

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2295

Introduced by Assembly Member Baker
(Coauthors: Assembly Members Brough and Wilk)
(Coauthors: Senators Glazer and Nielsen)

February 18, 2016

An act to amend ~~Section~~ *Sections 186.11, 186.12, and 1202.4* of the Penal Code, relating to restitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2295, as amended, Baker. Restitution for crimes.

Existing law requires the court to order a person who is convicted of a crime to pay restitution to the victim or victims for the full amount of economic loss, unless the court finds compelling and extraordinary reasons for not doing so and states them on the record. *Existing law specifically requires a defendant subject to the aggravated white collar crime enhancement, and a person convicted of a felony involving theft, embezzlement, forgery, or fraud, with respect to the property or personal identifying information of an elder or a dependent adult, to be ordered to make full restitution to the victim or to make restitution to the victim based on his or her ability to pay.*

This bill would require the court to order full restitution and would make technical, nonsubstantive changes. The bill would state the finding of the Legislature that these changes are declaratory of existing law.

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 186.11 of the Penal Code is amended to
2 read:

3 186.11. (a) (1) Any person who commits two or more related
4 felonies, a material element of which is fraud or embezzlement,
5 which involve a pattern of related felony conduct, and the pattern
6 of related felony conduct involves the taking of, or results in the
7 loss by another person or entity of, more than one hundred thousand
8 dollars (\$100,000), shall be punished, upon conviction of two or
9 more felonies in a single criminal proceeding, in addition and
10 consecutive to the punishment prescribed for the felony offenses
11 of which he or she has been convicted, by an additional term of
12 imprisonment in the state prison as specified in paragraph (2) or
13 (3). This enhancement shall be known as the aggravated white
14 collar crime enhancement. The aggravated white collar crime
15 enhancement shall only be imposed once in a single criminal
16 proceeding. For purposes of this section, “pattern of related felony
17 conduct” means engaging in at least two felonies that have the
18 same or similar purpose, result, principals, victims, or methods of
19 commission, or are otherwise interrelated by distinguishing
20 characteristics, and that are not isolated events. For purposes of
21 this section, “two or more related felonies” means felonies
22 committed against two or more separate victims, or against the
23 same victim on two or more separate occasions.

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

28 (3) If the pattern of related felony conduct involves the taking
29 of, or results in the loss by another person or entity of, more than
30 one hundred thousand dollars (\$100,000), but not more than five
31 hundred thousand dollars (\$500,000), the additional term of
32 punishment shall be the term specified in paragraph (1) or (2) of
33 subdivision (a) of Section 12022.6.

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

1 (2) The additional prison term provided in paragraph (2) of
2 subdivision (a) shall be in addition to any other punishment
3 provided by law, including Section 12022.6, and shall not be
4 limited by any other provision of law.

5 (c) Any person convicted of two or more felonies, as specified
6 in subdivision (a), shall also be liable for a fine not to exceed five
7 hundred thousand dollars (\$500,000) or double the value of the
8 taking, whichever is greater, if the existence of facts that would
9 make the person subject to the aggravated white collar crime
10 enhancement have been admitted or found to be true by the trier
11 of fact. However, if the pattern of related felony conduct involves
12 the taking of more than one hundred thousand dollars (\$100,000),
13 but not more than five hundred thousand dollars (\$500,000), the
14 fine shall not exceed one hundred thousand dollars (\$100,000) or
15 double the value of the taking, whichever is greater.

16 (d) (1) If a person is alleged to have committed two or more
17 felonies, as specified in subdivision (a), and the aggravated white
18 collar crime enhancement is also charged, or a person is charged
19 in an accusatory pleading with a felony, a material element of
20 which is fraud or embezzlement, that involves the taking or loss
21 of more than one hundred thousand dollars (\$100,000), and an
22 allegation as to the existence of those facts, any asset or property
23 that is in the control of that person, and any asset or property that
24 has been transferred by that person to a third party, subsequent to
25 the commission of any criminal act alleged pursuant to subdivision
26 (a), other than in a bona fide purchase, whether found within or
27 outside the state, may be preserved by the superior court in order
28 to pay restitution and fines. Upon conviction of two or more
29 felonies, as specified in subdivision (a), or a felony, a material
30 element of which is fraud or embezzlement, that involves the taking
31 or loss of more than one hundred thousand dollars (\$100,000), this
32 property may be levied upon by the superior court to pay restitution
33 and fines if the existence of facts that would make the person
34 subject to the aggravated white collar crime enhancement or that
35 demonstrate the taking or loss of more than one hundred thousand
36 dollars (\$100,000) in the commission of a felony, a material
37 element of which is fraud or embezzlement, have been charged in
38 the accusatory pleading and admitted or found to be true by the
39 trier of fact.

1 (2) To prevent dissipation or secreting of assets or property, the
2 prosecuting agency may, at the same time as or subsequent to the
3 filing of a complaint or indictment charging two or more felonies,
4 as specified in subdivision (a), and the enhancement specified in
5 subdivision (a), or a felony, a material element of which is fraud
6 or embezzlement, that involves the taking or loss of more than one
7 hundred thousand dollars (\$100,000), and an allegation as to the
8 existence of those facts, file a petition with the criminal division
9 of the superior court of the county in which the accusatory pleading
10 was filed, seeking a temporary restraining order, preliminary
11 injunction, the appointment of a receiver, or any other protective
12 relief necessary to preserve the property or assets. This petition
13 shall commence a proceeding that shall be pendent to the criminal
14 proceeding and maintained solely to affect the criminal remedies
15 provided for in this section. The proceeding shall not be subject
16 to or governed by the provisions of the Civil Discovery Act as set
17 forth in Title 4 (commencing with Section 2016.010) of Part 4 of
18 the Code of Civil Procedure. The petition shall allege that the
19 defendant has been charged with two or more felonies, as specified
20 in subdivision (a), and is subject to the aggravated white collar
21 crime enhancement specified in subdivision (a) or that the
22 defendant has been charged with a felony, a material element of
23 which is fraud or embezzlement, that involves the taking or loss
24 of more than one hundred thousand dollars (\$100,000), and an
25 allegation as to the existence of those facts. The petition shall
26 identify that criminal proceeding and the assets and property to be
27 affected by an order issued pursuant to this section.

28 (3) A notice regarding the petition shall be provided, by personal
29 service or registered mail, to every person who may have an interest
30 in the property specified in the petition. Additionally, the notice
31 shall be published for at least three successive weeks in a
32 newspaper of general circulation in the county where the property
33 affected by an order issued pursuant to this section is located. The
34 notice shall state that any interested person may file a verified
35 claim with the superior court stating the nature and amount of their
36 claimed interest. The notice shall set forth the time within which
37 a claim of interest in the protected property is required to be filed.

38 (4) If the property to be preserved is real property, the
39 prosecuting agency shall record, at the time of filing the petition,
40 a lis pendens in each county in which the real property is situated

1 which specifically identifies the property by legal description, the
2 name of the owner of record as shown on the latest equalized
3 assessment roll, and the assessor's parcel number.

4 (5) If the property to be preserved are assets under the control
5 of a banking or financial institution, the prosecuting agency, at the
6 time of the filing of the petition, may obtain an order from the
7 court directing the banking or financial institution to immediately
8 disclose the account numbers and value of the assets of the accused
9 held by the banking or financial institution. The prosecuting agency
10 shall file a supplemental petition, specifically identifying which
11 banking or financial institution accounts shall be subject to a
12 temporary restraining order, preliminary injunction, or other
13 protective remedy.

14 (6) Any person claiming an interest in the protected property
15 may, at any time within 30 days from the date of the first
16 publication of the notice of the petition, or within 30 days after
17 receipt of actual notice, file with the superior court of the county
18 in which the action is pending a verified claim stating the nature
19 and amount of his or her interest in the property or assets. A
20 verified copy of the claim shall be served by the claimant on the
21 Attorney General or district attorney, as appropriate.

22 (7) The imposition of fines and restitution pursuant to this
23 section shall be determined by the superior court in which the
24 underlying criminal offense is sentenced. Any judge who is
25 assigned to the criminal division of the superior court in the county
26 where the petition is filed may issue a temporary restraining order
27 in conjunction with, or subsequent to, the filing of an allegation
28 pursuant to this section. Any subsequent hearing on the petition
29 shall also be heard by a judge assigned to the criminal division of
30 the superior court in the county in which the petition is filed. At
31 the time of the filing of an information or indictment in the
32 underlying criminal case, any subsequent hearing on the petition
33 shall be heard by the superior court judge assigned to the
34 underlying criminal case.

35 (e) Concurrent with or subsequent to the filing of the petition,
36 the prosecuting agency may move the superior court for, and the
37 superior court may issue, the following pendente lite orders to
38 preserve the status quo of the property alleged in the petition:

1 (1) An injunction to restrain any person from transferring,
2 encumbering, hypothecating, or otherwise disposing of that
3 property.

4 (2) Appointment of a receiver to take possession of, care for,
5 manage, and operate the assets and properties so that the property
6 may be maintained and preserved. The court may order that a
7 receiver appointed pursuant to this section shall be compensated
8 for all reasonable expenditures made or incurred by him or her in
9 connection with the possession, care, management, and operation
10 of any property or assets that are subject to the provisions of this
11 section.

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

15 (f) (1) No preliminary injunction may be granted or receiver
16 appointed by the court without notice that meets the requirements
17 of paragraph (3) of subdivision (d) to all known and reasonably
18 ascertainable interested parties and upon a hearing to determine
19 that an order is necessary to preserve the property pending the
20 outcome of the criminal proceedings. A temporary restraining
21 order may be issued by the court, ex parte, pending that hearing
22 in conjunction with or subsequent to the filing of the petition upon
23 the application of the prosecuting attorney. The temporary
24 restraining order may be based upon the sworn declaration of a
25 peace officer with personal knowledge of the criminal investigation
26 that establishes probable cause to believe that aggravated white
27 collar crime or a felony, a material element of which is fraud or
28 embezzlement, that involves the taking or loss of more than one
29 hundred thousand dollars (\$100,000) has taken place and that the
30 amount of restitution and fines exceeds or equals the worth of the
31 assets subject to the temporary restraining order. The declaration
32 may include the hearsay statements of witnesses to establish the
33 necessary facts. The temporary restraining order may be issued
34 without notice upon a showing of good cause to the court.

35 (2) The defendant, or a person who has filed a verified claim
36 as provided in paragraph (6) of subdivision (d), shall have the right
37 to have the court conduct an order to show cause hearing within
38 10 days of the service of the request for hearing upon the
39 prosecuting agency, in order to determine whether the temporary
40 restraining order should remain in effect, whether relief should be

1 granted from any lis pendens recorded pursuant to paragraph (4)
2 of subdivision (d), or whether any existing order should be
3 modified in the interests of justice. Upon a showing of good cause,
4 the hearing shall be held within two days of the service of the
5 request for hearing upon the prosecuting agency.

6 (3) In determining whether to issue a preliminary injunction or
7 temporary restraining order in a proceeding brought by a
8 prosecuting agency in conjunction with or subsequent to the filing
9 of an allegation pursuant to this section, the court has the discretion
10 to consider any matter that it deems reliable and appropriate,
11 including hearsay statements, in order to reach a just and equitable
12 decision. The court shall weigh the relative degree of certainty of
13 the outcome on the merits and the consequences to each of the
14 parties of granting the interim relief. If the prosecution is likely to
15 prevail on the merits and the risk of the dissipation of assets
16 outweighs the potential harm to the defendants and the interested
17 parties, the court shall grant injunctive relief. The court shall give
18 significant weight to the following factors:

19 (A) The public interest in preserving the property or assets
20 pendente lite.

21 (B) The difficulty of preserving the property or assets pendente
22 lite where the underlying alleged crimes involve issues of fraud
23 and moral turpitude.

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

26 (D) The likelihood that substantial public harm has occurred
27 where aggravated white collar crime is alleged to have been
28 committed.

29 (E) The significant public interest involved in compensating
30 the victims of white collar crime and paying court-imposed
31 restitution and fines.

32 (4) The court, in making its orders, may consider a defendant's
33 request for the release of a portion of the property affected by this
34 section in order to pay reasonable legal fees in connection with
35 the criminal proceeding, any necessary and appropriate living
36 expenses pending trial and sentencing, and for the purpose of
37 posting bail. The court shall weigh the needs of the public to retain
38 the property against the needs of the defendant to a portion of the
39 property. The court shall consider the factors listed in paragraph
40 (3) prior to making any order releasing property for these purposes.

1 (5) The court, in making its orders, shall seek to protect the
2 interests of any innocent third persons, including an innocent
3 spouse, who were not involved in the commission of any criminal
4 activity.

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

9 (7) Based upon a noticed motion brought by the receiver
10 appointed pursuant to paragraph (2) of subdivision (e), the court
11 may order an interlocutory sale of property named in the petition
12 when the property is liable to perish, to waste, or to be significantly
13 reduced in value, or when the expenses of maintaining the property
14 are disproportionate to the value thereof. The proceeds of the
15 interlocutory sale shall be deposited with the court or as directed
16 by the court pending determination of the proceeding pursuant to
17 this section.

18 (8) The court may make any orders that are necessary to preserve
19 the continuing viability of any lawful business enterprise that is
20 affected by the issuance of a temporary restraining order or
21 preliminary injunction issued pursuant to this action.

22 (9) In making its orders, the court shall seek to prevent any asset
23 subject to a temporary restraining order or preliminary injunction
24 from perishing, spoiling, going to waste, or otherwise being
25 significantly reduced in value. Where the potential for diminution
26 in value exists, the court shall appoint a receiver to dispose of or
27 otherwise protect the value of the property or asset.

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

31 (g) If the allegation that the defendant is subject to the
32 aggravated white collar crime enhancement or has committed a
33 felony, a material element of which is fraud or embezzlement, that
34 involves the taking or loss of more than one hundred thousand
35 dollars (\$100,000) is dismissed or found by the trier of fact to be
36 untrue, any preliminary injunction or temporary restraining order
37 issued pursuant to this section shall be dissolved. If a jury is the
38 trier of fact, and the jury is unable to reach a unanimous verdict,
39 the court shall have the discretion to continue or dissolve all or a
40 portion of the preliminary injunction or temporary restraining order

1 based upon the interests of justice. However, if the prosecuting
2 agency elects not to retry the case, any preliminary injunction or
3 temporary restraining order issued pursuant to this section shall
4 be dissolved.

5 (h) (1) (A) If the defendant is convicted of two or more
6 felonies, as specified in subdivision (a), and the existence of facts
7 that would make the person subject to the aggravated white collar
8 crime enhancement have been admitted or found to be true by the
9 trier of fact, or the defendant is convicted of a felony, a material
10 element of which is fraud or embezzlement, that involves the taking
11 or loss of more than one hundred thousand dollars (\$100,000), and
12 an allegation as to the existence of those facts has been admitted
13 or found to be true by the trier of fact, the trial judge shall continue
14 the preliminary injunction or temporary restraining order until the
15 date of the criminal sentencing and shall make a finding at that
16 time as to what portion, if any, of the property or assets subject to
17 the preliminary injunction or temporary restraining order shall be
18 levied upon to pay fines and restitution to victims of the crime.
19 The order imposing fines and restitution may exceed the total worth
20 of the property or assets subjected to the preliminary injunction
21 or temporary restraining order. The court may order the immediate
22 transfer of the property or assets to satisfy any judgment and
23 sentence made pursuant to this section. Additionally, upon motion
24 of the prosecution, the court may enter an order as part of the
25 judgment and sentence making the order imposing fines and
26 restitution pursuant to this section enforceable pursuant to Title 9
27 (commencing with Section 680.010) of Part 2 of the Code of Civil
28 Procedure.

29 (B) Additionally, the court shall order the defendant to make
30 full restitution to the ~~victim or to make restitution to the victim~~
31 ~~based on his or her ability to pay, as defined in subdivision (b) of~~
32 ~~Section 1203.1b: victim.~~ The payment of the restitution ordered
33 by the court pursuant to this section shall be made a condition of
34 any probation granted by the court if the existence of facts that
35 would make the defendant subject to the aggravated white collar
36 crime enhancement or of facts demonstrating the person committed
37 a felony, a material element of which is fraud or embezzlement,
38 that involves the taking or loss of more than one hundred thousand
39 dollars (\$100,000) have been admitted or found to be true by the
40 trier of fact. Notwithstanding any other provision of law, the court

1 may order that the period of probation continue for up to 10 years
2 or until full restitution is made to the victim, whichever is earlier.

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

8 (D) If the execution of judgment is stayed pending an appeal
9 of an order of the superior court pursuant to this section, the
10 preliminary injunction or temporary restraining order shall be
11 maintained in full force and effect during the pendency of the
12 appellate period.

13 (2) The order imposing fines and restitution shall not affect the
14 interest in real property of any third party that was acquired prior
15 to the recording of the lis pendens, unless the property was obtained
16 from the defendant other than as a bona fide purchaser for value.
17 If any assets or property affected by this section are subject to a
18 valid lien, mortgage, security interest, or interest under a
19 conditional sales contract and the amount due to the holder of the
20 lien, mortgage, interest, or contract is less than the appraised value
21 of the property, that person may pay to the state or the local
22 government that initiated the proceeding the amount of the
23 difference between the appraised value of the property and the
24 amount of the lien, mortgage, security interest, or interest under a
25 conditional sales contract. Upon that payment, the state or local
26 entity shall relinquish all claims to the property. If the holder of
27 the interest elects not to make that payment to the state or local
28 governmental entity, the interest in the property shall be deemed
29 transferred to the state or local governmental entity and any indicia
30 of ownership of the property shall be confirmed in the state or
31 local governmental entity. The appraised value shall be determined
32 as of the date judgment is entered either by agreement between
33 the holder of the lien, mortgage, security interest, or interest under
34 a conditional sales contract and the governmental entity involved,
35 or if they cannot agree, then by a court-appointed appraiser for the
36 county in which the action is brought. A person holding a valid
37 lien, mortgage, security interest, or interest under a conditional
38 sales contract shall be paid the appraised value of his or her interest.

39 (3) In making its final order, the court shall seek to protect the
40 legitimately acquired interests of any innocent third persons,

1 including an innocent spouse, who were not involved in the
2 commission of any criminal activity.

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

7 (1) To the receiver, or court-appointed appraiser, for all
8 reasonable expenditures made or incurred by him or her in
9 connection with the sale of the property or liquidation of assets,
10 including all reasonable expenditures for any necessary repairs,
11 storage, or transportation of any property levied upon under this
12 section.

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

15 (3) To any victim as restitution for any fraudulent or unlawful
16 acts alleged in the accusatory pleading that were proven by the
17 prosecuting agency as part of the pattern of fraudulent or unlawful
18 acts.

19 (4) For payment of any fine imposed pursuant to this section.
20 The proceeds obtained in payment of a fine shall be paid to the
21 treasurer of the county in which the judgment was entered, or if
22 the action was undertaken by the Attorney General, to the
23 Treasurer. If the payment of any fine imposed pursuant to this
24 section involved losses resulting from violation of Section 550 of
25 this code or Section 1871.4 of the Insurance Code, one-half of the
26 fine collected shall be paid to the treasurer of the county in which
27 the judgment was entered, and one-half of the fine collected shall
28 be paid to the Department of Insurance for deposit in the
29 appropriate account in the Insurance Fund. The proceeds from the
30 fine first shall be used by a county to reimburse local prosecutors
31 and enforcement agencies for the reasonable costs of investigation
32 and prosecution of cases brought pursuant to this section.

33 (5) To the Restitution Fund, or in cases involving convictions
34 relating to insurance fraud, to the Insurance Fund as restitution for
35 crimes not specifically pleaded and proven in the accusatory
36 pleading.

37 (j) If, after distribution pursuant to paragraphs (1) and (2) of
38 subdivision (i), the value of the property to be levied upon pursuant
39 to this section is insufficient to pay for restitution and fines, the
40 court shall order an equitable sharing of the proceeds of the

1 liquidation of the property, and any other recoveries, which shall
 2 specify the percentage of recoveries to be devoted to each purpose.
 3 At least 70 percent of the proceeds remaining after distribution
 4 pursuant to paragraphs (1) and (2) of subdivision (i) shall be
 5 devoted to restitution.

6 (k) Unless otherwise expressly provided, the remedies or
 7 penalties provided by this section are cumulative to each other and
 8 to the remedies or penalties available under all other laws of this
 9 state, except that two separate actions against the same defendant
 10 and pertaining to the same fraudulent or unlawful acts may not be
 11 brought by a district attorney or the Attorney General pursuant to
 12 this section and Chapter 5 (commencing with Section 17200) of
 13 Part 2 of Division 7 of the Business and Professions Code. If a
 14 fine is imposed under this section, it shall be in lieu of all other
 15 fines that may be imposed pursuant to any other provision of law
 16 for the crimes for which the defendant has been convicted in the
 17 action.

18 *SEC. 2. Section 186.12 of the Penal Code is amended to read:*

19 186.12. (a) (1) A felony for purposes of this section means a
 20 felony violation of subdivision (d) or (e) of Section 368, or a felony
 21 violation of subdivision (c) of Section 15656 of the Welfare and
 22 Institutions Code, that involves the taking or loss of more than one
 23 hundred thousand dollars (\$100,000).

24 (2) If a person is charged with a felony as described in paragraph
 25 (1) and an allegation as to the existence of those facts has been
 26 made, any property that is in the control of that person, and any
 27 property that has been transferred by that person to a third party,
 28 subsequent to the commission of any criminal act alleged pursuant
 29 to this subdivision, other than in a bona fide purchase, whether
 30 found within or outside the state, may be preserved by the superior
 31 court in order to pay restitution imposed pursuant to this section.
 32 Upon conviction of the felony, this property may be levied upon
 33 by the superior court to pay restitution imposed pursuant to this
 34 section.

35 (b) (1) To prevent dissipation or secreting of property, the
 36 prosecuting agency may, at the same time as or subsequent to the
 37 filing of a complaint or indictment charging a felony subject to
 38 this section, file a petition with the criminal division of the superior
 39 court of the county in which the accusatory pleading was filed,
 40 seeking a temporary restraining order, preliminary injunction, the

1 appointment of a receiver, or any other protective relief necessary
2 to preserve the property. The filing of the petition shall commence
3 a proceeding that shall be pendent to the criminal proceeding and
4 maintained solely to affect the criminal remedies provided for in
5 this section. The proceeding shall not be subject to or governed
6 by the provisions of the Civil Discovery Act as set forth in Title
7 4 (commencing with Section 2016.010) of Part 4 of the Code of
8 Civil Procedure. The petition shall allege that the defendant has
9 been charged with a felony as described in paragraph (1) of
10 subdivision (a) and shall identify that criminal proceeding and the
11 property to be affected by an order issued pursuant to this section.

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

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

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

38 (5) Any person claiming an interest in the protected property
39 may, at any time within 30 days from the date of the first
40 publication of the notice of the petition, or within 30 days after

1 receipt of actual notice, file with the superior court of the county
2 in which the action is pending a verified claim stating the nature
3 and amount of his or her interest in the property. A verified copy
4 of the claim shall be served by the claimant on the Attorney
5 General or district attorney, as appropriate.

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

19 (c) Concurrent with or subsequent to the filing of the petition
20 pursuant to this section, the prosecuting agency may move the
21 superior court for, and the superior court may issue, the following
22 pendente lite orders to preserve the status quo of the property
23 identified in the petition:

24 (1) An injunction to restrain any person from transferring,
25 encumbering, hypothecating, or otherwise disposing of that
26 property.

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

34 (3) A bond or other undertaking, in lieu of other orders, of a
35 value sufficient to ensure the satisfaction of restitution imposed
36 pursuant to this section.

37 (d) (1) No preliminary injunction may be granted or receiver
38 appointed by the court without notice that meets the requirements
39 of paragraph (2) of subdivision (b) to all known and reasonably
40 ascertainable interested parties and upon a hearing to determine

1 that an order is necessary to preserve the property pending the
2 outcome of the criminal proceedings. A temporary restraining
3 order may be issued by the court, ex parte, pending that hearing
4 in conjunction with or subsequent to the filing of the petition upon
5 the application of the prosecuting attorney. The temporary
6 restraining order may be based upon the sworn declaration of a
7 peace officer with personal knowledge of the criminal investigation
8 that establishes probable cause to believe that a felony has taken
9 place and that the amount of restitution established by this section
10 exceeds or equals the worth of the property subject to the temporary
11 restraining order. The declaration may include the hearsay
12 statements of witnesses to establish the necessary facts. The
13 temporary restraining order may be issued without notice upon a
14 showing of good cause to the court.

15 (2) The defendant, or a person who has filed a verified claim
16 as provided in paragraph (5) of subdivision (b), shall have the right
17 to have the court conduct an order to show cause hearing within
18 10 days of the service of the request for hearing upon the
19 prosecuting agency, in order to determine whether the temporary
20 restraining order should remain in effect, whether relief should be
21 granted from any lis pendens recorded pursuant to paragraph (3)
22 of subdivision (b), or whether any existing order should be
23 modified in the interests of justice. Upon a showing of good cause,
24 the hearing shall be held within two days of the service of the
25 request for hearing upon the prosecuting agency.

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

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

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

4 (C) The fact that the requested relief is being sought by a public
5 prosecutor on behalf of alleged victims of elder or dependent adult
6 financial abuse.

7 (D) The likelihood that substantial public harm has occurred
8 where a felony is alleged to have been committed.

9 (E) The significant public interest involved in compensating
10 the elder or dependent adult victim of financial abuse and paying
11 court-imposed restitution.

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 shall be part of
26 the criminal proceedings for purposes of appointment of counsel
27 and shall be assigned to the criminal division of the superior court
28 of 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 identified 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
4 property subject to a temporary restraining order or preliminary
5 injunction from perishing, spoiling, going to waste, or otherwise
6 being significantly reduced in value. Where the potential for
7 diminution in value exists, the court shall appoint a receiver to
8 dispose of or otherwise protect the value of the property.

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 (e) If the allegation that the defendant committed a felony
13 subject to this section is dismissed or found by the trier of fact to
14 be untrue, any preliminary injunction or temporary restraining
15 order issued pursuant to this section shall be dissolved. If a jury
16 is the trier of fact, and the jury is unable to reach a unanimous
17 verdict, the court shall have the discretion to continue or dissolve
18 all or a portion of the preliminary injunction or temporary
19 restraining order based upon the interests of justice. However, if
20 the prosecuting agency elects not to retry the case, any preliminary
21 injunction or temporary restraining order issued pursuant to this
22 section shall be dissolved.

23 (f) (1) (A) If the defendant is convicted of a felony subject to
24 this section, the trial judge shall continue the preliminary injunction
25 or temporary restraining order until the date of the criminal
26 sentencing and shall make a finding at that time as to what portion,
27 if any, of the property subject to the preliminary injunction or
28 temporary restraining order shall be levied upon to pay restitution
29 to victims of the crime. The order imposing restitution may exceed
30 the total worth of the property subjected to the preliminary
31 injunction or temporary restraining order. The court may order the
32 immediate transfer of the property to satisfy any judgment and
33 sentence made pursuant to this section. Additionally, upon motion
34 of the prosecution, the court may enter an order as part of the
35 judgment and sentence making the order imposing restitution
36 pursuant to this section enforceable pursuant to Title 9
37 (commencing with Section 680.010) of Part 2 of the Code of Civil
38 Procedure.

39 (B) Additionally, the court shall order the defendant to make
40 full restitution to the ~~victim or to make restitution to the victim~~

1 based on his or her ability to pay, as defined in subdivision (b) of
 2 Section 1203.1b: *victim*. The payment of the restitution ordered
 3 by the court pursuant to this section shall be made a condition of
 4 any probation granted by the court. Notwithstanding any other
 5 provision of law, the court may order that the period of probation
 6 continue for up to 10 years or until full restitution is made to the
 7 victim, whichever is earlier.

8 (C) The sentencing court shall retain jurisdiction to enforce the
 9 order to pay additional restitution and, in appropriate cases, may
 10 initiate probation violation proceedings or contempt of court
 11 proceedings against a defendant who is found to have willfully
 12 failed to comply with any lawful order of the court.

13 (D) If the execution of judgment is stayed pending an appeal
 14 of an order of the superior court pursuant to this section, the
 15 preliminary injunction or temporary restraining order shall be
 16 maintained in full force and effect during the pendency of the
 17 appellate period.

18 (2) The order imposing restitution shall not affect the interest
 19 in real property of any third party that was acquired prior to the
 20 recording of the lis pendens, unless the property was obtained from
 21 the defendant other than as a bona fide purchaser for value. If any
 22 assets or property affected by this section are subject to a valid
 23 lien, mortgage, security interest, or interest under a conditional
 24 sales contract and the amount due to the holder of the lien,
 25 mortgage, interest, or contract is less than the appraised value of
 26 the property, that person may pay to the state or the local
 27 government that initiated the proceeding the amount of the
 28 difference between the appraised value of the property and the
 29 amount of the lien, mortgage, security interest, or interest under a
 30 conditional sales contract. Upon that payment, the state or local
 31 entity shall relinquish all claims to the property. If the holder of
 32 the interest elects not to make that payment to the state or local
 33 governmental entity, the interest in the property shall be deemed
 34 transferred to the state or local governmental entity and any indicia
 35 of ownership of the property shall be confirmed in the state or
 36 local governmental entity. The appraised value shall be determined
 37 as of the date judgment is entered either by agreement between
 38 the holder of the lien, mortgage, security interest, or interest under
 39 a conditional sales contract and the governmental entity involved,
 40 or if they cannot agree, then by a court-appointed appraiser for the

1 county in which the action is brought. A person holding a valid
2 lien, mortgage, security interest, or interest under a conditional
3 sales contract shall be paid the appraised value of his or her interest.

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

8 (g) In all cases where property is to be levied upon pursuant to
9 this section, a receiver appointed by the court shall be empowered
10 to liquidate all property, the proceeds of which shall be distributed
11 in the following order of priority:

12 (1) To the receiver, or court-appointed appraiser, for all
13 reasonable expenditures made or incurred by him or her in
14 connection with the sale or liquidation of the property, including
15 all reasonable expenditures for any necessary repairs, storage, or
16 transportation of any property levied upon under this section.

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

19 (3) To any victim as restitution for any fraudulent or unlawful
20 acts alleged in the accusatory pleading that were proven by the
21 prosecuting agency as part of the pattern of fraudulent or unlawful
22 acts.

23 (h) Unless otherwise expressly provided, the remedies or
24 penalties provided by this section are cumulative to each other and
25 to the remedies or penalties available under all other laws of this
26 state, except that two separate actions against the same defendant
27 and pertaining to the same fraudulent or unlawful acts may not be
28 brought by a district attorney or the Attorney General pursuant to
29 this section and Chapter 5 (commencing with Section 17200) of
30 Part 2 of Division 7 of the Business and Professions Code.

31 **SECTION 1.**

32 *SEC. 3.* Section 1202.4 of the Penal Code, is amended to read:

33 1202.4. (a) (1) It is the intent of the Legislature that a victim
34 of crime who incurs an economic loss as a result of the commission
35 of a crime shall receive restitution directly from a defendant
36 convicted of that crime.

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

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

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

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

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

12 (1) The restitution fine shall be set at the discretion of the court
13 and commensurate with the seriousness of the offense. If the person
14 is convicted of a felony, the fine shall not be less than three hundred
15 dollars (\$300) and not more than ten thousand dollars (\$10,000).
16 If the person is convicted of a misdemeanor, the fine shall not be
17 less than one hundred fifty dollars (\$150) and not more than one
18 thousand dollars (\$1,000).

19 (2) In setting a felony restitution fine, the court may determine
20 the amount of the fine as the product of the minimum fine pursuant
21 to paragraph (1) multiplied by the number of years of imprisonment
22 the defendant is ordered to serve, multiplied by the number of
23 felony counts of which the defendant is convicted.

24 (c) The court shall impose the restitution fine unless it finds
25 compelling and extraordinary reasons for not doing so and states
26 those reasons on the record. A defendant's inability to pay shall
27 not be considered a compelling and extraordinary reason not to
28 impose a restitution fine. Inability to pay may be considered only
29 in increasing the amount of the restitution fine in excess of the
30 minimum fine pursuant to paragraph (1) of subdivision (b). The
31 court may specify that funds confiscated at the time of the
32 defendant's arrest, except for funds confiscated pursuant to Chapter
33 8 (commencing with Section 11469) of Division 10 of the Health
34 and Safety Code, be applied to the restitution fine if the funds are
35 not exempt for spousal or child support or subject to any other
36 legal exemption.

37 (d) In setting the amount of the fine pursuant to subdivision (b)
38 in excess of the minimum fine pursuant to paragraph (1) of
39 subdivision (b), the court shall consider any relevant factors,
40 including, but not limited to, the defendant's inability to pay, the

1 seriousness and gravity of the offense and the circumstances of its
2 commission, any economic gain derived by the defendant as a
3 result of the crime, the extent to which any other person suffered
4 losses as a result of the crime, and the number of victims involved
5 in the crime. Those losses may include pecuniary losses to the
6 victim or his or her dependents as well as intangible losses, such
7 as psychological harm caused by the crime. Consideration of a
8 defendant's inability to pay may include his or her future earning
9 capacity. A defendant shall bear the burden of demonstrating his
10 or her inability to pay. Express findings by the court as to the
11 factors bearing on the amount of the fine shall not be required. A
12 separate hearing for the fine shall not be required.

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

18 (f) Except as provided in subdivisions (q) and (r), in every case
19 in which a victim has suffered economic loss as a result of the
20 defendant's conduct, the court shall require that the defendant
21 make restitution to the victim or victims in an amount established
22 by court order, based on the amount of loss claimed by the victim
23 or victims or any other showing to the court. If the amount of loss
24 cannot be ascertained at the time of sentencing, the restitution
25 order shall include a provision that the amount shall be determined
26 at the direction of the court. The court shall order full restitution.
27 The court may specify that funds confiscated at the time of the
28 defendant's arrest, except for funds confiscated pursuant to Chapter
29 8 (commencing with Section 11469) of Division 10 of the Health
30 and Safety Code, be applied to the restitution order if the funds
31 are not exempt for spousal or child support or subject to any other
32 legal exemption.

33 (1) The defendant has the right to a hearing before a judge to
34 dispute the determination of the amount of restitution. The court
35 may modify the amount, on its own motion or on the motion of
36 the district attorney, the victim or victims, or the defendant. If a
37 motion is made for modification of a restitution order, the victim
38 shall be notified of that motion at least 10 days prior to the
39 proceeding held to decide the motion. A victim at a restitution
40 hearing or modification hearing described in this paragraph may

1 testify by live, two-way audio and video transmission, if testimony
2 by live, two-way audio and video transmission is available at the
3 court.

4 (2) Determination of the amount of restitution ordered pursuant
5 to this subdivision shall not be affected by the indemnification or
6 subrogation rights of a third party. Restitution ordered pursuant to
7 this subdivision shall be ordered to be deposited in the Restitution
8 Fund to the extent that the victim, as defined in subdivision (k),
9 has received assistance from the California Victim Compensation
10 and Government Claims Board pursuant to Chapter 5 (commencing
11 with Section 13950) of Part 4 of Division 3 of Title 2 of the
12 Government Code.

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

19 (A) Full or partial payment for the value of stolen or damaged
20 property. The value of stolen or damaged property shall be the
21 replacement cost of like property, or the actual cost of repairing
22 the property when repair is possible.

23 (B) Medical expenses.

24 (C) Mental health counseling expenses.

25 (D) Wages or profits lost due to injury incurred by the victim,
26 and if the victim is a minor, wages or profits lost by the minor's
27 parent, parents, guardian, or guardians, while caring for the injured
28 minor. Lost wages shall include commission income as well as
29 base wages. Commission income shall be established by evidence
30 of commission income during the 12-month period prior to the
31 date of the crime for which restitution is being ordered, unless
32 good cause for a shorter time period is shown.

33 (E) Wages or profits lost by the victim, and if the victim is a
34 minor, wages or profits lost by the minor's parent, parents,
35 guardian, or guardians, due to time spent as a witness or in assisting
36 the police or prosecution. Lost wages shall include commission
37 income as well as base wages. Commission income shall be
38 established by evidence of commission income during the
39 12-month period prior to the date of the crime for which restitution

1 is being ordered, unless good cause for a shorter time period is
2 shown.

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

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

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

9 (I) Expenses incurred by an adult victim in relocating away
10 from the defendant, including, but not limited to, deposits for
11 utilities and telephone service, deposits for rental housing,
12 temporary lodging and food expenses, clothing, and personal items.
13 Expenses incurred pursuant to this section shall be verified by law
14 enforcement to be necessary for the personal safety of the victim
15 or by a mental health treatment provider to be necessary for the
16 emotional well-being of the victim.

17 (J) Expenses to install or increase residential security incurred
18 related to a violent felony, as defined in subdivision (c) of Section
19 667.5, including, but not limited to, a home security device or
20 system, or replacing or increasing the number of locks.

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

25 (L) Expenses for a period of time reasonably necessary to make
26 the victim whole, for the costs to monitor the credit report of, and
27 for the costs to repair the credit of, a victim of identity theft, as
28 defined in Section 530.5.

29 (4) (A) If, as a result of the defendant's conduct, the Restitution
30 Fund has provided assistance to or on behalf of a victim or
31 derivative victim pursuant to Chapter 5 (commencing with Section
32 13950) of Part 4 of Division 3 of Title 2 of the Government Code,
33 the amount of assistance provided shall be presumed to be a direct
34 result of the defendant's criminal conduct and shall be included
35 in the amount of the restitution ordered.

36 (B) The amount of assistance provided by the Restitution Fund
37 shall be established by copies of bills submitted to the California
38 Victim Compensation and Government Claims Board reflecting
39 the amount paid by the board and whether the services for which
40 payment was made were for medical or dental expenses, funeral

1 or burial expenses, mental health counseling, wage or support
2 losses, or rehabilitation. Certified copies of these bills provided
3 by the board and redacted to protect the privacy and safety of the
4 victim or any legal privilege, together with a statement made under
5 penalty of perjury by the custodian of records that those bills were
6 submitted to and were paid by the board, shall be sufficient to meet
7 this requirement.

8 (C) If the defendant offers evidence to rebut the presumption
9 established by this paragraph, the court may release additional
10 information contained in the records of the board to the defendant
11 only after reviewing that information in camera and finding that
12 the information is necessary for the defendant to dispute the amount
13 of the restitution order.

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

28 (6) A defendant who fails to file the financial disclosure required
29 in paragraph (5), but who has filed a financial affidavit or financial
30 information pursuant to subdivision (c) of Section 987, shall be
31 deemed to have waived the confidentiality of that affidavit or
32 financial information as to a victim in whose favor the order of
33 restitution is entered pursuant to subdivision (f). The affidavit or
34 information shall serve in lieu of the financial disclosure required
35 in paragraph (5), and paragraphs (7) to (10), inclusive, shall not
36 apply.

37 (7) Except as provided in paragraph (6), the defendant shall file
38 the disclosure with the clerk of the court no later than the date set
39 for the defendant's sentencing, unless otherwise directed by the

1 court. The disclosure may be inspected or copied as provided by
2 subdivision (b), (c), or (d) of Section 1203.05.

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

7 (A) A report submitted pursuant to subparagraph (D) of
8 paragraph (2) of subdivision (b) of Section 1203 or subdivision
9 (g) of Section 1203.

10 (B) A stipulation submitted pursuant to paragraph (4) of
11 subdivision (b) of Section 1203.

12 (C) A report by the probation officer, or information submitted
13 by the defendant applying for a conditional sentence pursuant to
14 subdivision (d) of Section 1203.

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

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

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

22 (C) A factor indicating that the interests of justice would not be
23 served by conditionally sentencing the defendant under Section
24 1203.

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

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

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

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

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

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

20 (12) In cases where an employer is convicted of a crime against
21 an employee, a payment to the employee or the employee's
22 dependent that is made by the employer's workers' compensation
23 insurance carrier shall not be used to offset the amount of the
24 restitution order unless the court finds that the defendant
25 substantially met the obligation to pay premiums for that insurance
26 coverage.

27 (g) A defendant's inability to pay shall not be a consideration
28 in determining the amount of a restitution order.

29 (h) The district attorney may request an order of examination
30 pursuant to the procedures specified in Article 2 (commencing
31 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part
32 2 of the Code of Civil Procedure, in order to determine the
33 defendant's financial assets for purposes of collecting on the
34 restitution order.

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

37 (j) The making of a restitution order pursuant to subdivision (f)
38 shall not affect the right of a victim to recovery from the Restitution
39 Fund as otherwise provided by law, except to the extent that
40 restitution is actually collected pursuant to the order. Restitution

1 collected pursuant to this subdivision shall be credited to any other
2 judgments for the same losses obtained against the defendant
3 arising out of the crime for which the defendant was convicted.

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

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

7 (2) A corporation, business trust, estate, trust, partnership,
8 association, joint venture, government, governmental subdivision,
9 agency, or instrumentality, or any other legal or commercial entity
10 when that entity is a direct victim of a crime.

11 (3) A person who has sustained economic loss as the result of
12 a crime and who satisfies any of the following conditions:

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

15 (B) At the time of the crime was living in the household of the
16 victim.

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

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

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

25 (4) A person who is eligible to receive assistance from the
26 Restitution Fund pursuant to Chapter 5 (commencing with Section
27 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

28 (5) A governmental entity that is responsible for repairing,
29 replacing, or restoring public or privately owned property that has
30 been defaced with graffiti or other inscribed material, as defined
31 in subdivision (e) of Section 594, and that has sustained an
32 economic loss as the result of a violation of Section 594, 594.3,
33 594.4, 640.5, 640.6, or 640.7.

34 (l) At its discretion, the board of supervisors of a county may
35 impose a fee to cover the actual administrative cost of collecting
36 the restitution fine, not to exceed 10 percent of the amount ordered
37 to be paid, to be added to the restitution fine and included in the
38 order of the court, the proceeds of which shall be deposited in the
39 general fund of the county.

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

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

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

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

25 (q) Upon conviction for a violation of Section 236.1, the court
26 shall, in addition to any other penalty or restitution, order the
27 defendant to pay restitution to the victim in a case in which a victim
28 has suffered economic loss as a result of the defendant's conduct.
29 The court shall require that the defendant make restitution to the
30 victim or victims in an amount established by court order, based
31 on the amount of loss claimed by the victim or victims or another
32 showing to the court. In determining restitution pursuant to this
33 section, the court shall base its order upon the greater of the
34 following: the gross value of the victim's labor or services based
35 upon the comparable value of similar services in the labor market
36 in which the offense occurred, or the value of the victim's labor
37 as guaranteed under California law, or the actual income derived
38 by the defendant from the victim's labor or services or any other
39 appropriate means to provide reparations to the victim.

1 (r) (1) In addition to any other penalty or fine, the court shall
2 order a person who has been convicted of a violation of Section
3 350, 653h, 653s, 653u, 653w, or 653aa that involves a recording
4 or audiovisual work to make restitution to an owner or lawful
5 producer, or trade association acting on behalf of the owner or
6 lawful producer, of a phonograph record, disc, wire, tape, film, or
7 other device or article from which sounds or visual images are
8 derived that suffered economic loss resulting from the violation.
9 The order of restitution shall be based on the aggregate wholesale
10 value of lawfully manufactured and authorized devices or articles
11 from which sounds or visual images are devised corresponding to
12 the number of nonconforming devices or articles involved in the
13 offense, unless a higher value can be proved in the case of (A) an
14 unreleased audio work, or (B) an audiovisual work that, at the time
15 of unauthorized distribution, has not been made available in copies
16 for sale to the general public in the United States on a digital
17 versatile disc. For purposes of this subdivision, possession of
18 nonconforming devices or articles intended for sale constitutes
19 actual economic loss to an owner or lawful producer in the form
20 of displaced legitimate wholesale purchases. The order of
21 restitution shall also include reasonable costs incurred as a result
22 of an investigation of the violation undertaken by the owner, lawful
23 producer, or trade association acting on behalf of the owner or
24 lawful producer. “Aggregate wholesale value” means the average
25 wholesale value of lawfully manufactured and authorized sound
26 or audiovisual recordings. Proof of the specific wholesale value
27 of each nonconforming device or article is not required.

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

30 ~~SEC. 2.~~

31 *SEC. 4.* The Legislature finds and declares that this measure
32 is declaratory of existing law, as described in footnote 2 of *People*
33 *v. Pierce* (2015) 234 Cal.App.4th 1334 (hereafter *Pierce*). As noted
34 in that case, subdivision (b) of Section 28 of Article I of the
35 California Constitution, as amended by Proposition 9 (Marsy’s
36 Law) at the November 4, 2008, general election, requires that
37 “restitution shall be ordered from the convicted wrongdoer in every
38 case, regardless of the sentence or disposition imposed, in which
39 a crime victim suffers a loss.” By providing that a court has
40 authority to order less than full restitution in situations where a

1 victim suffers a loss, subdivision (f) of Section 1202.4 of the Penal
2 Code is inconsistent with the constitutional requirement. The court
3 in *Pierce* encouraged the Legislature to conform this requirement
4 to the ~~constitution~~ *Constitution*. This measure would do so.

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