

AMENDED IN SENATE AUGUST 11, 2010

AMENDED IN ASSEMBLY MAY 11, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1847

Introduced by Assembly Member Furutani

February 12, 2010

An act to amend Section 1202.42 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1847, as amended, Furutani. Restitution orders.

Existing law provides for victim restitution orders and restitution fines, as specified. Existing law authorizes procedures for the entry and application of court orders for income deduction upon entry of an order for a restitution fine or for victim restitution, and gives the agency responsible for the collection of restitution specified powers and duties in regard to these income deduction orders.

The bill would provide that if there is no agency in the county responsible for the collection of restitution, the county probation office or the prosecuting attorney may carry out the functions and duties of such an agency in regard to the income deduction orders described above, as specified. This bill would further provide, if the defendant fails to meet his or her obligations under the restitution order and the defendant has not provided good cause for the failure, that a court ~~would~~ *shall* be authorized, upon the request of the prosecuting attorney, to order the prosecuting attorney be given authority to use lien procedures applicable to the defendant, including, but not limited to, a writ of

attachment of property, as specified. *The bill would provide prosecutorial immunity from liability and deny prosecutorial reimbursement from the defendant for these proceedings, as specified.*

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

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

1 SECTION 1. Section 1202.42 of the Penal Code is amended
2 to read:

3 1202.42. Upon entry of a restitution order under subdivision
4 (c) of Section 13967 of the Government Code, as operative on or
5 before September 28, 1994, paragraph (3) of subdivision (a) of
6 Section 1202.4 of this code, or Section 1203.04 as operative on or
7 before August 2, 1995, the following shall apply:

8 (a) The court shall enter a separate order for income deduction
9 upon determination of the defendant’s ability to pay, regardless
10 of the probation status, in accordance with Section 1203.
11 Determination of a defendant’s ability to pay may include his or
12 her future earning capacity. A defendant shall bear the burden of
13 demonstrating lack of his or her ability to pay. Express findings
14 by the court as to the factors bearing on the amount of the fine
15 shall not be required.

16 (b) (1) In any case in which the court enters a separate order
17 for income deduction under this section, the order shall be stayed
18 until the agency in the county responsible for collection of
19 restitution determines that the defendant has failed to meet his or
20 her obligation under the restitution order and the defendant has
21 not provided the agency with good cause for the failure in
22 accordance with paragraph (2).

23 (2) If the agency responsible for collection of restitution receives
24 information that the defendant has failed to meet his or her
25 obligation under the restitution order, the agency shall request the
26 defendant to provide evidence indicating that timely payments
27 have been made or provide information establishing good cause
28 for the failure. If the defendant fails to either provide the agency
29 with the evidence or fails to establish good cause within five days
30 of the request, the agency shall immediately inform the defendant
31 of that fact, and shall inform the clerk of the court in order that an
32 income deduction order will be served pursuant to subdivision (f)

1 following a 15-day appeal period. The defendant may apply for a
2 hearing to contest the lifting of the stay pursuant to subdivision
3 (f).

4 (c) The income deduction order shall direct a payer to deduct
5 from all income due and payable to the defendant the amount
6 required by the court to meet the defendant's obligation.

7 (d) The income deduction order shall be effective so long as the
8 order for restitution upon which it is based is effective or until
9 further order of the court.

10 (e) When the court orders the income deduction, the court shall
11 furnish to the defendant a statement of his or her rights, remedies,
12 and duties in regard to the income deduction order. The statement
13 shall state all of the following:

14 (1) All fees or interest that will be imposed.

15 (2) The total amount of income to be deducted for each pay
16 period.

17 (3) That the income deduction order applies to current and
18 subsequent payers and periods of employment.

19 (4) That a copy of the income deduction order will be served
20 on the defendant's payer or payers.

21 (5) That enforcement of the income deduction order may only
22 be contested on the ground of mistake of fact regarding the amount
23 of restitution owed.

24 (6) That the defendant is required to notify the clerk of the court
25 within seven days after changes in the defendant's address, payers,
26 and the addresses of his or her payers.

27 (7) That the court order will be stayed in accordance with
28 subdivision (b) and that a hearing is available in accordance with
29 subdivision (f).

30 (f) (1) Upon receiving the notice described in paragraph (2) of
31 subdivision (b), the clerk of the court or officer of the agency
32 responsible for collection of restitution shall serve an income
33 deduction order and the notice to payer on the defendant's payer
34 unless the defendant has applied for a hearing to contest the
35 enforcement of the income deduction order.

36 (2) (A) Service by or upon any person who is a party to a
37 proceeding under this section shall be made in the manner
38 prescribed for service upon parties in a civil action.

1 (B) Service upon the defendant’s payer or successor payer under
2 this section shall be made by prepaid certified mail, return receipt
3 requested.

4 (3) The defendant, within 15 days after being informed that the
5 order staying the income deduction order will be lifted, may apply
6 for a hearing to contest the enforcement of the income deduction
7 order on the ground of mistake of fact regarding the amount of
8 restitution owed or on the ground that the defendant has established
9 good cause for the nonpayment. The timely request for a hearing
10 shall stay the service of an income deduction order on all payers
11 of the defendant until a hearing is held and a determination is made
12 as to whether the enforcement of the income deduction order is
13 proper.

14 (4) The notice to any payer required by this subdivision shall
15 contain only information necessary for the payer to comply with
16 the income deduction order. The notice shall do all of the
17 following:

18 (A) Require the payer to deduct from the defendant’s income
19 the amount specified in the income deduction order, and to pay
20 that amount to the clerk of the court.

21 (B) Instruct the payer to implement the income deduction order
22 no later than the first payment date that occurs more than 14 days
23 after the date the income deduction order was served on the payer.

24 (C) Instruct the payer to forward, within two days after each
25 payment date, to the clerk of the court the amount deducted from
26 the defendant’s income and a statement as to whether the amount
27 totally or partially satisfies the periodic amount specified in the
28 income deduction order.

29 (D) Specify that if a payer fails to deduct the proper amount
30 from the defendant’s income, the payer is liable for the amount
31 the payer should have deducted, plus costs, interest, and reasonable
32 attorney’s fees.

33 (E) Provide that the payer may collect up to five dollars (\$5)
34 against the defendant’s income to reimburse the payer for
35 administrative costs for the first income deduction and up to one
36 dollar (\$1) for each deduction thereafter.

37 (F) State that the income deduction order and the notice to payer
38 are binding on the payer until further notice by the court or until
39 the payer no longer provides income to the defendant.

1 (G) Instruct the payer that, when he or she no longer provides
2 income to the defendant, he or she shall notify the clerk of the
3 court and shall also provide the defendant's last known address
4 and the name and address of the defendant's new payer, if known,
5 and that, if the payer violates this provision, the payer is subject
6 to a civil penalty not to exceed two hundred fifty dollars (\$250)
7 for the first violation or five hundred dollars (\$500) for any
8 subsequent violation.

9 (H) State that the payer shall not discharge, refuse to employ,
10 or take disciplinary action against the defendant because of an
11 income deduction order and shall state that a violation of this
12 provision subjects the payer to a civil penalty not to exceed two
13 hundred fifty dollars (\$250) for the first violation or five hundred
14 dollars (\$500) for any subsequent violation.

15 (I) Inform the payer that when he or she receives income
16 deduction orders requiring that the income of two or more
17 defendants be deducted and sent to the same clerk of a court, he
18 or she may combine the amounts that are to be paid to the
19 depository in a single payment as long as he or she identifies that
20 portion of the payment attributable to each defendant.

21 (J) Inform the payer that if the payer receives more than one
22 income deduction order against the same defendant, he or she shall
23 contact the court for further instructions.

24 (5) The clerk of the court shall enforce income deduction orders
25 against the defendant's successor payer who is located in this state
26 in the same manner prescribed in this subdivision for the
27 enforcement of an income deduction order against a payer.

28 (6) A person may not discharge, refuse to employ, or take
29 disciplinary action against an employee because of the enforcement
30 of an income deduction order. An employer who violates this
31 provision is subject to a civil penalty not to exceed two hundred
32 fifty dollars (\$250) for the first violation or five hundred dollars
33 (\$500) for any subsequent violation.

34 (7) When a payer no longer provides income to a defendant, he
35 or she shall notify the clerk of the court and shall provide the
36 defendant's last known address and the name and address of the
37 defendant's new payer, if known. A payer who violates this
38 provision is subject to a civil penalty not to exceed two hundred
39 fifty dollars (\$250) for the first violation or five hundred dollars
40 (\$500) for a subsequent violation.

1 (g) If the defendant has failed to meet his or her obligation under
2 the restitution order and the defendant has not provided good cause
3 for the failure in accordance with the process set forth in paragraph
4 (2) of subdivision (b), the court may, upon the request of the
5 prosecuting attorney, order that the prosecuting attorney be given
6 authority to use lien procedures applicable to the defendant,
7 including, but not limited to, a writ of attachment of property. This
8 authority is in addition to any authority granted to the prosecuting
9 attorney in subdivision (h).

10 (1) If the court authorizes a lien or other similar encumbrance
11 on real property pursuant to this subdivision, the court shall, within
12 15 days, furnish to the defendant a statement of his or her rights,
13 remedies, and duties in regard to the order. The statement shall
14 state all of the following:

15 (A) That the lien is enforceable and collectible by execution
16 issued by order of the court, except that a lien shall not be enforced
17 by writ of execution on a defendant's principal place of residence.

18 (B) A legal description of the property to be encumbered.

19 (C) The total amount of restitution still owed by the defendant.

20 (D) That enforcement of the lien order may only be contested
21 on the ground of mistake of fact regarding the amount of restitution
22 owed *or on the ground of mistake of fact regarding the defendant's*
23 *ownership interest of the property to be encumbered.*

24 (E) That a hearing is available in accordance with paragraph
25 (2).

26 (F) That, upon paying the restitution order in full, the defendant
27 may petition the court for a full release of any related encumbrance
28 in accordance with paragraph (3).

29 (2) The defendant, within 15 days after being informed that a
30 lien or other similar encumbrance on real property has been
31 ordered, may apply for a hearing to contest the enforcement order
32 on the ground of mistake of fact regarding the amount of restitution
33 owed, *on the ground of mistake of fact regarding the defendant's*
34 *ownership interest of the property to be encumbered*, or on the
35 ground that the defendant has established good cause for the
36 nonpayment. The timely request for a hearing shall stay any
37 execution on the lien until a hearing is held and a determination
38 is made as to whether the enforcement order is proper.

39 (3) Upon payment of the restitution order in full, the defendant
40 may petition the court to issue an order directing the clerk of the

1 court to execute a full reconveyance of title, a certificate of
2 discharge, or a full release of any lien against real property created
3 to secure performance of the restitution order.

4 *(4) Neither a prosecutorial agency nor a prosecuting attorney*
5 *shall be liable for an injury caused by an act or omission in*
6 *exercising the authority granted by this subdivision.*

7 (h) If there is no agency in the county responsible for the
8 collection of restitution, the county probation office or the
9 prosecuting attorney may carry out the functions and duties of
10 such an agency as specified in subdivisions (b) and (f).

11 *(i) A prosecuting attorney shall not make any collection against,*
12 *or take any percentage of, the defendant's income or assets to*
13 *reimburse the prosecuting attorney for administrative costs in*
14 *carrying out any action authorized by this section.*

15 (i)

16 (j) As used in this section, "good cause" for failure to meet an
17 obligation or "good cause" for nonpayment means, but shall not
18 be limited to, any of the following:

19 (1) That there has been a substantial change in the defendant's
20 economic circumstances, such as involuntary unemployment,
21 involuntary cost-of-living increases, or costs incurred as the result
22 of medical circumstances or a natural disaster.

23 (2) That the defendant reasonably believes there has been an
24 administrative error with regard to his or her obligation for
25 payment.

26 (3) Any other similar and justifiable reasons.