

Introduced by Senator PavleyFebruary 24, 2012

An act to amend Section 1202.4 of the Penal Code, relating to crime victims, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1479, as introduced, Pavley. Crime victims: restitution.

Existing law requires the court to order defendants convicted of any crime to pay a fine in the form of a penalty, as specified. Existing law additionally requires the court to order defendants to pay restitution to the victim or victims, as well as a restitution fine. Existing law provides for the minimum and maximum amounts that a court is authorized to impose for a restitution fine, and specifies that, if a person is convicted of a felony, the restitution fine shall not be more than \$10,000, and, on or after January 1, 2013, not less than \$280, and, on or after January 1, 2014, not less than \$300. Existing law requires that the restitution fine be deposited in the Restitution Fund in the State Treasury, a continuously appropriated fund.

This bill would increase the maximum amount of the restitution fine for a felony to \$15,000, and, starting January 1, 2013, would increase the minimum amount to \$350, and starting January 1, 2014, would increase the minimum amount to \$400. By increasing the amounts deposited into the Restitution Fund, this bill would make an appropriation.

The bill would also make technical, nonsubstantive changes to these provisions.

Vote: $\frac{2}{3}$. 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
12 the 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 forty dollars (\$240) starting on~~
24 ~~January 1, 2012, two hundred eighty dollars (\$280) starting on~~
25 ~~January 1, 2013, and three hundred dollars (\$300) starting on~~
26 ~~January 1, 2014, three hundred fifty dollars (\$350) starting on~~
27 ~~January 1, 2013, and four hundred dollars (\$400) starting on~~
28 ~~January 1, 2014, and not more than ten fifteen thousand dollars~~
29 ~~(\$10,000), (\$15,000), if the person is convicted of a felony, and~~
30 ~~shall not be less than one hundred twenty dollars (\$120) starting~~
31 ~~on January 1, 2012, one hundred forty dollars (\$140) starting on~~
32 ~~January 1, 2013, and one hundred fifty dollars (\$150) starting on~~
33 ~~January 1, 2014, and not more than one thousand dollars (\$1,000),~~
34 ~~if the person is convicted of a misdemeanor.~~

35 (2) In setting a felony restitution fine, the court may determine
36 the amount of the fine as the product of the minimum fine pursuant
37 to paragraph (1) multiplied by the number of years of imprisonment

1 the defendant is ordered to serve, multiplied by the number of
2 felony counts of 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
9 minimum fine pursuant to paragraph (1) of subdivision (b). The
10 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 minimum fine pursuant to paragraph (1) of
17 subdivision (b), 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 *California Victim*
24 *Compensation Program and Government Claims Board* pursuant
25 to Chapter 5 (commencing with Section 13950) of Part 4 of
26 Division 3 of Title 2 of the Government 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 (L) Expenses for a period of time reasonably necessary to make
39 the victim whole, for the costs to monitor the credit report of, and

1 for the costs to repair the credit of, a victim of identity theft, as
2 defined in Section 530.5.

3 (4) (A) If, as a result of the defendant's conduct, the Restitution
4 Fund has provided assistance to or on behalf of a victim or
5 derivative victim pursuant to Chapter 5 (commencing with Section
6 13950) of Part 4 of Division 3 of Title 2 of the Government Code,
7 the amount of assistance provided shall be presumed to be a direct
8 result of the defendant's criminal conduct and shall be included
9 in the amount of the restitution ordered.

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

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

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

1 a misdemeanor, unless this conduct is punishable as perjury or
2 another provision of law provides for a greater penalty.

3 (6) A defendant who fails to file the financial disclosure required
4 in paragraph (5), but who has filed a financial affidavit or financial
5 information pursuant to subdivision (c) of Section 987, shall be
6 deemed to have waived the confidentiality of that affidavit or
7 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
23 (g) 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 1203.

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

1 (D) A factor indicating that the interests of justice would not
2 be served by imposing less than the maximum fine and sentence
3 fixed 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 attorney
9 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 defendant’s
13 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 (11) If a defendant has any remaining unpaid balance on a
18 restitution order or fine 120 days prior to his or her scheduled
19 release from probation or 120 days prior to his or her completion
20 of a conditional sentence, the defendant shall prepare and file a
21 new and updated financial disclosure identifying all assets, income,
22 and liabilities in which the defendant holds or controls or has held
23 or controlled a present or future interest during the defendant’s
24 period of probation or conditional sentence. The financial
25 disclosure shall be made available to the victim and the board
26 pursuant to Section 1214. The disclosure shall be signed and
27 prepared by the defendant on the same form as described in
28 paragraph (5). Any defendant who willfully states as true any
29 material matter that he or she knows to be false on the disclosure
30 required by this subdivision is guilty of a misdemeanor, unless
31 this conduct is punishable as perjury or another provision of law
32 provides for a greater penalty. The financial disclosure required
33 by this paragraph shall be filed with the clerk of the court no later
34 than 90 days prior to the defendant’s scheduled release from
35 probation or completion of the defendant’s conditional sentence.

36 (g) The court shall order full restitution unless it finds
37 compelling and extraordinary reasons for not doing so, and states
38 those reasons on the record. A defendant’s inability to pay shall
39 not be considered a compelling and extraordinary reason not to

1 impose a restitution order, nor shall inability to pay be a
2 consideration in determining the amount of a restitution order.

3 (h) The district attorney may request an order of examination
4 pursuant to the procedures specified in Article 2 (commencing
5 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part
6 2 of the Code of Civil Procedure, in order to determine the
7 defendant’s financial assets for purposes of collecting on the
8 restitution order.

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

11 (j) The making of a restitution order pursuant to subdivision (f)
12 shall not affect the right of a victim to recovery from the Restitution
13 Fund as otherwise provided by law, except to the extent that
14 restitution is actually collected pursuant to the order. Restitution
15 collected pursuant to this subdivision shall be credited to any other
16 judgments for the same losses obtained against the defendant
17 arising out of the crime for which the defendant was convicted.

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

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

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

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

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

29 (B) At the time of the crime was living in the household of the
30 victim.

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

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

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

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

4 (5) Any governmental entity that is responsible for repairing,
5 replacing, or restoring public or privately owned property that has
6 been defaced with graffiti or other inscribed material, as defined
7 in subdivision (e) of Section 594, and that has sustained an
8 economic loss as the result of a violation of Section 594, 594.3,
9 594.4, 640.5, 640.6, or 640.7 of the Penal Code.

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

16 (m) In every case in which the defendant is granted probation,
17 the court shall make the payment of restitution fines and orders
18 imposed pursuant to this section a condition of probation. Any
19 portion of a restitution order that remains unsatisfied after a
20 defendant is no longer on probation shall continue to be enforceable
21 by a victim pursuant to Section 1214 until the obligation is
22 satisfied.

23 (n) If the court finds and states on the record compelling and
24 extraordinary reasons why a restitution fine or full restitution order
25 should not be required, the court shall order, as a condition of
26 probation, that the defendant perform specified community service,
27 unless it finds and states on the record compelling and
28 extraordinary reasons not to require community service in addition
29 to the finding that restitution should not be required. Upon
30 revocation of probation, the court shall impose restitution pursuant
31 to this section.

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

34 (p) The court clerk shall notify the California Victim
35 Compensation and Government Claims Board within 90 days of
36 an order of restitution being imposed if the defendant is ordered
37 to pay restitution to the board due to the victim receiving
38 compensation from the Restitution Fund. Notification shall be
39 accomplished by mailing a copy of the court order to the board,
40 which may be done periodically by bulk mail or e-mail.

1 (q) Upon conviction for a violation of Section 236.1, the court
2 shall, in addition to any other penalty or restitution, order the
3 defendant to pay restitution to the victim in any case in which a
4 victim has suffered economic loss as a result of the defendant's
5 conduct. The court shall require that the defendant make restitution
6 to the victim or victims in an amount established by court order,
7 based on the amount of loss claimed by the victim or victims or
8 any other showing to the court. In determining restitution pursuant
9 to this section, the court shall base its order upon the greater of the
10 following: the gross value of the victim's labor or services based
11 upon the comparable value of similar services in the labor market
12 in which the offense occurred, or the value of the victim's labor
13 as guaranteed under California law, or the actual income derived
14 by the defendant from the victim's labor or services or any other
15 appropriate means to provide reparations to the victim.

16 (r) (1) In addition to any other penalty or fine, the court shall
17 order any person who has been convicted of any violation of
18 Section 350, 653h, 653s, 653u, 653w, or 653aa that involves a
19 recording or audiovisual work to make restitution to any owner or
20 lawful producer, or trade association acting on behalf of the owner
21 or lawful producer, of a phonograph record, disc, wire, tape, film,
22 or other device or article from which sounds or visual images are
23 derived that suffered economic loss resulting from the violation.
24 For the purpose of calculating restitution, the value of each
25 nonconforming article or device shall be based on the aggregate
26 wholesale value of lawfully manufactured and authorized devices
27 or articles from which sounds or visual images are devised, unless
28 a higher value can be proved in the case of (A) an unreleased audio
29 work, or (B) an audiovisual work that, at the time of unauthorized
30 distribution, has not been made available in copies for sale to the
31 general public in the United States on a digital versatile disc. The
32 order of restitution shall also include reasonable costs incurred as
33 a result of any investigation of the violation undertaken by the
34 owner, lawful producer, or trade association acting on behalf of
35 the owner or lawful producer. "Aggregate wholesale value" means
36 the average wholesale value of lawfully manufactured and
37 authorized sound or audiovisual recordings. Proof of the specific
38 wholesale value of each nonconforming device or article is not
39 required.

- 1 (2) As used in this subdivision, “audiovisual work” and
- 2 “recording” shall have the same meaning as in Section 653w.

O