

Introduced by Senator Pavley

February 16, 2016

An act to amend Section 2085.5 of the Penal Code, and to amend Section 19280 of the Revenue and Taxation Code, relating to restitution orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1054, as introduced, Pavley. Restitution orders: collection.

(1) Existing law, when a prisoner is punished in a county jail for a felony, in any case in which the prisoner owes a restitution order, permits the agency designated by the board of supervisors in the county where the prisoner is incarcerated to deduct a minimum of 20% or the balance owing on the order amount, whichever is less, up to a maximum of 50% from the county jail equivalent of wages and trust account deposits of a prisoner for transfer to the California Victim Compensation and Government Claims Board. Existing law allows the agency to deduct and retain an administrative fee that totals 10% of any amount transferred to the board pursuant to these provisions. Existing law additionally allows the agency to charge a fee to cover the actual administrative cost of collection, not to exceed 10% of the total amount collected, upon release of the prisoner from custody.

This bill would instead allow the designated agency to charge an administrative fee to cover the actual administrative cost of collection, not to exceed 10% of the total amount collected pursuant to the above provisions. The bill would delete the authorization to charge a fee for the actual administrative cost of collection upon release of the prisoner from custody.

(2) Existing law, unless the victim of the crime notifies the Department of Corrections and Rehabilitation or county to the contrary,

allows the department or county to refer a restitution order to the Franchise Tax Board for collection.

This bill would prohibit the department or county from referring the restitution order to the Franchise Tax Board if a county agency has been designated by the county board of supervisors to collect restitution from individuals who have been sentenced to a county jail for a felony, who are on mandatory supervision, or who are on postrelease community supervision, the designated county agency has an existing collection system and objects to collection by the board, and the designated county agency informs the department or county that it will collect the restitution order. If the crime victim entitled to restitution in the order notifies either the department or the designated county agency with regard to his or her preference of a collecting agency, the bill would require the collection to be performed in accordance with that preference.

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

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

1 SECTION 1. Section 2085.5 of the Penal Code is amended to
2 read:

3 2085.5. (a) In any case in which a prisoner owes a restitution
4 fine imposed pursuant to subdivision (a) of Section 13967 of the
5 Government Code, as operative prior to September 29, 1994,
6 subdivision (b) of Section 730.6 of the Welfare and Institutions
7 Code, or subdivision (b) of Section 1202.4, the Secretary of the
8 Department of Corrections and Rehabilitation shall deduct a
9 minimum of 20 percent or the balance owing on the fine amount,
10 whichever is less, up to a maximum of 50 percent from the wages
11 and trust account deposits of a prisoner, unless prohibited by
12 federal law, and shall transfer that amount to the California Victim
13 Compensation and Government Claims Board for deposit in the
14 Restitution Fund in the State Treasury. The amount deducted shall
15 be credited against the amount owing on the fine. The sentencing
16 court shall be provided a record of the payments.

17 (b) (1) ~~When~~*If* a prisoner is punished by imprisonment in a
18 county jail pursuant to subdivision (h) of Section 1170, ~~in any case~~
19 ~~in which a prisoner~~ *and* owes a restitution fine imposed pursuant
20 to subdivision (a) of Section 13967 of the Government Code, as

operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(2) If the board of supervisors designates the county sheriff as the collecting agency, the board of supervisors shall first obtain the concurrence of the county sheriff.

(c) In any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. The secretary shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(d) ~~When~~ If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, ~~in any case in which a prisoner~~ and owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the agency designated by the board of supervisors

1 in the county where the prisoner is incarcerated is authorized to
2 deduct a minimum of 20 percent or the balance owing on the order
3 amount, whichever is less, up to a maximum of 50 percent from
4 the county jail equivalent of wages and trust account deposits of
5 a prisoner, unless prohibited by federal law. The agency shall
6 transfer that amount to the California Victim Compensation and
7 Government Claims Board for direct payment to the victim, or
8 payment shall be made to the Restitution Fund to the extent that
9 the victim has received assistance pursuant to that program, or
10 may pay the victim directly. The sentencing court shall be provided
11 a record of the payments made to the victims and of the payments
12 deposited to the Restitution Fund pursuant to this subdivision.

13 (e) The secretary shall deduct and retain from the wages and
14 trust account deposits of a prisoner, unless prohibited by federal
15 law, an administrative fee that totals 10 percent of any amount
16 transferred to the California Victim Compensation and Government
17 Claims Board pursuant to subdivision (a) or (c). The secretary
18 shall deduct and retain from any prisoner settlement or trial award,
19 an administrative fee that totals 5 percent of any amount paid from
20 the settlement or award to satisfy an outstanding restitution order
21 or fine pursuant to subdivision (n), unless prohibited by federal
22 law. The secretary shall deposit the administrative fee moneys in
23 a special deposit account for reimbursing administrative and
24 support costs of the restitution program of the Department of
25 Corrections and Rehabilitation. The secretary, at his or her
26 discretion, may retain any excess funds in the special deposit
27 account for future reimbursement of the department's
28 administrative and support costs for the restitution program or may
29 transfer all or part of the excess funds for deposit in the Restitution
30 Fund.

31 (f) ~~When~~ *If* a prisoner is punished by imprisonment in a county
32 jail pursuant to subdivision (h) of Section 1170, the agency
33 designated by the board of supervisors in the county where the
34 prisoner is incarcerated is authorized to deduct and retain from the
35 county jail equivalent of wages and trust account deposits of a
36 prisoner, unless prohibited by federal law, an administrative fee
37 ~~that totals 10 percent of any amount transferred to the California~~
38 ~~Victim Compensation and Government Claims Board to cover the~~
39 *actual administrative cost of collection, not to exceed 10 percent*
40 *of the total amount collected pursuant to subdivision (b) or (d).*

1 The agency is authorized to deduct and retain from a prisoner
2 settlement or trial award an administrative fee that totals 5 percent
3 of any amount paid from the settlement or award to satisfy an
4 outstanding restitution order or fine pursuant to subdivision (n),
5 unless prohibited by federal law. ~~Upon release from custody~~
6 ~~pursuant to subdivision (h) of Section 1170, the agency is~~
7 ~~authorized to charge a fee to cover the actual administrative cost~~
8 ~~of collection, not to exceed 10 percent of the total amount collected.~~
9 The agency shall deposit the administrative fee moneys in a special
10 deposit account for reimbursing administrative and support costs
11 of the restitution program of the agency. The agency is authorized
12 to retain any excess funds in the special deposit account for future
13 reimbursement of the agency's administrative and support costs
14 for the restitution program or may transfer all or part of the excess
15 funds for deposit in the Restitution Fund.

16 (g) In any case in which a parolee owes a restitution fine
17 imposed pursuant to subdivision (a) of Section 13967 of the
18 Government Code, as operative prior to September 29, 1994,
19 subdivision (b) of Section 730.6 of the Welfare and Institutions
20 Code, or subdivision (b) of Section 1202.4, the secretary, or, when
21 a prisoner is punished by imprisonment in a county jail pursuant
22 to subdivision (h) of Section 1170, the agency designated by the
23 board of supervisors in the county where the prisoner is
24 incarcerated, may collect from the parolee or, pursuant to Section
25 2085.6, from a person previously imprisoned in county jail any
26 moneys owing on the restitution fine amount, unless prohibited
27 by federal law. The secretary or the agency shall transfer that
28 amount to the California Victim Compensation and Government
29 Claims Board for deposit in the Restitution Fund in the State
30 Treasury. The amount deducted shall be credited against the
31 amount owing on the fine. The sentencing court shall be provided
32 a record of the payments.

33 (h) In any case in which a parolee owes a direct order of
34 restitution, imposed pursuant to subdivision (c) of Section 13967
35 of the Government Code, as operative prior to September 29, 1994,
36 subdivision (h) of Section 730.6 of the Welfare and Institutions
37 Code, or paragraph (3) of subdivision (a) of Section 1202.4, the
38 secretary, or, when a prisoner is punished by imprisonment in a
39 county jail pursuant to subdivision (h) of Section 1170, the agency
40 designated by the board of supervisors in the county where the

1 prisoner is incarcerated or a local collection program, may collect
2 from the parolee or, pursuant to Section 2085.6, from a person
3 previously imprisoned in county jail any moneys owing, unless
4 prohibited by federal law. The secretary or the agency shall transfer
5 that amount to the California Victim Compensation and
6 Government Claims Board for direct payment to the victim, or
7 payment shall be made to the Restitution Fund to the extent that
8 the victim has received assistance pursuant to that program, or the
9 agency may pay the victim directly. The sentencing court shall be
10 provided a record of the payments made by the offender pursuant
11 to this subdivision.

12 (i) The secretary, or, ~~when~~ *if* a prisoner is punished by
13 imprisonment in a county jail pursuant to subdivision (h) of Section
14 1170, the agency designated by the board of supervisors in the
15 county where the prisoner is incarcerated, may deduct and retain
16 from moneys collected from parolees or persons previously
17 imprisoned in county jail an administrative fee that totals 10 percent
18 of any amount transferred to the California Victim Compensation
19 and Government Claims Board pursuant to subdivision (g) or (h),
20 unless prohibited by federal law. The secretary shall deduct and
21 retain from any settlement or trial award of a parolee an
22 administrative fee that totals 5 percent of an amount paid from the
23 settlement or award to satisfy an outstanding restitution order or
24 fine pursuant to subdivision (n), unless prohibited by federal law.
25 The agency is authorized to deduct and retain from any settlement
26 or trial award of a person previously imprisoned in county jail an
27 administrative fee that totals 5 percent of any amount paid from
28 the settlement or award to satisfy an outstanding restitution order
29 or fine pursuant to subdivision (n). The secretary or the agency
30 shall deposit the administrative fee moneys in a special deposit
31 account for reimbursing administrative and support costs of the
32 restitution program of the Department of Corrections and
33 Rehabilitation or the agency, as applicable. The secretary, at his
34 or her discretion, or the agency may retain any excess funds in the
35 special deposit account for future reimbursement of the
36 department's or agency's administrative and support costs for the
37 restitution program or may transfer all or part of the excess funds
38 for deposit in the Restitution Fund.

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

1 and Rehabilitation shall collect the restitution order first pursuant
2 to subdivision (c).

3 (k) ~~When~~ If a prisoner is punished by imprisonment in a county
4 jail pursuant to subdivision (h) of Section 1170 and that prisoner
5 has both a restitution fine and a restitution order from the
6 sentencing court, if the agency designated by the board of
7 supervisors in the county where the prisoner is incarcerated collects
8 the fine and order, the agency shall collect the restitution order
9 first pursuant to subdivision (d).

10 (l) ~~When~~ If a parolee has both a restitution fine and a restitution
11 order from the sentencing court, the Department of Corrections
12 and Rehabilitation, ~~or, when~~ or if the prisoner is punished by
13 imprisonment in a county jail pursuant to subdivision (h) of Section
14 1170, the agency designated by the board of supervisors in the
15 county where the prisoner is incarcerated, may collect the
16 restitution order first, pursuant to subdivision (h).

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

27 (n) Compensatory or punitive damages awarded by trial or
28 settlement to any inmate, parolee, person placed on postrelease
29 community supervision pursuant to Section 3451, or defendant on
30 mandatory supervision imposed pursuant to subparagraph (B) of
31 paragraph (5) of subdivision (h) of Section 1170, in connection
32 with a civil action brought against a federal, state, or local jail,
33 prison, or correctional facility, or any official or agent thereof,
34 shall be paid directly, after payment of reasonable attorney's fees
35 and litigation costs approved by the court, to satisfy any
36 outstanding restitution orders or restitution fines against that
37 person. The balance of the award shall be forwarded to the payee
38 after full payment of all outstanding restitution orders and
39 restitution fines, subject to subdivisions (e) and (i). The Department
40 of Corrections and Rehabilitation shall make all reasonable efforts

1 to notify the victims of the crime for which that person was
2 convicted concerning the pending payment of any compensatory
3 or punitive damages. For any prisoner punished by imprisonment
4 in a county jail pursuant to subdivision (h) of Section 1170, the
5 agency is authorized to make all reasonable efforts to notify the
6 victims of the crime for which that person was convicted
7 concerning the pending payment of any compensatory or punitive
8 damages.

9 (o) (1) Amounts transferred to the California Victim
10 Compensation and Government Claims Board for payment of
11 direct orders of restitution shall be paid to the victim within 60
12 days from the date the restitution revenues are received by the
13 California Victim Compensation and Government Claims Board.
14 If the restitution payment to a victim is less than twenty-five dollars
15 (\$25), then payment need not be forwarded to that victim until the
16 payment reaches twenty-five dollars (\$25) or when the victim
17 requests payment of the lesser amount.

18 (2) If a victim cannot be located, the restitution revenues
19 received by the California Victim Compensation and Government
20 Claims Board on behalf of the victim shall be held in trust in the
21 Restitution Fund until the end of the state fiscal year subsequent
22 to the state fiscal year in which the funds were deposited or until
23 the time that the victim has provided current address information,
24 whichever occurs sooner. Amounts remaining in trust at the end
25 of the specified period of time shall revert to the Restitution Fund.

26 (3) (A) A victim failing to provide a current address within the
27 period of time specified in paragraph (2) may provide
28 documentation to the Department of Corrections and Rehabilitation,
29 which shall verify that moneys were collected on behalf of the
30 victim. Upon receipt of that verified information from the
31 Department of Corrections and Rehabilitation, the California
32 Victim Compensation and Government Claims Board shall transmit
33 the restitution revenues to the victim in accordance with the
34 provisions of subdivision (c) or (h).

35 (B) A victim failing to provide a current address within the
36 period of time specified in paragraph (2) may provide
37 documentation to the agency designated by the board of supervisors
38 in the county where the prisoner punished by imprisonment in a
39 county jail pursuant to subdivision (h) of Section 1170 is
40 incarcerated, which may verify that moneys were collected on

1 behalf of the victim. Upon receipt of that verified information from
2 the agency, the California Victim Compensation and Government
3 Claims Board shall transmit the restitution revenues to the victim
4 in accordance with the provisions of subdivision (d) or (h).

5 SEC. 2. Section 19280 of the Revenue and Taxation Code is
6 amended to read:

7 19280. (a) (1) (A) Fines, state or local penalties, bail,
8 forfeitures, restitution fines, restitution orders, or any other amounts
9 imposed by a juvenile or superior court of the State of California
10 upon a person or any other entity that are due and payable in an
11 amount totaling no less than one hundred dollars (\$100), in the
12 aggregate, for criminal offenses, including all offenses involving
13 a violation of the Vehicle Code, and any amounts due pursuant to
14 Section 903.1 of the Welfare and Institutions Code may, no sooner
15 than 90 days after payment of that amount becomes delinquent,
16 be referred by the juvenile or superior court, the county, or the
17 state to the Franchise Tax Board for collection under guidelines
18 prescribed by the Franchise Tax Board. ~~Unless the victim of the~~
19 ~~crime notifies the Department of Corrections and Rehabilitation~~
20 ~~or county to the contrary, Except as specified in subparagraph~~
21 ~~(B), the Department of Corrections and Rehabilitation or county~~
22 may refer a restitution order to the Franchise Tax Board, in
23 accordance with subparagraph (B) of paragraph (2), for any person
24 subject to the restitution order who is or has been under the
25 jurisdiction of the Department of Corrections and Rehabilitation
26 or county.

27 (B) *The Department of Corrections and Rehabilitation or county*
28 *shall not refer a restitution order to the Franchise Tax Board if a*
29 *county agency has been designated by the county board of*
30 *supervisors to collect restitution from individuals who (i) have*
31 *been sentenced to a county jail pursuant to subdivision (h) of*
32 *Section 1170 of the Penal Code, (ii) are on mandatory supervision*
33 *pursuant to paragraph (5) of subdivision (h) of Section 1170 of*
34 *the Penal Code, or (iii) are on postrelease community supervision*
35 *pursuant to Title 2.05 (commencing with Section 3450) of Part 3*
36 *of the Penal Code, the designated county agency has an existing*
37 *collection system and objects to collection by the Franchise Tax*
38 *Board, and the designated county agency informs the Department*
39 *of Corrections and Rehabilitation or county that it will collect the*
40 *restitution order. If the crime victim entitled to restitution in the*

1 *order notifies either the Department of Correction and*
2 *Rehabilitation or the designated county agency with regard to his*
3 *or her preference of a collecting agency, that preference shall be*
4 *honored and the collection shall be performed in accordance with*
5 *the preference of the victim.*

6 (2) For purposes of this subdivision:

7 (A) The amounts referred by the juvenile or superior court, the
8 county, or the state under this section may include an administrative
9 fee and any amounts that a government entity may add to the
10 court-imposed obligation as a result of the underlying offense,
11 trial, or conviction. For purposes of this article, those amounts
12 shall be deemed to be imposed by the court.

13 (B) Restitution orders may be referred to the Franchise Tax
14 Board only by a government entity, as agreed upon by the
15 Franchise Tax Board, provided that all of the following apply:

16 (i) The government entity has the authority to collect on behalf
17 of the state or the victim.

18 (ii) The government entity shall be responsible for distributing
19 the restitution order collections, as appropriate.

20 (iii) The government entity shall ensure, in making the referrals
21 and distributions, that it coordinates with any other related
22 collection activities that may occur by superior courts, counties,
23 or other state agencies.

24 (iv) The government entity shall ensure compliance with laws
25 relating to the reimbursement of the State Restitution Fund.

26 (C) The Franchise Tax Board shall establish criteria for referral
27 that shall include setting forth a minimum dollar amount subject
28 to referral and collection.

29 (b) The Franchise Tax Board, in conjunction with the Judicial
30 Council, shall seek whatever additional resources are needed to
31 accept referrals from all 58 counties or superior courts.

32 (c) Upon written notice to the debtor from the Franchise Tax
33 Board, any amount referred to the Franchise Tax Board under
34 subdivision (a) and any interest thereon, including any interest on
35 the amount referred under subdivision (a) that accrued prior to the
36 date of referral, shall be treated as final and due and payable to the
37 State of California, and shall be collected from the debtor by the
38 Franchise Tax Board in any manner authorized under the law for
39 collection of a delinquent personal income tax liability, including,
40 but not limited to, issuance of an order and levy under Article 4

1 (commencing with Section 706.070) of Chapter 5 of Division 2
2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner
3 provided for earnings withholding orders for taxes.

4 (d) (1) Part 10 (commencing with Section 17001), this part,
5 Part 10.7 (commencing with Section 21001), and Part 11
6 (commencing with Section 23001) shall apply to amounts referred
7 under this article in the same manner and with the same force and
8 effect and to the full extent as if the language of those laws had
9 been incorporated in full into this article, except to the extent that
10 any provision is either inconsistent with this article or is not
11 relevant to this article.

12 (2) Any information, information sources, or enforcement
13 remedies and capabilities available to the court or the state referring
14 to the amount due described in subdivision (a) shall be available
15 to the Franchise Tax Board to be used in conjunction with, or
16 independent of, the information, information sources, or remedies
17 and capabilities available to the Franchise Tax Board for purposes
18 of administering Part 10 (commencing with Section 17001), this
19 part, Part 10.7 (commencing with Section 21001), or Part 11
20 (commencing with Section 23001).

21 (e) The activities required to implement and administer this part
22 shall not interfere with the primary mission of the Franchise Tax
23 Board to administer Part 10 (commencing with Section 17001)
24 and Part 11 (commencing with Section 23001).

25 (f) For amounts referred for collection under subdivision (a),
26 interest shall accrue at the greater of the rate applicable to the
27 amount due being collected or the rate provided under Section
28 19521. When notice of the amount due includes interest and is
29 mailed to the debtor and the amount is paid within 15 days after
30 the date of notice, interest shall not be imposed for the period after
31 the date of notice.

32 (g) A collection under this article is not a payment of income
33 taxes imposed under Part 10 (commencing with Section 17001)
34 or Part 11 (commencing with Section 23001).

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