

Introduced by Senator LieuFebruary 22, 2012

An act to amend Sections 1202.45 and 2085.5 of the Penal Code, relating to restitution, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1210, as introduced, Lieu. Restitution: collection of fines.

Under existing law, in every case where a person is convicted of a crime and whose sentence includes parole, the court is required to assess a parole revocation fine, as specified, for deposit into the Restitution Fund in the State Treasury.

This bill would require a person who is subject to postrelease community supervision or mandatory supervision, who violates the terms of his or her postrelease community supervision or mandatory supervision, and who is incarcerated in a county jail for that violation, to pay a fine, for deposit into the Restitution Fund in the State Treasury, a continuously appropriated fund. Because the bill creates a new source of revenue for deposit into the restitution fund, the bill would make an appropriation.

Existing law requires the Department of Corrections and Rehabilitation to deduct and retain certain funds from the wages, trust account deposits, or settlement or trial awards of a prisoner for the payment of certain fees and fines, including restitution orders, restitution fines, and specified administrative fees, and also authorizes the department to collect funds from a parolee for the payment of restitution orders and fines, unless prohibited by federal law. Under existing law, these funds are required to be deposited in the Restitution Fund in the State Treasury.

This bill would specify that, when a prisoner is punished by imprisonment in a county jail, an agency designated by the county board of supervisors is required to deduct and retain those funds, and would also authorize that agency to collect funds from a parolee. The bill would require these agencies to transfer these funds for deposit in the Restitution Fund.

By imposing additional requirements on counties, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
 State-mandated local program: yes.

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

- 1 SECTION 1. Section 1202.45 of the Penal Code is amended
- 2 to read:
- 3 1202.45. (a) In every case where a person is convicted of a
- 4 crime and whose sentence includes a period of parole, the court
- 5 shall at the time of imposing the restitution fine pursuant to
- 6 subdivision (b) of Section 1202.4, assess an additional parole
- 7 revocation restitution fine in the same amount as that imposed
- 8 pursuant to subdivision (b) of Section 1202.4. ~~This additional~~
- 9 ~~parole revocation restitution fine~~
- 10 (b) *In every case where a person is convicted of a crime and is*
- 11 *subject to either postrelease community supervision under Section*
- 12 *3415 or mandatory supervision under paragraph (5) of subdivision*
- 13 *(h) of Section 1170, and violates the terms of the postrelease*
- 14 *community supervision or mandatory supervision and is*
- 15 *incarcerated in a county jail for that violation, the person shall*
- 16 *pay a fine that shall be collected by the agency designated by the*
- 17 *board of supervisors of the county in which the prisoner is*
- 18 *incarcerated.*
- 19 (c) *The fines imposed pursuant to subdivisions (a) and (b) shall*
- 20 *not be subject to penalty assessments authorized by Section 1464*

1 or Chapter 12 (commencing with Section 76000) of Title 8 of the
2 Government Code, or the state surcharge authorized by Section
3 1465.7, and shall be suspended unless the person's parole,
4 *postrelease community supervision, or mandatory supervision* is
5 revoked. ~~Parole revocation restitution fine~~ *Fine* moneys shall be
6 deposited in the Restitution Fund in the State Treasury.

7 SEC. 2. Section 2085.5 of the Penal Code is amended to read:

8 2085.5. (a) In any case in which a prisoner owes a restitution
9 fine imposed pursuant to subdivision (a) of Section 13967 of the
10 Government Code, as operative prior to September 28, 1994,
11 subdivision (b) of Section 730.6 of the Welfare and Institutions
12 Code, or subdivision (b) of Section 1202.4, the Secretary of the
13 Department of Corrections and Rehabilitation, *or, when a prisoner*
14 *is punished by imprisonment in a county jail, the agency designated*
15 *by the board of supervisors in the county where the prisoner is*
16 *incarcerated*, shall deduct a minimum of 20 percent or the balance
17 owing on the fine amount, whichever is less, up to a maximum of
18 50 percent from the wages and trust account deposits of a prisoner,
19 *or the county jail equivalent of wages and trust account deposits*
20 *of a prisoner*, unless prohibited by federal law, and shall transfer
21 that amount to the California Victim Compensation and
22 Government Claims Board for deposit in the Restitution Fund in
23 the State Treasury. Any amount so deducted shall be credited
24 against the amount owing on the fine. The sentencing court shall
25 be provided a record of the payments.

26 (b) In any case in which a prisoner owes a restitution order
27 imposed pursuant to subdivision (c) of Section 13967 of the
28 Government Code, as operative prior to September 28, 1994,
29 subdivision (h) of Section 730.6 of the Welfare and Institutions
30 Code, or subdivision (f) of Section 1202.4, the Secretary of the
31 Department of Corrections and Rehabilitation, *or, when a prisoner*
32 *is punished by imprisonment in a county jail, the agency designated*
33 *by the board of supervisors in the county where the prisoner is*
34 *incarcerated*, shall deduct a minimum of 20 percent or the balance
35 owing on the order amount, whichever is less, up to a maximum
36 of 50 percent from the wages and trust account deposits of a
37 prisoner, *or the county jail equivalent of wages and trust account*
38 *deposits of a prisoner*, unless prohibited by federal law. The
39 secretary *or the agency* shall transfer that amount to the California
40 Victim Compensation and Government Claims Board for direct

1 payment to the victim, or payment shall be made to the Restitution
2 Fund to the extent that the victim has received assistance pursuant
3 to that program. The sentencing court shall be provided a record
4 of the payments made to victims and of the payments deposited
5 to the Restitution Fund pursuant to this subdivision.

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

28 (d) In any case in which a parolee owes a restitution fine
29 imposed pursuant to subdivision (a) of Section 13967 of the
30 Government Code, as operative prior to September 28, 1994,
31 subdivision (b) of Section 730.6 of the Welfare and Institutions
32 Code, or subdivision (b) of Section 1202.4, the secretary, *or, when*
33 *a prisoner is punished by imprisonment in a county jail, the agency*
34 *designated by the board of supervisors in the county where the*
35 *prisoner is incarcerated,* may collect from the parolee any moneys
36 owing on the restitution fine amount, unless prohibited by federal
37 law. The secretary *or the agency* shall transfer that amount to the
38 California Victim Compensation and Government Claims Board
39 for deposit in the Restitution Fund in the State Treasury. Any
40 amount so deducted shall be credited against the amount owing

1 on the fine. The sentencing court shall be provided a record of the
2 payments.

3 (e) In any case in which a parolee owes a direct order of
4 restitution, imposed pursuant to subdivision (c) of Section 13967
5 of the Government Code, as operative prior to September 28, 1994,
6 subdivision (h) of Section 730.6 of the Welfare and Institutions
7 Code, or paragraph (3) of subdivision (a) of Section 1202.4, the
8 secretary, *or, when a prisoner is punished by imprisonment in a*
9 *county jail, the agency designated by the board of supervisors in*
10 *the county where the prisoner is incarcerated,* may collect from
11 the parolee any moneys owing, unless prohibited by federal law.
12 The secretary *or the agency* shall transfer that amount to the
13 California Victim Compensation and Government Claims Board
14 for direct payment to the victim, or payment shall be made to the
15 Restitution Fund to the extent that the victim has received
16 assistance pursuant to that program. The sentencing court shall be
17 provided a record of the payments made by the offender pursuant
18 to this subdivision.

19 (f) The secretary, *or, when a prisoner is punished by*
20 *imprisonment in a county jail, the agency designated by the board*
21 *of supervisors in the county where the prisoner is incarcerated,*
22 may deduct and retain from any moneys collected from parolees
23 an administrative fee that totals 10 percent of any amount
24 transferred to the California Victim Compensation and Government
25 Claims Board pursuant to subdivision (d) or (e), unless prohibited
26 by federal law. The secretary *or the agency* shall deduct and retain
27 from any settlement or trial award of a parolee an administrative
28 fee that totals 5 percent of any amount paid from the settlement
29 or award to satisfy an outstanding restitution order or fine pursuant
30 to subdivision (j), unless prohibited by federal law. The secretary
31 *or the agency* shall deposit the administrative fee moneys in a
32 special deposit account for reimbursing administrative and support
33 costs of the restitution program of the Department of Corrections
34 and Rehabilitation. The secretary, at his or her discretion, *or the*
35 *agency* may retain any excess funds in the special deposit account
36 for future reimbursement of the department's administrative and
37 support costs for the restitution program or may transfer all or part
38 of the excess funds for deposit in the Restitution Fund.

39 (g) When a prisoner has both a restitution fine and a restitution
40 order from the sentencing court, the Department of Corrections

1 and Rehabilitation, *or, when a prisoner is punished by*
2 *imprisonment in a county jail, the agency designated by the board*
3 *of supervisors in the county where the prisoner is incarcerated,*
4 shall collect the restitution order first pursuant to subdivision (b).

5 (h) When a parolee has both a restitution fine and a restitution
6 order from the sentencing court, the Department of Corrections
7 and Rehabilitation, *or, when the prisoner is punished by*
8 *imprisonment in a county jail, the agency designated by the board*
9 *of supervisors in the county where the prisoner is incarcerated,*
10 may collect the restitution order first, pursuant to subdivision (e).

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

21 (j) Any compensatory or punitive damages awarded by trial or
22 settlement to any inmate or parolee in connection with a civil action
23 brought against any federal, state, or local jail, prison, or
24 correctional facility, or any official or agent thereof, shall be paid
25 directly, after payment of reasonable attorney's fees and litigation
26 costs approved by the court, to satisfy any outstanding restitution
27 orders or restitution fines against that person. The balance of any
28 award shall be forwarded to the payee after full payment of all
29 outstanding restitution orders and restitution fines, subject to
30 subdivisions (c) and (f). The Department of Corrections and
31 Rehabilitation, *or, when a prisoner is punished by imprisonment*
32 *in a county jail, the agency designated by the board of supervisors*
33 *in the county where the prisoner is incarcerated,* shall make all
34 reasonable efforts to notify the victims of the crime for which that
35 person was convicted concerning the pending payment of any
36 compensatory or punitive damages.

37 (k) (1) Amounts transferred to the California Victim
38 Compensation and Government Claims Board for payment of
39 direct orders of restitution shall be paid to the victim within 60
40 days from the date the restitution revenues are received by the

1 California Victim Compensation and Government Claims Board.
2 If the restitution payment to a victim is less than fifty dollars (\$50),
3 then payment need not be forwarded to that victim until the
4 payment reaches fifty dollars (\$50) or until 180 days from the date
5 the first payment is received, whichever occurs sooner.

6 (2) In any case in which a victim cannot be located, the
7 restitution revenues received by the California Victim
8 Compensation and Government Claims Board on behalf of the
9 victim shall be held in trust in the Restitution Fund until the end
10 of the state fiscal year subsequent to the state fiscal year in which
11 the funds were deposited or until the time that the victim has
12 provided current address information, whichever occurs sooner.
13 Amounts remaining in trust at the end of the specified period of
14 time shall revert to the Restitution Fund.

15 (3) Any victim failing to provide a current address within the
16 period of time specified in paragraph (2) may provide
17 documentation to the Department of Corrections and Rehabilitation
18 *or, when a prisoner is punished by imprisonment in a county jail,*
19 *to the agency designated by the board of supervisors in the county*
20 *where the prisoner is incarcerated,* which in turn shall verify that
21 moneys were in fact collected on behalf of the victim. Upon receipt
22 of that verified information from the Department of Corrections
23 and Rehabilitation *or the agency,* the California Victim
24 Compensation and Government Claims Board shall transmit the
25 restitution revenues to the victim in accordance with the provisions
26 of subdivision (b) or (e).

27 SEC. 3. If the Commission on State Mandates determines that
28 this act contains costs mandated by the state, reimbursement to
29 local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.