate
12 hearing for the fine shall not be required.

13 (2) If the minor is found to be a person described in Section 602
14 by reason of the commission of one or more misdemeanor offenses,
15 the restitution fine shall not exceed one hundred dollars (\$100). A
16 separate hearing for the fine shall not be required.

17 (c) The restitution fine shall be in addition to any other
18 disposition or fine imposed and shall be imposed regardless of the
19 minor's inability to pay. This fine shall be deposited in the
20 Restitution Fund, the proceeds of which shall be distributed
21 pursuant to Section 13967 of the Government Code.

22 (d) (1) In setting the amount of the fine pursuant to
23 subparagraph (A) of paragraph (2) of subdivision (a), the court
24 shall consider any relevant factors including, but not limited to,
25 the minor's ability to pay, the seriousness and gravity of the offense
26 and the circumstances of its commission, any economic gain
27 derived by the minor as a result of the offense, and the extent to
28 which others suffered losses as a result of the offense. The losses
29 may include pecuniary losses to the victim or his or her dependents
30 as well as intangible losses such as psychological harm caused by
31 the offense.

32 (2) The consideration of a minor's ability to pay may include
33 his or her future earning capacity. A minor shall bear the burden
34 of demonstrating a lack of his or her ability to pay.

35 (e) Express findings of the court as to the factors bearing on the
36 amount of the fine shall not be required.

37 (f) Except as provided in subdivision (g), under no circumstances
38 shall the court fail to impose the separate and additional restitution
39 fine required by subparagraph (A) of paragraph (2) of subdivision

1 (a). This fine shall not be subject to penalty assessments pursuant
2 to Section 1464 of the Penal Code.

3 (g) In a case in which the minor is a person described in Section
4 602 by reason of having committed a felony offense, if the court
5 finds that there are compelling and extraordinary reasons, the court
6 may waive imposition of the restitution fine required by
7 subparagraph (A) of paragraph (2) of subdivision (a). When a
8 waiver is granted, the court shall state on the record all reasons
9 supporting the waiver.

10 (h) Restitution ordered pursuant to subparagraph (B) of
11 paragraph (2) of subdivision (a) shall be imposed in the amount
12 of the losses, as determined. If the amount of loss cannot be
13 ascertained at the time of sentencing, the restitution order shall
14 include a provision that the amount shall be determined at the
15 direction of the court at any time during the term of the
16 commitment or probation. The court shall order full restitution
17 unless it finds compelling and extraordinary reasons for not doing
18 so, and states them on the record. A minor's inability to pay shall
19 not be considered a compelling or extraordinary reason not to
20 impose a restitution order, nor shall inability to pay be a
21 consideration in determining the amount of the restitution order.
22 A restitution order pursuant to subparagraph (B) of paragraph (2)
23 of subdivision (a), to the extent possible, shall identify each victim,
24 unless the court for good cause finds that the order should not
25 identify a victim or victims, and the amount of each victim's loss
26 to which it pertains, and shall be of a dollar amount sufficient to
27 fully reimburse the victim or victims for all determined economic
28 losses incurred as the result of the minor's conduct for which the
29 minor was found to be a person described in Section 602, including
30 all of the following:

31 (1) Full or partial payment for the value of stolen or damaged
32 property. The value of stolen or damaged property shall be the
33 replacement cost of like property, or the actual cost of repairing
34 the property when repair is possible.

35 (2) Medical expenses.

36 (3) Wages or profits lost due to injury incurred by the victim,
37 and if the victim is a minor, wages or profits lost by the minor's
38 parent, parents, guardian, or guardians, while caring for the injured
39 minor. Lost wages shall include any commission income as well
40 as any base wages. Commission income shall be established by

1 evidence of commission income during the 12-month period prior
2 to the date of the crime for which restitution is being ordered,
3 unless good cause for a shorter time period is shown.

4 (4) Wages or profits lost by the victim, and if the victim is a
5 minor, wages or profits lost by the minor's parent, parents,
6 guardian, or guardians, due to time spent as a witness or in assisting
7 the police or prosecution. Lost wages shall include any commission
8 income as well as any base wages. Commission income shall be
9 established by evidence of commission income during the
10 12-month period prior to the date of the crime for which restitution
11 is being ordered, unless good cause for a shorter time period is
12 shown.

13 A minor shall have the right to a hearing before a judge to dispute
14 the determination of the amount of restitution. The court may
15 modify the amount on its own motion or on the motion of the
16 district attorney, the victim or victims, or the minor. If a motion
17 is made for modification of a restitution order, the victim shall be
18 notified of that motion at least 10 days prior to the hearing on the
19 motion. When the amount of victim restitution is not known at the
20 time of disposition, the court order shall identify the victim or
21 victims, unless the court finds for good cause that the order should
22 not identify a victim or victims, and state that the amount of
23 restitution for each victim is to be determined. When feasible, the
24 court shall also identify on the court order, any cooffenders who
25 are jointly and severally liable for victim restitution.

26 (i) A restitution order imposed pursuant to subparagraph (B) of
27 paragraph (2) of subdivision (a) shall identify the losses to which
28 it pertains, and shall be enforceable as a civil judgment pursuant
29 to subdivision (r). The making of a restitution order pursuant to
30 this subdivision shall not affect the right of a victim to recovery
31 from the Restitution Fund in the manner provided elsewhere, except
32 to the extent that restitution is actually collected pursuant to the
33 order. Restitution collected pursuant to this subdivision shall be
34 credited to any other judgments for the same losses obtained against
35 the minor or the minor's parent or guardian arising out of the
36 offense for which the minor was found to be a person described
37 in Section 602. Restitution imposed shall be ordered to be made
38 to the Restitution Fund to the extent that the victim, as defined in
39 subdivision (j), has received assistance from the Victims of Crime
40 Program pursuant to Article 5 (commencing with Section 13959)

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

3 (j) For purposes of this section, “victim” shall include ~~the~~:

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

5 (2) *Any governmental entity responsible for repairing, replacing,*
6 *or restoring graffiti vandalized property, both publicly and*
7 *privately owned, that has sustained an economic loss as the result*
8 *of a violation of Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7*
9 *of the Penal Code.*

10 (k) Nothing in this section shall prevent a court from ordering
11 restitution to any corporation, business trust, estate, trust,
12 partnership, association, joint venture, government, governmental
13 subdivision, agency, or instrumentality, or any other legal or
14 commercial entity when that entity is a direct victim of an offense.

15 (l) Upon a minor being found to be a person described in Section
16 602, the court shall require as a condition of probation the payment
17 of restitution fines and orders imposed under this section. Any
18 portion of a restitution order that remains unsatisfied after a minor
19 is no longer on probation shall continue to be enforceable by a
20 victim pursuant to subdivision (r) until the obligation is satisfied
21 in full.

22 (m) Probation shall not be revoked for failure of a person to
23 make restitution pursuant to this section as a condition of probation
24 unless the court determines that the person has willfully failed to
25 pay or failed to make sufficient bona fide efforts to legally acquire
26 the resources to pay.

27 (n) If the court finds and states on the record compelling and
28 extraordinary reasons why restitution should not be required as
29 provided in paragraph (2) of subdivision (a), the court shall order,
30 as a condition of probation, that the minor perform specified
31 community service.

32 (o) The court may avoid ordering community service as a
33 condition of probation only if it finds and states on the record
34 compelling and extraordinary reasons not to order community
35 service in addition to the finding that restitution pursuant to
36 paragraph (2) of subdivision (a) should not be required.

37 (p) When a minor is committed to the Department of the Youth
38 Authority, the court shall order restitution to be paid to the victim
39 or victims, if any. Payment of restitution to the victim or victims

1 pursuant to this subdivision shall take priority in time over payment
2 of any other restitution fine imposed pursuant to this section.

3 (q) 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 (r) If the judgment is for a restitution fine ordered pursuant to
10 subparagraph (A) of paragraph (2) of subdivision (a), or a
11 restitution order imposed pursuant to subparagraph (B) of
12 paragraph (2) of subdivision (a), the judgment may be enforced
13 in the manner provided in Section 1214 of the Penal Code.