

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2221

Introduced by Assembly Members Cristina Garcia and Grove

February 18, 2016

An act to amend Section ~~186.11~~ 836 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2221, as amended, Cristina Garcia. ~~Crimes: fraud and embezzlement. Criminal procedure: arrests.~~

Existing law authorizes a peace officer to arrest a person without a warrant if the officer has probable cause to believe that the person has committed a public offense in the officer's presence or if the officer has probable cause to believe that the person has committed a felony.

This bill would authorize a peace officer to arrest a person without a warrant if the officer has probable cause to believe that the person has committed the misdemeanor offense of soliciting a minor for prostitution.

~~Existing law provides for enhanced penalties in the case of a person who commits 2 or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, and the pattern of related felony conduct involves the taking or loss of more than \$100,000.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

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

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

1 *SECTION 1. Section 836 of the Penal Code is amended to*
2 *read:*

3 836. (a) A peace officer may arrest a person in obedience to
4 ~~a warrant~~, *warrant* or, pursuant to the authority granted to him or
5 her by Chapter 4.5 (commencing with Section 830) of Title 3 of
6 Part 2, without a ~~warrant~~, *warrant* may arrest a person whenever
7 any of the following circumstances occur:

8 (1) The officer has probable cause to believe that the person to
9 be arrested has committed a public offense in the officer's presence.

10 (2) The person arrested has committed a felony, although not
11 in the officer's presence.

12 (3) The officer has probable cause to believe that the person to
13 be arrested has committed a felony, whether or not a felony, in
14 fact, has been committed.

15 (b) Any time a peace officer is called out on a domestic violence
16 call, it shall be mandatory that the officer make a good faith effort
17 to inform the victim of his or her right to make a citizen's arrest,
18 unless the peace officer makes an arrest for a violation of paragraph
19 (1) of subdivision (e) of Section 243 or 273.5. This information
20 shall include advising the victim how to safely execute the arrest.

21 (c) (1) When a peace officer is responding to a call alleging a
22 violation of a domestic violence protective or restraining order
23 issued under Section 527.6 of the Code of Civil Procedure, the
24 Family Code, Section 136.2, 646.91, or paragraph (2) of
25 subdivision (a) of Section 1203.097 of this code, Section 213.5 or
26 15657.03 of the Welfare and Institutions Code, or of a domestic
27 violence protective or restraining order issued by the court of
28 another state, tribe, or territory and the peace officer has probable
29 cause to believe that the person against whom the order is issued
30 has notice of the order and has committed an act in violation of
31 the order, the officer shall, consistent with subdivision (b) of
32 Section 13701, make a lawful arrest of the person without a warrant
33 and take that person into custody whether or not the violation
34 occurred in the presence of the arresting officer. The officer shall,
35 as soon as possible after the arrest, confirm with the appropriate
36 authorities or the Domestic Violence Protection Order Registry
37 maintained pursuant to Section 6380 of the Family Code that a

1 true copy of the protective order has been registered, unless the
2 victim provides the officer with a copy of the protective order.

3 (2) The person against whom a protective order has been issued
4 shall be deemed to have notice of the order if the victim presents
5 to the officer proof of service of the order, the officer confirms
6 with the appropriate authorities that a true copy of the proof of
7 service is on file, or the person against whom the protective order
8 was issued was present at the protective order hearing or was
9 informed by a peace officer of the contents of the protective order.

10 (3) In situations where mutual protective orders have been issued
11 under Division 10 (commencing with Section 6200) of the Family
12 Code, liability for arrest under this subdivision applies only to
13 those persons who are reasonably believed to have been the
14 dominant aggressor. In those situations, prior to making an arrest
15 under this subdivision, the peace officer shall make reasonable
16 efforts to identify, and may arrest, the dominant aggressor involved
17 in the incident. The dominant aggressor is the person determined
18 to be the most significant, rather than the first, aggressor. In
19 identifying the dominant aggressor, an officer shall consider (A)
20 the intent of the law to protect victims of domestic violence from
21 continuing abuse, (B) the threats creating fear of physical injury,
22 (C) the history of domestic violence between the persons involved,
23 and (D) whether either person involved acted in self-defense.

24 (d) Notwithstanding paragraph (1) of subdivision (a), if a suspect
25 commits an assault or battery upon a current or former spouse,
26 fiancé, fiancée, a current or former cohabitant as defined in Section
27 6209 of the Family Code, a person with whom the suspect currently
28 is having or has previously had an engagement or dating
29 relationship, as defined in paragraph (10) of subdivision (f) of
30 Section 243, a person with whom the suspect has parented a child,
31 or is presumed to have parented a child pursuant to the Uniform
32 Parentage Act (Part 3 (commencing with Section 7600) of Division
33 12 of the Family Code), a child of the suspect, a child whose
34 parentage by the suspect is the subject of an action under the
35 Uniform Parentage Act, a child of a person in one of the above
36 categories, any other person related to the suspect by consanguinity
37 or affinity within the second degree, or any person who is 65 years
38 of age or older and who is related to the suspect by blood or legal
39 guardianship, a peace officer may arrest the suspect without a
40 warrant ~~where~~ *when* both of the following circumstances apply:

1 (1) The peace officer has probable cause to believe that the
2 person to be arrested has committed the assault or battery, whether
3 or not it has in fact been committed.

4 (2) The peace officer makes the arrest as soon as probable cause
5 arises to believe that the person to be arrested has committed the
6 assault or battery, whether or not it has in fact been committed.

7 (e) In addition to the authority to make an arrest without a
8 warrant pursuant to paragraphs (1) and (3) of subdivision (a), a
9 peace officer may, without a warrant, arrest a person for a violation
10 of Section 25400 when all of the following apply:

11 (1) The officer has reasonable cause to believe that the person
12 to be arrested has committed the violation of Section 25400.

13 (2) The violation of Section 25400 occurred within an airport,
14 as defined in Section 21013 of the Public Utilities Code, in an area
15 to which access is controlled by the inspection of persons and
16 property.

17 (3) The peace officer makes the arrest as soon as reasonable
18 cause arises to believe that the person to be arrested has committed
19 the violation of Section 25400.

20 (f) *In addition to the authority to make an arrest without a*
21 *warrant pursuant to subdivision (a), a peace officer may, without*
22 *a warrant, arrest a person if the officer has probable cause to*
23 *believe that the person to be arrested has violated subdivision (m)*
24 *of Section 647, although not in the presence of the officer.*

25 ~~SECTION 1. Section 186.11 of the Penal Code is amended to~~
26 ~~read:~~

27 ~~186.11. (a) (1) Any person who commits two or more related~~
28 ~~felonies, a material element of which is fraud or embezzlement,~~
29 ~~which involve a pattern of related felony conduct, and the pattern~~
30 ~~of related felony conduct involves the taking of, or results in the~~
31 ~~loss by another person or entity of, more than one hundred thousand~~
32 ~~dollars (\$100,000), shall be punished, upon conviction of two or~~
33 ~~more felonies in a single criminal proceeding, in addition and~~
34 ~~consecutive to the punishment prescribed for the felony offenses~~
35 ~~of which he or she has been convicted, by an additional term of~~
36 ~~imprisonment in the state prison as specified in paragraph (2) or~~
37 ~~(3). This enhancement shall be known as the aggravated white~~
38 ~~collar crime enhancement. The aggravated white collar crime~~
39 ~~enhancement shall only be imposed once in a single criminal~~
40 ~~proceeding. For purposes of this section, "pattern of related felony~~

1 ~~conduct” means engaging in at least two felonies that have the~~
2 ~~same or similar purpose, result, principals, victims, or methods of~~
3 ~~commission, or are otherwise interrelated by distinguishing~~
4 ~~characteristics, and that are not isolated events. For purposes of~~
5 ~~this section, “two or more related felonies” means felonies~~
6 ~~committed against two or more separate victims, or against the~~
7 ~~same victim on two or more separate occasions.~~

8 ~~(2) If the pattern of related felony conduct involves the taking~~
9 ~~of, or results in the loss by another person or entity of, more than~~
10 ~~five hundred thousand dollars (\$500,000), the additional term of~~
11 ~~punishment shall be two, three, or five years in the state prison.~~

12 ~~(3) If the pattern of related felony conduct involves the taking~~
13 ~~of, or results in the loss by another person or entity of, more than~~
14 ~~one hundred thousand dollars (\$100,000), but not more than five~~
15 ~~hundred thousand dollars (\$500,000), the additional term of~~
16 ~~punishment shall be the term specified in paragraph (1) or (2) of~~
17 ~~subdivision (a) of Section 12022.6.~~

18 ~~(b) (1) The additional prison term and penalties provided for~~
19 ~~in subdivisions (a), (c), and (d) shall not be imposed unless the~~
20 ~~facts set forth in subdivision (a) are charged in the accusatory~~
21 ~~pleading and admitted or found to be true by the trier of fact.~~

22 ~~(2) The additional prison term provided in paragraph (2) of~~
23 ~~subdivision (a) shall be in addition to any other punishment~~
24 ~~provided under law, including Section 12022.6, and shall not be~~
25 ~~limited by any other provision of law.~~

26 ~~(c) Any person convicted of two or more felonies, as specified~~
27 ~~in subdivision (a), shall also be liable for a fine not to exceed five~~
28 ~~hundred thousand dollars (\$500,000) or double the value of the~~
29 ~~taking, whichever is greater, if the existence of facts that would~~
30 ~~make the person subject to the aggravated white collar crime~~
31 ~~enhancement have been admitted or found to be true by the trier~~
32 ~~of fact. However, if the pattern of related felony conduct involves~~
33 ~~the taking of more than one hundred thousand dollars (\$100,000),~~
34 ~~but not more than five hundred thousand dollars (\$500,000), the~~
35 ~~fine shall not exceed one hundred thousand dollars (\$100,000) or~~
36 ~~double the value of the taking, whichever is greater.~~

37 ~~(d) (1) If a person is alleged to have committed two or more~~
38 ~~felonies, as specified in subdivision (a), and the aggravated white~~
39 ~~collar crime enhancement is also charged, or a person is charged~~
40 ~~in an accusatory pleading with a felony, a material element of~~

1 which is fraud or embezzlement, that involves the taking or loss
2 of more than one hundred thousand dollars (\$100,000), and an
3 allegation as to the existence of those facts, any asset or property
4 that is in the control of that person, and any asset or property that
5 has been transferred by that person to a third party, subsequent to
6 the commission of any criminal act alleged pursuant to subdivision
7 (a), other than in a bona fide purchase, whether found within or
8 outside the state, may be preserved by the superior court in order
9 to pay restitution and fines. Upon conviction of two or more
10 felonies, as specified in subdivision (a), or a felony, a material
11 element of which is fraud or embezzlement, that involves the taking
12 or loss of more than one hundred thousand dollars (\$100,000), this
13 property may be levied upon by the superior court to pay restitution
14 and fines if the existence of facts that would make the person
15 subject to the aggravated white collar crime enhancement or that
16 demonstrate the taking or loss of more than one hundred thousand
17 dollars (\$100,000) in the commission of a felony, a material
18 element of which is fraud or embezzlement, have been charged in
19 the accusatory pleading and admitted or found to be true by the
20 trier of fact.

21 (2) To prevent dissipation or secreting of assets or property, the
22 prosecuting agency may, at the same time as or subsequent to the
23 filing of a complaint or indictment charging two or more felonies,
24 as specified in subdivision (a), and the enhancement specified in
25 subdivision (a), or a felony, a material element of which is fraud
26 or embezzlement, that involves the taking or loss of more than one
27 hundred thousand dollars (\$100,000), and an allegation as to the
28 existence of those facts, file a petition with the criminal division
29 of the superior court of the county in which the accusatory pleading
30 was filed, seeking a temporary restraining order, preliminary
31 injunction, the appointment of a receiver, or any other protective
32 relief necessary to preserve the property or assets. This petition
33 shall commence a proceeding that shall be pendent to the criminal
34 proceeding and maintained solely to affect the criminal remedies
35 provided for in this section. The proceeding shall not be subject
36 to or governed by the provisions of the Civil Discovery Act as set
37 forth in Title 4 (commencing with Section 2016.010) of Part 4 of
38 the Code of Civil Procedure. The petition shall allege that the
39 defendant has been charged with two or more felonies, as specified
40 in subdivision (a), and is subject to the aggravated white collar

1 ~~crime enhancement specified in subdivision (a) or that the~~
2 ~~defendant has been charged with a felony, a material element of~~
3 ~~which is fraud or embezzlement, that involves the taking or loss~~
4 ~~of more than one hundred thousand dollars (\$100,000), and an~~
5 ~~allegation as to the existence of those facts. The petition shall~~
6 ~~identify that criminal proceeding and the assets and property to be~~
7 ~~affected by an order issued pursuant to this section.~~

8 ~~(3) A notice regarding the petition shall be provided, by personal~~
9 ~~service or registered mail, to every person who may have an interest~~
10 ~~in the property specified in the petition. Additionally, the notice~~
11 ~~shall be published for at least three successive weeks in a~~
12 ~~newspaper of general circulation in the county where the property~~
13 ~~affected by an order issued pursuant to this section is located. The~~
14 ~~notice shall state that any interested person may file a verified~~
15 ~~claim with the superior court stating the nature and amount of their~~
16 ~~claimed interest. The notice shall set forth the time within which~~
17 ~~a claim of interest in the protected property is required to be filed.~~

18 ~~(4) If the property to be preserved is real property, the~~
19 ~~prosecuting agency shall record, at the time of filing the petition,~~
20 ~~a lis pendens in each county in which the real property is situated~~
21 ~~which specifically identifies the property by legal description, the~~
22 ~~name of the owner of record as shown on the latest equalized~~
23 ~~assessment roll, and the assessor's parcel number.~~

24 ~~(5) If the property to be preserved are assets under the control~~
25 ~~of a banking or financial institution, the prosecuting agency, at the~~
26 ~~time of the filing of the petition, may obtain an order from the~~
27 ~~court directing the banking or financial institution to immediately~~
28 ~~disclose the account numbers and value of the assets of the accused~~
29 ~~held by the banking or financial institution. The prosecuting agency~~
30 ~~shall file a supplemental petition, specifically identifying which~~
31 ~~banking or financial institution accounts shall be subject to a~~
32 ~~temporary restraining order, preliminary injunction, or other~~
33 ~~protective remedy.~~

34 ~~(6) Any person claiming an interest in the protected property~~
35 ~~may, at any time within 30 days from the date of the first~~
36 ~~publication of the notice of the petition, or within 30 days after~~
37 ~~receipt of actual notice, file with the superior court of the county~~
38 ~~in which the action is pending a verified claim stating the nature~~
39 ~~and amount of his or her interest in the property or assets. A~~

1 verified copy of the claim shall be served by the claimant on the
2 Attorney General or district attorney, as appropriate.

3 ~~(7) The imposition of fines and restitution pursuant to this~~
4 ~~section shall be determined by the superior court in which the~~
5 ~~underlying criminal offense is sentenced. Any judge who is~~
6 ~~assigned to the criminal division of the superior court in the county~~
7 ~~where the petition is filed may issue a temporary restraining order~~
8 ~~in conjunction with, or subsequent to, the filing of an allegation~~
9 ~~pursuant to this section. Any subsequent hearing on the petition~~
10 ~~shall also be heard by a judge assigned to the criminal division of~~
11 ~~the superior court in the county in which the petition is filed. At~~
12 ~~the time of the filing of an information or indictment in the~~
13 ~~underlying criminal case, any subsequent hearing on the petition~~
14 ~~shall be heard by the superior court judge assigned to the~~
15 ~~underlying criminal case.~~

16 ~~(e) Concurrent with, or subsequent to, the filing of the petition,~~
17 ~~the prosecuting agency may move the superior court for, and the~~
18 ~~superior court may issue, the following pendente lite orders to~~
19 ~~preserve the status quo of the property alleged in the petition:~~

20 ~~(1) An injunction to restrain any person from transferring,~~
21 ~~encumbering, hypothecating, or otherwise disposing of that~~
22 ~~property.~~

23 ~~(2) Appointment of a receiver to take possession of, care for,~~
24 ~~manage, and operate the assets and properties so that the property~~
25 ~~may be maintained and preserved. The court may order that a~~
26 ~~receiver appointed pursuant to this section shall be compensated~~
27 ~~for all reasonable expenditures made or incurred by him or her in~~
28 ~~connection with the possession, care, management, and operation~~
29 ~~of any property or assets that are subject to the provisions of this~~
30 ~~section.~~

31 ~~(3) A bond or other undertaking, in lieu of other orders, of a~~
32 ~~value sufficient to ensure the satisfaction of restitution and fines~~
33 ~~imposed pursuant to this section.~~

34 ~~(f) (1) No preliminary injunction may be granted or receiver~~
35 ~~appointed by the court without notice that meets the requirements~~
36 ~~of paragraph (3) of subdivision (d) to all known and reasonably~~
37 ~~ascertainable interested parties and upon a hearing to determine~~
38 ~~that an order is necessary to preserve the property pending the~~
39 ~~outcome of the criminal proceedings. A temporary restraining~~
40 ~~order may be issued by the court, ex parte, pending that hearing~~

1 in conjunction with or subsequent to the filing of the petition upon
2 the application of the prosecuting attorney. The temporary
3 restraining order may be based upon the sworn declaration of a
4 peace officer with personal knowledge of the criminal investigation
5 that establishes probable cause to believe that aggravated white
6 collar crime or a felony, a material element of which is fraud or
7 embezzlement, that involves the taking or loss of more than one
8 hundred thousand dollars (\$100,000) has taken place and that the
9 amount of restitution and fines exceeds or equals the worth of the
10 assets subject to the temporary restraining order. The declaration
11 may include the hearsay statements of witnesses to establish the
12 necessary facts. The temporary restraining order may be issued
13 without notice upon a showing of good cause to the court.

14 (2) The defendant, or a person who has filed a verified claim
15 as provided in paragraph (6) of subdivision (d), shall have the right
16 to have the court conduct an order to show cause hearing within
17 10 days of the service of the request for hearing upon the
18 prosecuting agency, in order to determine whether the temporary
19 restraining order should remain in effect, whether relief should be
20 granted from any lis pendens recorded pursuant to paragraph (4)
21 of subdivision (d), or whether any existing order should be
22 modified in the interests of justice. Upon a showing of good cause,
23 the hearing shall be held within two days of the service of the
24 request for hearing upon the prosecuting agency.

25 (3) In determining whether to issue a preliminary injunction or
26 temporary restraining order in a proceeding brought by a
27 prosecuting agency in conjunction with or subsequent to the filing
28 of an allegation pursuant to this section, the court has the discretion
29 to consider any matter that it deems reliable and appropriate,
30 including hearsay statements, in order to reach a just and equitable
31 decision. The court shall weigh the relative degree of certainty of
32 the outcome on the merits and the consequences to each of the
33 parties of granting the interim relief. If the prosecution is likely to
34 prevail on the merits and the risk of the dissipation of assets
35 outweighs the potential harm to the defendants and the interested
36 parties, the court shall grant injunctive relief. The court shall give
37 significant weight to the following factors:

38 (A) The public interest in preserving the property or assets
39 pendente lite.

1 ~~(B) The difficulty of preserving the property or assets pendente~~
2 ~~lite where the underlying alleged crimes involve issues of fraud~~
3 ~~and moral turpitude.~~

4 ~~(C) The fact that the requested relief is being sought by a public~~
5 ~~prosecutor on behalf of alleged victims of white collar crimes.~~

6 ~~(D) The likelihood that substantial public harm has occurred~~
7 ~~where aggravated white collar crime is alleged to have been~~
8 ~~committed.~~

9 ~~(E) The significant public interest involved in compensating~~
10 ~~the victims of white collar crime and paying court-imposed~~
11 ~~restitution and fines.~~

12 ~~(4) The court, in making its orders, may consider a defendant's~~
13 ~~request for the release of a portion of the property affected by this~~
14 ~~section in order to pay reasonable legal fees in connection with~~
15 ~~the criminal proceeding, any necessary and appropriate living~~
16 ~~expenses pending trial and sentencing, and for the purpose of~~
17 ~~posting bail. The court shall weigh the needs of the public to retain~~
18 ~~the property against the needs of the defendant to a portion of the~~
19 ~~property. The court shall consider the factors listed in paragraph~~
20 ~~(3) prior to making any order releasing property for these purposes.~~

21 ~~(5) The court, in making its orders, shall seek to protect the~~
22 ~~interests of any innocent third persons, including an innocent~~
23 ~~spouse, who were not involved in the commission of any criminal~~
24 ~~activity.~~

25 ~~(6) Any petition filed pursuant to this section is part of the~~
26 ~~criminal proceedings for purposes of appointment of counsel and~~
27 ~~shall be assigned to the criminal division of the superior court of~~
28 ~~the county in which the accusatory pleading was filed.~~

29 ~~(7) Based upon a noticed motion brought by the receiver~~
30 ~~appointed pursuant to paragraph (2) of subdivision (c), the court~~
31 ~~may order an interlocutory sale of property named in the petition~~
32 ~~when the property is liable to perish, to waste, or to be significantly~~
33 ~~reduced in value, or when the expenses of maintaining the property~~
34 ~~are disproportionate to the value thereof. The proceeds of the~~
35 ~~interlocutory sale shall be deposited with the court or as directed~~
36 ~~by the court pending determination of the proceeding pursuant to~~
37 ~~this section.~~

38 ~~(8) The court may make any orders that are necessary to preserve~~
39 ~~the continuing viability of any lawful business enterprise that is~~

1 affected by the issuance of a temporary restraining order or
2 preliminary injunction issued pursuant to this action.

3 (9) In making its orders, the court shall seek to prevent any asset
4 subject to a temporary restraining order or preliminary injunction
5 from perishing, spoiling, going to waste, or otherwise being
6 significantly reduced in value. Where the potential for diminution
7 in value exists, the court shall appoint a receiver to dispose of or
8 otherwise protect the value of the property or asset.

9 (10) A preservation order shall not be issued against any assets
10 of a business that are not likely to be dissipated and that may be
11 subject to levy or attachment to meet the purposes of this section.

12 (g) If the allegation that the defendant is subject to the
13 aggravated white collar crime enhancement or has committed a
14 felony, a material element of which is fraud or embezzlement, that
15 involves the taking or loss of more than one hundred thousand
16 dollars (\$100,000) is dismissed or found by the trier of fact to be
17 untrue, any preliminary injunction or temporary restraining order
18 issued pursuant to this section shall be dissolved. If a jury is the
19 trier of fact, and the jury is unable to reach a unanimous verdict,
20 the court shall have the discretion to continue or dissolve all or a
21 portion of the preliminary injunction or temporary restraining order
22 based upon the interests of justice. However, if the prosecuting
23 agency elects not to retry the case, any preliminary injunction or
24 temporary restraining order issued pursuant to this section shall
25 be dissolved.

26 (h) (1) (A) If the defendant is convicted of two or more
27 felonies, as specified in subdivision (a), and the existence of facts
28 that would make the person subject to the aggravated white collar
29 crime enhancement have been admitted or found to be true by the
30 trier of fact, or the defendant is convicted of a felony, a material
31 element of which is fraud or embezzlement, that involves the taking
32 or loss of more than one hundred thousand dollars (\$100,000), and
33 an allegation as to the existence of those facts has been admitted
34 or found to be true by the trier of fact, the trial judge shall continue
35 the preliminary injunction or temporary restraining order until the
36 date of the criminal sentencing and shall make a finding at that
37 time as to what portion, if any, of the property or assets subject to
38 the preliminary injunction or temporary restraining order shall be
39 levied upon to pay fines and restitution to victims of the crime.
40 The order imposing fines and restitution may exceed the total worth

1 of the property or assets subjected to the preliminary injunction
2 or temporary restraining order. The court may order the immediate
3 transfer of the property or assets to satisfy any judgment and
4 sentence made pursuant to this section. Additionally, upon motion
5 of the prosecution, the court may enter an order as part of the
6 judgment and sentence making the order imposing fines and
7 restitution pursuant to this section enforceable pursuant to Title 9
8 (commencing with Section 680.010) of Part 2 of the Code of Civil
9 Procedure.

10 (B) Additionally, the court shall order the defendant to make
11 full restitution to the victim or to make restitution to the victim
12 based on his or her ability to pay, as defined in subdivision (c) of
13 Section 1203.1b. The payment of the restitution ordered by the
14 court pursuant to this section shall be made a condition of any
15 probation granted by the court if the existence of facts that would
16 make the defendant subject to the aggravated white collar crime
17 enhancement or of facts demonstrating the person committed a
18 felony, a material element of which is fraud or embezzlement, that
19 involves the taking or loss of more than one hundred thousand
20 dollars (\$100,000) have been admitted or found to be true by the
21 trier of fact. Notwithstanding any other provision of law, the court
22 may order that the period of probation continue for up to 10 years
23 or until full restitution is made to the victim, whichever is earlier.

24 (C) The sentencing court shall retain jurisdiction to enforce the
25 order to pay additional fines and restitution and, in appropriate
26 cases, may initiate probation violation proceedings or contempt
27 of court proceedings against a defendant who is found to have
28 willfully failed to comply with any lawful order of the court.

29 (D) If the execution of judgment is stayed pending an appeal
30 of an order of the superior court pursuant to this section, the
31 preliminary injunction or temporary restraining order shall be
32 maintained in full force and effect during the pendency of the
33 appellate period.

34 (2) The order imposing fines and restitution shall not affect the
35 interest in real property of any third party that was acquired prior
36 to the recording of the lis pendens, unless the property was obtained
37 from the defendant other than as a bona fide purchaser for value.
38 If any assets or property affected by this section are subject to a
39 valid lien, mortgage, security interest, or interest under a
40 conditional sales contract and the amount due to the holder of the

1 lien, mortgage, interest, or contract is less than the appraised value
2 of the property, that person may pay to the state or the local
3 government that initiated the proceeding the amount of the
4 difference between the appraised value of the property and the
5 amount of the lien, mortgage, security interest, or interest under a
6 conditional sales contract. Upon that payment, the state or local
7 entity shall relinquish all claims to the property. If the holder of
8 the interest elects not to make that payment to the state or local
9 governmental entity, the interest in the property shall be deemed
10 transferred to the state or local governmental entity and any indicia
11 of ownership of the property shall be confirmed in the state or
12 local governmental entity. The appraised value shall be determined
13 as of the date judgment is entered either by agreement between
14 the holder of the lien, mortgage, security interest, or interest under
15 a conditional sales contract and the governmental entity involved,
16 or if they cannot agree, then by a court-appointed appraiser for the
17 county in which the action is brought. A person holding a valid
18 lien, mortgage, security interest, or interest under a conditional
19 sales contract shall be paid the appraised value of his or her interest.

20 (3) In making its final order, the court shall seek to protect the
21 legitimately acquired interests of any innocent third persons,
22 including an innocent spouse, who were not involved in the
23 commission of any criminal activity.

24 (i) In all cases where property is to be levied upon pursuant to
25 this section, a receiver appointed by the court shall be empowered
26 to liquidate all property or assets which shall be distributed in the
27 following order of priority:

28 (1) To the receiver, or court-appointed appraiser, for all
29 reasonable expenditures made or incurred by him or her in
30 connection with the sale of the property or liquidation of assets,
31 including all reasonable expenditures for any necessary repairs,
32 storage, or transportation of any property levied upon under this
33 section.

34 (2) To any holder of a valid lien, mortgage, or security interest
35 up to the amount of his or her interest in the property or proceeds.

36 (3) To any victim as restitution for any fraudulent or unlawful
37 acts alleged in the accusatory pleading that were proven by the
38 prosecuting agency as part of the pattern of fraudulent or unlawful
39 acts.

1 ~~(4) For payment of any fine imposed pursuant to this section.~~
2 ~~The proceeds obtained in payment of a fine shall be paid to the~~
3 ~~treasurer of the county in which the judgment was entered, or if~~
4 ~~the action was undertaken by the Attorney General, to the~~
5 ~~Treasurer. If the payment of any fine imposed pursuant to this~~
6 ~~section involved losses resulting from violation of Section 550 of~~
7 ~~this code or Section 1871.4 of the Insurance Code, one-half of the~~
8 ~~fine collected shall be paid to the treasurer of the county in which~~
9 ~~the judgment was entered, and one-half of the fine collected shall~~
10 ~~be paid to the Department of Insurance for deposit in the~~
11 ~~appropriate account in the Insurance Fund. The proceeds from the~~
12 ~~fine first shall be used by a county to reimburse local prosecutors~~
13 ~~and enforcement agencies for the reasonable costs of investigation~~
14 ~~and prosecution of cases brought pursuant to this section.~~

15 ~~(5) To the Restitution Fund, or in cases involving convictions~~
16 ~~relating to insurance fraud, to the Insurance Fund as restitution for~~
17 ~~crimes not specifically pleaded and proven in the accusatory~~
18 ~~pleading.~~

19 ~~(j) If, after distribution pursuant to paragraphs (1) and (2) of~~
20 ~~subdivision (i), the value of the property to be levied upon pursuant~~
21 ~~to this section is insufficient to pay for restitution and fines, the~~
22 ~~court shall order an equitable sharing of the proceeds of the~~
23 ~~liquidation of the property, and any other recoveries, which shall~~
24 ~~specify the percentage of recoveries to be devoted to each purpose.~~
25 ~~At least 70 percent of the proceeds remaining after distribution~~
26 ~~pursuant to paragraphs (1) and (2) of subdivision (i) shall be~~
27 ~~devoted to restitution.~~

28 ~~(k) Unless otherwise expressly provided, the remedies or~~
29 ~~penalties provided by this section are cumulative to each other and~~
30 ~~to the remedies or penalties available under all other laws of this~~
31 ~~state, except that two separate actions against the same defendant~~
32 ~~and pertaining to the same fraudulent or unlawful acts may not be~~
33 ~~brought by a district attorney or the Attorney General pursuant to~~
34 ~~this section and Chapter 5 (commencing with Section 17200) of~~
35 ~~Part 2 of Division 7 of the Business and Professions Code. If a~~
36 ~~fine is imposed under this section, it shall be in lieu of all other~~
37 ~~finest that may be imposed pursuant to any other provision of law~~

1 ~~for the crimes for which the defendant has been convicted in the~~
2 ~~action.~~

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