

**Assembly Bill No. 817**

\_\_\_\_\_

Passed the Assembly July 29, 1995

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_

Passed the Senate July 29, 1995

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_

This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1995, at \_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

└

## CHAPTER \_\_\_\_

An act to amend Sections 13966.01 and 50050 of, and to add Section 13969.4 to, the Government Code, to amend Sections 1202.4, 1203, 1203.3, 1214, 1297, 2085.5, 3000, and 11177.2 of, to add Sections 1202.45 and 3060.1 to, to add Chapter 2.95 (commencing with Section 1001.90) to Title 6 of Part 2 of, and to repeal Section 1203.04 of, the Penal Code, to amend Section 1095 of the Unemployment Insurance Code, and to amend Sections 656, 659, 700, and 730.6 of, to add Section 730.7 to, and to repeal Sections 729.6 and 731.1 of, the Welfare and Institutions Code, relating to restitution for victims of crime, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

AB 817, Hoge. Victims of crime: restitution.

(1) Existing law addresses the procedures available to indemnify private citizens who are victims of crime. Under existing law, the State of California is subrogated to the rights of a victim to whom cash payments have been granted from the Restitution Fund to the extent of the cash payments. Additionally, the state is entitled to a lien on any judgment, award, or settlement in the amount of the cash payments on any recovery made by or on behalf of the victim.

This bill would provide that repayment obligations of the victim to the Restitution Fund shall be enforceable as a summary judgment. This bill also would authorize the executive officer of the State Board of Control or his or her designees, subject to the above indemnity provisions, to recover money owed to the Restitution Fund by filing a civil action against the liable person as provided. The bill also would make clarifying changes to these provisions and would revise provisions pertaining to notice of institution of legal proceedings.

(2) Existing law requires the state to pay the county probation department or other county agency



responsible for collection of funds owed to the Restitution Fund 10% of the funds so owed and collected by the county agency. Existing law states that these funds should be used for furthering collection efforts.

This bill would require the funds to be used for furthering collection efforts.

(3) Existing law provides that money held by a local agency that remains unclaimed under specified circumstances becomes the property of the local agency after notice if not claimed or if no verified complaint is filed and served within 3 years.

This bill would except money that is restitution to victims from this provision and would provide instead that money representing restitution collected on behalf of victims shall be deposited into the Restitution Fund after the expiration of the 3-year period.

(4) Existing law requires direct restitution to the victim of a crime who has incurred any economic loss as a result of the commission of a crime from any defendant convicted of that crime. However, under existing law, the prosecution of specified offenses may be postponed, temporarily or permanently, to permit the defendant to participate in a diversion program.

This bill would require the court to impose a diversion restitution fee on a defendant whose case is diverted, as specified.

(5) Existing law sets forth procedures under which a restitution fine is imposed upon a person convicted of a crime or a minor found in violation of the law.

This bill would add provisions relating to the criteria used to set the restitution fine required under certain of these procedures and would revise and recast provisions relating to the imposition of restitution when probation is denied or the imposition of restitution as a condition of probation.

The bill also would require the court at the time of imposing the restitution fine to assess an additional restitution fine in the same amount, but which would be suspended unless the person's parole is revoke.



(6) Under existing law, the court is authorized to revoke, modify, change, or terminate probation subject to specified limitations.

This bill would authorize the court to modify the time and manner of the term of probation for purposes of measuring the timely payment of restitution obligations or the good conduct and reform of the defendant while on probation. The bill would also prohibit the court from modifying the dollar amount of the restitution obligations, except as specified, and prohibit the court from limiting the ability of the payees to enforce the obligations in the manner of judgments in civil actions.

(7) Existing law provides that, in a case in which a defendant is ordered to pay restitution as a condition of probation or of a conditional sentence, the order to pay restitution is deemed a money judgment, as provided.

This bill would provide instead that the order to pay restitution is deemed a money judgment in any case in which the defendant is ordered to pay restitution.

(8) Existing law requires the court to provide a certified copy of an order of restitution to the victim in whose favor the order was entered, as provided.

This bill additionally would require that the court provide a certified copy of the restitution order to the State Board of Control, as provided.

(9) Under existing law, the clerk of a court is required to apply money that has been deposited in lieu of bail by a defendant in satisfaction of any judgment for the payment of a fine if the money remains on deposit at the time of the judgment.

This bill would authorize the clerk to also apply the money deposited toward restitution orders.

(10) Existing law requires the Director of Corrections, in any case in which a prisoner owes a restitution order or a restitution fine, to deduct specified amounts from the wages and trust account deposits of the prisoner, and to transfer those amounts to the State Board of Control for direct payment to the victim or deposit in the Restitution Fund. Existing law also authorizes the Department of Corrections to provide, under guidelines specified by the



parole authority, the conditions of parole of any prisoner and authorizes the Board of Prison Terms to impose any conditions that it may deem proper on the parole of any prisoner.

This bill would require the Department of Corrections or the Board of Prison Terms to impose as a condition of parole that a prisoner make payments on any outstanding restitution orders or fines. Additionally, the bill would authorize the Director of Corrections to collect any moneys owing on a restitution order or a restitution fine, and require the director to transfer those amounts to the State Board of Control for direct payment to the victim or deposit in the Restitution Fund. The bill would authorize the director to deduct and retain from any moneys collected from parolees an administrative fee totaling 10% of any amount transferred to the State Board of Control.

(11) Existing law prohibits a parolee from being released on parole to reside in any other receiving state if the parolee is subject to an unsatisfied order of restitution to a victim within the sending state.

This bill would extend this prohibition to apply to a parolee who is subject to an unsatisfied restitution fine within the sending state.

(12) Under existing law, the Employment Development Department is required to provide county probation departments with wage and claim information in its possession that will assist those departments in the location of victims of crime who are entitled to restitution, and to assist in the collection of money owed to the county or the state by any person who has been directed to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.

This bill also would require the department to provide this information to the State Board of Control and the United States Attorney General. The department also would be required to provide this information to assist in the collection of money owed to the United States. The department would be authorized to charge a fee for all reasonable administrative expenses.



(13) Under existing law, various notification provisions require parents and guardians to be advised that if the minor is ordered to make restitution to the victim, the parent or guardian may be liable for the payment of that restitution.

This bill additionally would require parents and guardians to be advised that if the minor is ordered to pay fines or penalty assessments, the parent or guardian additionally may be liable for the payment of those fines or penalty assessments.

(14) Existing law makes a parent or guardian having custody and control of a minor jointly and severally liable for civil damages, up to specified amounts, for willful misconduct by the minor that results in death, personal injury, or property damage, as specified, as well as for specified fines imposed on the minor for certain acts of vandalism.

This bill would create a rebuttable presumption that a parent or guardian with joint or sole legal and physical custody and control of a minor who is the subject of a juvenile court restitution order, fine, or penalty assessment is jointly and severally liable therefor.

(15) The Restitution Fund is continuously appropriated to the State Board of Control for the purpose of indemnifying victims of crime.

This bill would make an appropriation by increasing fees deposited in the Restitution Fund that are subject to continuous appropriation.

(16) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 13966.01 of the Government Code is amended to read:

13966.01. (a) The State of California shall be subrogated to the rights of the victim to whom cash payments are granted to the extent of the cash payments granted. The subrogation rights shall be against the



perpetrator of the crime or any person liable for the pecuniary loss, including a carrier held liable in accordance with the provision of a policy of insurance issued pursuant to Section 11580.2 of the Insurance Code.

(b) The state shall also be entitled to a lien on the judgment, award, or settlement in the amount of the cash payments on any recovery made by or on behalf of the victim. The state may recover this amount in a separate action, or may intervene in an action brought by or on behalf of the victim. If a claim is filed within one year of the date of recovery, the state shall pay 25 percent of the amount of the recovery that is subject to a lien on the judgment, award, or settlement, to the victim responsible for recovery thereof from the perpetrator of the crime, provided the total amount of the lien is recovered. The remaining 75 percent of the amount and any amount not claimed within one year pursuant to this section, shall be deposited in the Restitution Fund.

(c) The board may compromise or settle and release any lien pursuant to this article if it is found that the action is in the best interest of the state or the collection would cause undue hardship upon the victim. Repayment obligations to the Restitution Fund shall be enforceable as a summary judgment.

(d) No judgment, award, or settlement in any action or claim by a victim to recover damages for injuries, where the state has an interest, shall be satisfied without first giving the board notice and a reasonable opportunity to perfect and satisfy the lien. The notice shall be given to the board in Sacramento except in cases where the board specifies that the notice shall be given otherwise. The notice shall include the complete terms of the award, settlement, or judgment and the name and address of any carrier directly or indirectly providing for the satisfaction.

(e) In the event that the victim, his or her guardian, personal representative, estate, or survivors, or any of them, bring an action or assert a claim for damages against the person or persons liable for the injury or death giving rise to an award by the board under this article,



notice of institution of legal proceedings, notice of settlement, and all other notices required to be given to the judgment debtor pursuant to Chapters 1 (commencing with Section 681) and 2 (commencing with Section 714) of Title 9 of Part 2 of the Code of Civil Procedure, shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. Notice of institution of legal proceedings shall be given to the board within 30 days of filing the action. All notices shall be given by the attorney employed to bring the action for damages or by the victim, his or her guardian, personal representative, estate, or survivors, if no attorney is employed. Notice shall include: the names of all parties to the claim or action; the address of all parties to the claim or action except for those persons represented by attorneys and in that case the name of the party and the name and address of the attorney; the nature of the claim asserted or action brought; in the case of actions before courts or administrative agencies the full title of the case including the identity of the court or agency, the names of the parties, and the case or docket number. When the victim or his or her attorney has reason to believe that a person from whom damages are sought is receiving a defense provided in whole or in part by a carrier, or is insured by a carrier for the injury caused to the victim, notice shall include statement of the fact and the name and address of the carrier. Upon request of the board a person obligated to provide notice shall provide the board with a copy of the current written claim or complaint.

(f) The state shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 13967, as operative on or before September 28, 1994, or Section 1202.4 or 1203.04 of the Penal Code, or Section 730.6 of the Welfare and Institutions Code, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the



end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10 percent rebates shall be used to augment the budgets for the county agencies responsible for collection of funds owed to the Restitution Fund, as provided in Section 13967, as operative on or before September 28, 1994, or Section 1202.4 or 1203.04 of the Penal Code, or Section 730.6 of the Welfare and Institutions Code. The 10 percent rebates shall not be used to supplant county funding.

SEC. 2. Section 13969.4 is added to the Government Code, to read:

13969.4. The executive officer or his or her designees, subject to this article, may do the following to recover moneys owed to the Restitution Fund:

(a) File a civil action against the liable person for the recovery of the amount of moneys owed. This action shall be filed within one year of either of the following events, or within three years of either of the following events if the liable person was overpaid benefits due to fraud, misrepresentation, or nondisclosure as described in Section 13969.3:

(1) The mailing or personal service of the notice of the moneys owed if the person affected does not file an appeal with the board or person designated by the board.

(2) The mailing of the decision of the board if the person affected does not initiate a further appeal.

(b) Initiate proceedings for a summary judgment against the liable person. However, this subdivision applies only where the executive officer has found, pursuant to Section 13969.3, that the overpayment may not be waived because it was due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient. The executive officer may, not later than three years after the overpayment became final, file with the clerk of the proper court in the county from which the overpayment of benefits was paid or in the county in



which the claimant resides, a certificate containing all of the following:

(1) The amount due, plus interest from the date that the initial determination of the moneys owed was made.

(2) A statement that the executive officer has complied with all the provisions of this article prior to the filing of the certificate.

(3) A request that the judgment be entered against the liable person in the amount set forth in the certificate.

The clerk, immediately upon the filing of the certificate, shall enter a judgment for the state against the liable person in the amount set forth in the certificate.

SEC. 3. Section 50050 of the Government Code is amended to read:

50050. For purposes of this article, “local agency” includes all districts. Except as otherwise provided by law, money, excluding restitution to victims, that is not the property of a local agency that remains unclaimed in its treasury or in the official custody of its officers for three years is the property of the local agency after notice if not claimed or if no verified complaint is filed and served. At any time after the expiration of the three-year period, the treasurer of the local agency may cause a notice to be published once a week for two successive weeks in a newspaper of general circulation published in the local agency. Money representing restitution collected on behalf of victims shall be deposited into the Restitution Fund after the expiration of the three-year period.

SEC. 4. Chapter 2.95 (commencing with Section 1001.90) is added to Title 6 of Part 2 of the Penal Code, to read:

#### CHAPTER 2.95. DIVERSION RESTITUTION FEE

1001.90. (a) For all persons charged with a felony or misdemeanor whose case is diverted by the court pursuant to this title, the court shall impose on the defendant a diversion restitution fee in addition to any other administrative fee provided or imposed under the law. This fee shall not be imposed upon persons whose



case is diverted by the court pursuant to Chapter 2.8 (commencing with Section 1001.20).

(b) The diversion restitution fee imposed pursuant to this section shall be set at the discretion of the court and shall be commensurate with the seriousness of the offense, but shall not be less than one hundred dollars (\$100), and not more than one thousand dollars (\$1,000).

(c) The diversion restitution fee shall be ordered regardless of the defendant's present ability to pay. However, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the fee. When the waiver is granted, the court shall state on the record all reasons supporting the waiver. Except as provided in this subdivision, the court shall impose the separate and additional diversion restitution fee required by this section.

(d) In setting the amount of the diversion restitution fee in excess of the one hundred dollar (\$100) minimum, the court shall consider any relevant factors, including, but not limited to, the defendant's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, and the extent to which any other person suffered any losses as a result of the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating the lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fee shall not be required. A separate hearing for the diversion restitution fee shall not be required.

(e) The court shall not limit the ability of the state to enforce the fee imposed by this section in the manner of a judgment in a civil action. The court shall not modify the amount of this fee except to correct an error in the setting of the amount of the fee imposed.



(f) The fee imposed pursuant to this section shall be immediately deposited in the Restitution Fund for use pursuant to Section 13967 of the Government Code.

(g) The board of supervisors of any county may impose a fee at its discretion to cover the actual administrative costs of collection of the restitution fee, not to exceed 10 percent of the amount ordered to be paid. Any fee imposed pursuant to this subdivision shall be deposited in the general fund of the county.

(h) The state shall pay the county agency responsible for collecting the diversion restitution fee owed to the Restitution Fund under this section, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10 percent rebates shall be used to augment the budgets for the county agencies responsible for collection of funds owed to the Restitution Fund as provided in this section. The 10 percent rebates shall not be used to supplant county funding.

SEC. 5. Section 1202.4 of the Penal Code is amended to read:

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

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

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

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



(B) Restitution to the victim or victims, if any, in accordance with subdivision (f).

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine. The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars (\$200), and not more than ten thousand dollars (\$10,000) if the person is convicted of a felony, and shall not be less than one hundred dollars (\$100), and not more than one thousand dollars (\$1,000) if the person is convicted of a misdemeanor. In setting a felony restitution fine in excess of two hundred dollars (\$200), the court may determine the amount of the fine as the product of two hundred dollars (\$200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The restitution fine shall be in addition to any other penalty or fine imposed and shall be ordered regardless of the defendant's present ability to pay. However, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the fine. When the waiver is granted, the court shall state on the record all reasons supporting the waiver. Except as provided in this subdivision, under no circumstances shall the court fail to impose the separate and additional restitution fine required by this section. This fine shall not be subject to penalty assessments as provided in Section 1464.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two hundred dollar (\$200) or one hundred dollar (\$100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her



dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) Except as provided in subdivision (f), the fine imposed pursuant to this section shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims. Restitution payments made pursuant to this subdivision shall be made to the Restitution Fund to the extent that the person has received assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(g) Restitution ordered pursuant to subdivision (f) shall be imposed in the amount of the losses, as determined. The court shall order full restitution unless it finds clear and compelling reasons for not doing so, and states them on the record. Determination of the amount of restitution ordered pursuant to this section shall not be affected by the indemnification or subrogation rights of third parties. Restitution shall, to the extent possible, be of a dollar amount that is sufficient to fully reimburse the victim or victims, for every determined economic loss incurred as the result of the defendant's criminal conduct, including all of the following:

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

(2) Medical expenses.

(3) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost



by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(4) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(h) A restitution order imposed pursuant to subdivision (f) shall identify the losses to which it pertains, and shall be enforceable as a civil judgment. The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(i) If the conviction is for felony violation of Section 288, restitution may be ordered pursuant to subdivision (f) regardless of whether or not the defendant is denied probation and the court may order that the restitution be paid to the victim to cover noneconomic losses, including, but not limited to, psychological harm.

(j) For any order of restitution made pursuant to subdivision (f), the defendant shall have the right to a hearing before the judge to dispute the determination made regarding the amount of restitution.

(k) For purposes of this section, "victim" shall include the immediate surviving family of the actual victim.

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

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to paragraph (3) of subdivision (a) a condition of probation.



(n) If the court finds and states on the record, pursuant to subdivision (c) or (g), compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service. The court may avoid ordering community service as a condition of probation only if it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution pursuant to subdivisions (b) and (f) should not be required. Upon revocation of probation, the court shall impose restitution pursuant to subdivisions (b) and (f).

(o) The provisions of Section 13966.01 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) Nothing in this section shall prevent a court from ordering restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

SEC. 6. Section 1202.45 is added to the Penal Code, to read:

1202.45. In every case where a person is convicted of a crime and whose sentence includes a period of parole, the court shall at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4. This additional restitution fine shall be suspended unless the person's parole is revoked.

SEC. 7. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, "conditional sentence" means the suspension of the imposition or execution of a sentence



and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) (1) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment.

(2) (A) The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted.

(B) Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation.

(C) The probation officer shall also include in the report his or her recommendation of both of the following:

(i) The amount the defendant should be required to pay as a restitution fine pursuant to subdivision (b) of Section 1202.4.

(ii) Whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund and the amount thereof.



(D) The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court.

(3) At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert



the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon at either of those times.

(2) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a



public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

(12) Any person who is convicted of violating Section 8101 of the Welfare and Institutions Code.

(13) Any person who is described in paragraph (2) or (3) of subdivision (g) of Section 12072.



(f) When probation is granted in a case which comes within subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to subdivision (b) of Section 1202.4 in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in subdivision (b) of Section 1202.4.

(h) If a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement if the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator of the Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs of processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.



(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 8. Section 1203.04 of the Penal Code is repealed.

SEC. 9. Section 1203.3 of the Penal Code is amended to read:

1203.3. (a) The court shall have authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence. The court may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person so held.

(b) The exercise of the court's authority in subdivision (a) to revoke, modify, change, or terminate probation is subject to the following:

(1) Before any sentence or term or condition of probation is modified, a hearing shall be held in open court before the judge. The prosecuting attorney shall be given a two-day written notice and an opportunity to be heard on the matter.

(A) If the sentence or term or condition of probation is modified pursuant to this section, the judge shall state the reasons for that modification on the record.

(B) As used in this section, modification of sentence shall include reducing a felony to a misdemeanor.



(2) No order shall be made without written notice first given by the court or the clerk thereof to the proper probation officer of the intention to revoke, modify, or change its order.

(3) In all cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall at the end of the term of probation or any extension thereof, be by the court discharged subject to the provisions of these sections.

(4) The court may modify the time and manner of the term of probation for purposes of measuring the timely payment of restitution obligations or the good conduct and reform of the defendant while on probation. The court shall not modify the dollar amount of the restitution obligations, absent compelling and extraordinary reasons, nor shall the court limit the ability of payees to enforce the obligations in the manner of judgments in civil actions.

(c) If a probationer is ordered to serve time in jail, and the probationer escapes while serving that time, the probation is revoked as a matter of law on the day of the escape.

(d) If probation is revoked pursuant to subdivision (c), upon taking the probationer into custody, the probationer shall be accorded a hearing or hearings consistent with the holding in the case of *People v. Vickers*, 8 Cal. 3d 451. The purpose of that hearing or hearings is not to revoke probation, as the revocation has occurred as a matter of law in accordance with subdivision (c), but rather to afford the defendant an opportunity to require the prosecution to establish that the alleged violation did in fact occur and to justify the revocation.

(e) This section does not apply to cases covered by Section 1203.2.

SEC. 10. Section 1214 of the Penal Code is amended to read:

1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4 or 1203.04 or Section 13967 of the Government Code, as



operative on or before September 28, 1994, with or without imprisonment, the judgment may be enforced in the manner provided for the enforcement of money judgments generally.

(b) In any case in which a defendant is ordered to pay restitution, the order to pay restitution is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and shall constitute a civil judgment enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order. In addition, upon request, the court shall provide the State Board of Control with a certified copy of any order imposing a restitution fine or order.

(c) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a judgment for any fine ordered pursuant to Section 1202.4 or 1203.04 or Section 13967 of the Government Code, as operative on or before September 28, 1994.

SEC. 11. Section 1297 of the Penal Code is amended to read:

1297. When money has been deposited, a receipt shall be issued in the name of the depositor. If the money remains on deposit at the time of a judgment for the payment of a fine, the clerk shall, under the direction of the court, if the defendant be the depositor, apply the money in satisfaction thereof, and after satisfying restitution to the victim or the Restitution Fund, fines, and costs, shall refund the surplus, if any, to the defendant. If the person to whom the receipt for the deposit was issued was not the defendant, the deposit after judgment shall be returned to that person within 10 days after the person claims it by submitting the receipt, and, if a claim is not made within 10 days of the



exoneration of bail, the clerk shall immediately notify the depositor of the exoneration of bail.

SEC. 12. Section 2085.5 of the Penal Code is amended to read:

2085.5. (a) In any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) of Section 1202.4, the Director of Corrections shall 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 wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the State Board of Control for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) 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 28, 1994, or subdivision (f) of Section 1202.4, the Director of Corrections 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. If the restitution is owed to a person who has filed an application with the Victims of Crime Program, the director shall transfer that amount to the State Board of Control 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. No deductions shall be made on behalf of victims who have not filed an application with the Victims of Crime 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.

(c) The director shall deduct and retain from the wages and trust account deposits of a prisoner, unless



prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred to the State Board of Control pursuant to subdivision (a) or (b). The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(d) In any case in which a parolee owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) of Section 1202.4, the Director of Corrections may collect from the parolee any moneys owing on the restitution fine amount, unless prohibited by federal law, and shall transfer that amount to the State Board of Control for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(e) In any case in which a parolee owes a restitution fine, subject to an order, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or paragraph (3) of subdivision (a) of Section 1202.4, the Director of Corrections may collect from the parolee any moneys owing, unless prohibited by federal law. If the restitution is owed to a person who has filed an application with the Victims of Crime Program, the director shall transfer that amount to the State Board of Control 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. No deductions shall be made on behalf of victims who have not filed an application with the Victims of Crime Program. The sentencing court



shall be provided a record of the payments made by the offender pursuant to this subdivision.

(f) The director may deduct and retain from any moneys collected from parolees an administrative fee that totals 10 percent of any amount transferred to the State Board of Control pursuant to subdivision (d) or (e), unless prohibited by federal law. The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(g) When a prisoner has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections shall collect the restitution order first pursuant to subdivision (b).

(h) When a parolee has both a restitution fine and order from the sentencing court, the Department of Corrections may collect the restitution order first, pursuant to subdivision (e).

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

SEC. 13. Section 3000 of the Penal Code is amended to read:

3000. (a) (1) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and



to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Prison Terms to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931, if applicable, the inmate shall be released on parole for a period not exceeding three years, unless the parole authority for good cause waives parole and discharges the inmate from custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department.



This subdivision shall be also applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(4) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1) or (2), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1) and (2) shall be computed from the date of initial parole and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, in no case, except as provided in Section 3064, may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole, and, except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole.

(5) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections or the Board of Prison Terms may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to



September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(6) For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority.

(7) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Prison Terms, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

SEC. 14. Section 3060.1 is added to the Penal Code, to read:

3060.1. Upon the revocation of the parole of any prisoner who was ordered by the court to pay an additional restitution fine pursuant to Section 1202.45, but which was suspended by that section, the additional restitution fine shall be reinstated without the need for any further court proceeding.

SEC. 15. Section 11177.2 of the Penal Code is amended to read:

11177.2. (a) No parolee may be released on parole to reside in any other receiving state if the parolee is subject to an unsatisfied order of restitution to a victim or a restitution fine within the sending state.

(b) A parolee may be granted an exception to the prohibition in subdivision (a) if the parolee posts a bond for the amount of the restitution order.

(c) A parolee may petition the court for a hearing to determine whether, in the interests of justice, the prohibition in subdivision (a) should be waived.

SEC. 16. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes:

(a) To properly present a claim for benefits.

(b) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.



(c) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000). This subdivision, as it relates to Division 3 (commencing with Section 9000), applies only to subdivision (j) of this section.

(d) To enable an employer to receive a reduction in contribution rate.

(e) To enable the Director of Social Services or his or her representatives or the Director of Health Services or his or her representatives, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to the Welfare and Institutions Code, and directly connected with, and limited to, the administration of public social services.

(f) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(g) To enable county district attorneys, or their representatives, to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(h) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(i) To enable county departments of collection or their representatives to determine entitlement to medical assistance services rendered pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, and, when appropriate, to enable collection for the county's expenditures for these medical assistance services.

(j) To furnish an employer, or his or her authorized agent, with information including, but not limited to, the



applicant's or recipient's name, social security number, address, employable skills, and job placement in order to enable him or her to fully discharge his or her obligations or safeguard his or her rights under the elements of a joint union, management, and Employment Development Department agreement as are deemed necessary to assist displaced workers to obtain new employment under the provisions of Chapter 2.9 (commencing with Section 9970) of Part 1 of Division 3 and related provisions of Division 3 (commencing with Section 9000). The information shall be limited to any information gathered under these divisions by the department and authorized for release by the labor organization which shall act as an agent for the affected workers under terms of the agreement and shall participate in defining the information release provisions.

(k) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code and designated by the head of the law enforcement agency and who requests this information in the course of and as a part of an investigation into the commission of a crime where there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency. Any officer or employee of the department who discloses information in



violation of this subdivision is guilty of a misdemeanor. Any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(1) This subdivision shall not be construed to authorize the release of a general list identifying individuals applying for or receiving benefits to any law enforcement agency.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(l) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(m) To provide the State Teachers' Retirement System, pursuant to Section 22242 of the Education Code, with information relating to the earnings of any person who is receiving a disability allowance, or disability retirement allowance, from the State Teachers' Retirement System. The earnings information shall be released to the Teachers' Retirement Board only upon written request from the board specifying that the person is receiving a disability allowance or disability retirement allowance from the system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(n) To provide the Public Employees' Retirement System, pursuant to Section 20143 of the Government



Code, with information relating to the earnings of any person who is receiving a disability retirement allowance from the Public Employees' Retirement System. The earnings information shall be released to the Board of Administration of the system only upon written request from the board specifying that the person is receiving a disability retirement allowance from the system. The request may be made by the executive officer of the system or by an employee of the system so authorized and identified by name and title by the executive officer in writing.

(o) To provide the University of California Retirement System with information in its possession relating to the earnings of any person who has applied for or is receiving disability income from the system. The earnings information shall be disclosed only upon written request from the system specifying that the person has applied for or is receiving disability income from the system. The request may be made by the chief administrative officer of the system or by an employee so authorized and identified by name and title by the chief administrative officer in writing. The system shall notify applicants for and recipients of disability income that earnings information from the department's records will be released upon the system's request. The information obtained pursuant to this subdivision shall be used or disclosed by the system only to determine or to verify entitlement to, or continuing eligibility for, disability income. The system shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(p) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code. The Division of Labor Standards Enforcement shall reimburse the department for all



reasonable administrative expenses incurred pursuant to this subdivision.

(q) To enable the federal Department of Health and Human Services, Office of Child Support Enforcement, Federal Parent Locator Service, to administer its child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(r) To provide county probation departments, the State Board of Control, and the United States Attorney General with wage and claim information in its possession that will assist those departments and agencies in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been, or can be recovered, and to assist in the collection of money owed to the county, the state, or the United States by any person who has been directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law. Information provided about victims of crime shall be limited to data necessary to assist in locating them. Nothing in this section shall be construed to prevent the department from providing information to the State Board of Control or the United States Attorney General through electronic methods. The department may charge a fee for all reasonable administrative expenses incurred pursuant to this subdivision. Except as provided by Section 1463.007 of the Penal Code, any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Except as provided by Section 1463.007 of the Penal Code, any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(s) To provide the Student Aid Commission with information concerning any individuals who are delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by the commission. The information obtained pursuant to this subdivision shall be utilized by the commission exclusively to enable the collection of defaulted loans and



other funds owed, pursuant to the authority granted in Chapter 2 (commencing with Section 69500) of Part 42 of the Education Code and Chapter 1 (commencing with Section 30000) of Title 5 of the California Code of Regulations. The information released by the director for the purposes of this subdivision shall not include any employment, wage, or other information concerning any person who is receiving unemployment insurance benefits. The information shall be released to the commission only upon written request from the director of the commission or by an employee so authorized and identified by name and title by the director. The commission shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(t) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body. The Department of Insurance or Department of Industrial Relations shall reimburse the department for all reasonable administrative expenses incurred relative to a request that it submits pursuant to this subdivision. Relevant information may include, but is not limited to, all of the following:

(1) Copies of unemployment and disability insurance application and claim forms and copies of any supporting



medical records, documentation, and records pertaining thereto.

(2) Copies of returns or reports filed by an employer pursuant to Section 1088 and copies of supporting documentation.

(3) Copies of benefit payment checks issued to claimants.

(4) Copies of any documentation that specifically identifies the claimant by social security number, residence address, or telephone number.

(u) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, “reciprocal agreement” means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information which is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(v) Wages as defined by Section 13009 and amounts required to be deducted and withheld under Section 13020 shall not be disclosed except as provided in Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

SEC. 17. Section 656 of the Welfare and Institutions Code is amended to read:

656. A petition to commence proceedings in the juvenile court to declare a minor a ward of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and subdivision under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.



(e) The names and residence addresses, if known to petitioner, of both of the parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if his or her place of residence is not known to petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there are none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, that: (1) Section 903 may make that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 may make that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 may make that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

(i) In a proceeding alleging that the minor comes within Section 601, notice to the parent, guardian, or other person having control or charge of the minor that



failure to comply with the compulsory school attendance laws is an infraction, which may be charged and prosecuted before the juvenile court judge sitting as a municipal court judge. In those cases, the petition shall also include notice that the parent, guardian, or other person having control or charge of the minor has the right to a hearing on the infraction before a judge different than the judge who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the provisions of Section 170.6 of the Code of Civil Procedure.

(j) If a proceeding is pending against a minor child for a violation of Section 640.5 or 640.6 of the Penal Code, a notice to the parent or legal guardian of the minor that if the minor is found to have violated either or both of these provisions that (1) any community service which may be required of the minor may be performed in the presence, and under the direct supervision, of the parent or legal guardian pursuant to either or both of these provisions; and (2) if the minor is personally unable to pay any fine levied for the violation of either or both of these provisions, that the parent or legal guardian of the minor shall be liable for payment of the fine pursuant to those sections.

(k) A notice to the parent or guardian of the minor that if the minor is ordered to make restitution to the victim pursuant to Section 730.6, or to pay fines or penalty assessments, the parent or guardian may be liable for the payment of restitution, fines, or penalty assessments.

SEC. 18. Section 659 of the Welfare and Institutions Code is amended to read:

659. The notice shall contain all of the following:

(a) The name and address of the person to whom the notice is directed.

(b) The date, time, and place of the hearing on the petition.

(c) The name of the minor upon whose behalf the petition has been brought.

(d) Each section and subdivision under which the proceeding has been instituted.



(e) A statement that the minor and his or her parent or guardian or adult relative, as the case may be, to whom notice is required to be given, are entitled to have an attorney present at the hearing on the petition, and that, if the parent or guardian or the adult relative is indigent and cannot afford an attorney, and the minor or his or her parent or guardian or the adult relative desires to be represented by an attorney, the parent or guardian or adult relative shall promptly notify the clerk of the juvenile court, and that in the event counsel or legal assistance is furnished by the court, the parent or guardian or adult relative shall be liable to the county, to the extent of his, her, or their financial ability, for all or a portion of the cost thereof.

(f) A statement that the parent or parents or responsible relative or guardian may be liable for the costs of support of the minor in a county institution.

(g) A statement that the parent or guardian of the minor may be liable for the payment of restitution, fines, or penalty assessments if the minor is ordered to make restitution to the victim or to pay fines or penalty assessments.

SEC. 19. Section 700 of the Welfare and Institutions Code is amended to read:

700. At the beginning of the hearing on a petition filed pursuant to Article 16 (commencing with Section 650) of this chapter, the judge or clerk shall first read the petition to those present and upon request of the minor upon whose behalf the petition has been brought or upon the request of any parent, relative or guardian, the judge shall explain any term of allegation contained therein and the nature of the hearing, its procedures, and possible consequences. The judge shall advise those present that if the petition or petitions are sustained and the minor is ordered to make restitution to the victim, or to pay fines or penalty assessments, the parent or guardian may be liable for the payment of restitution, fines, or penalty assessments. The judge shall ascertain whether the minor and his or her parent or guardian or adult relative, as the case may be, has been informed of the right of the minor



to be represented by counsel, and if not, the judge shall advise the minor and such a person, if present, of the right to have counsel present and where applicable, of the right to appointed counsel. The court shall appoint counsel to represent the minor if he or she appears at the hearing without counsel, whether he or she is unable to afford counsel or not, unless there is an intelligent waiver of the right of counsel by the minor; and, in the absence of such a waiver, if the parent or guardian does not furnish counsel and the court determines that the parent or guardian has the ability to pay for counsel, the court shall appoint counsel at the expense of the parent or guardian. The court shall continue the hearing for not to exceed seven days, as necessary to make an appointment of counsel, or to enable counsel to acquaint himself or herself with the case, or to determine whether the parent or guardian or adult relative is unable to afford counsel at his or her own expense, and shall continue the hearing as necessary to provide reasonable opportunity for the minor and the parent or guardian or adult relative to prepare for the hearing.

SEC. 20. Section 729.6 of the Welfare and Institutions Code is repealed.

SEC. 21. Section 730.6 of the Welfare and Institutions Code is amended to read:

730.6. (a) (1) It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor.

(2) Upon a minor being found to be a person described in Section 602, the court shall consider levying a fine in accordance with Section 730.5. In addition, the court shall order the minor to pay, in addition to any other penalty provided or imposed under the law, both of the following:

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

(B) Restitution to the victim or victims, if any, in accordance with subdivision (h).



(b) In every case where a minor is found to be a person described in Section 602, the court shall impose a separate and additional restitution fine. The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense as follows:

(1) If the minor is found to be a person described in Section 602 by reason of the commission of one or more felony offenses, the restitution fine shall not be less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000).

(2) If the minor is found to be a person described in Section 602 by reason of the commission of one or more misdemeanor offenses, the restitution fine shall not exceed one hundred dollars (\$100).

(c) The restitution fine shall be in addition to any other disposition or fine imposed and shall be imposed regardless of the minor's present ability to pay. This fine shall be deposited in the Restitution Fund, the proceeds of which shall be distributed pursuant to Section 13967 of the Government Code.

(d) (1) In setting the amount of the fine pursuant to subparagraph (A) of paragraph (2) of subdivision (a), the court shall consider any relevant factors including, but not limited to, the minor's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the minor as a result of the offense, and the extent to which others suffered losses as a result of the offense. The losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses such as psychological harm caused by the offense.

(2) The consideration of a minor's ability to pay may include his or her future earning capacity. A minor shall bear the burden of demonstrating a lack of his or her ability to pay.

(e) Express findings of the court as to the factors bearing on the amount of the fine shall not be required.

(f) Except as provided in subdivision (g), under no circumstances shall the court fail to impose the separate and additional restitution fine required by subparagraph



(A) of paragraph (2) of subdivision (a). This fine shall not be subject to penalty assessments pursuant to Section 1464 of the Penal Code.

(g) In a case in which the minor is a person described in Section 602 by reason of having committed a felony offense, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the restitution fine required by subparagraph (A) of paragraph (2) of subdivision (a). When a waiver is granted, the court shall state on the record all reasons supporting the waiver.

(h) Restitution ordered pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall be imposed in the amount of the losses, as determined. The court shall order full restitution unless it finds clear and compelling reasons for not doing so, and states them on the record. A restitution order pursuant to subparagraph (B) of paragraph (2) of subdivision (a), to the extent possible, shall be of a dollar amount sufficient to fully reimburse the victim or victims for all determined economic losses incurred as the result of the minor's conduct for which the minor was found to be a person described in Section 602, including all of the following:

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

(2) Medical expenses.

(3) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(4) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(i) A restitution order imposed pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall identify the losses to which it pertains, and shall be



enforceable as a civil judgment. The making of a restitution order pursuant to this subdivision shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the minor arising out of the offense for which the minor was found to be a person described in Section 602.

(j) For purposes of this section, “victim” shall include the immediate surviving family of the actual victim.

(k) Nothing in this section shall prevent a court from ordering restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of an offense.

(l) Upon a minor being found to be a person described in Section 602, the court shall require as a condition of probation the payment of restitution fines and orders imposed under this section.

(m) Probation shall not be revoked for failure of a person to make restitution pursuant to this section as a condition of probation unless the court determines that the person has willfully failed to pay or failed to make sufficient bona fide efforts to legally acquire the resources to pay.

(n) If the court finds and states on the record compelling and extraordinary reasons why restitution should not be required as provided in paragraph (2) of subdivision (a), the court shall order, as a condition of probation, that the minor perform specified community service.

(o) The court may avoid ordering community service as a condition of probation only if it finds and states on the record compelling and extraordinary reasons not to order community service in addition to the finding that restitution pursuant to paragraph (2) of subdivision (a) should not be required.



(p) When a minor is committed to the Department of the Youth Authority, the court shall order restitution to be paid to the victim or victims, if any. Payment of restitution to the victim or victims pursuant to this subdivision shall take priority in time over payment of any other restitution fine imposed pursuant to this section.

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

SEC. 22. Section 730.7 is added to the Welfare and Institutions Code, to read:

730.7. (a) In a case where a minor is ordered to make restitution to the victim or victims, or the minor is ordered to pay fines and penalty assessments under any provision of this code, a parent or guardian who has joint or sole legal and physical custody and control of the minor shall be rebuttably presumed to be jointly and severally liable with the minor in accordance with Sections 1714.1 and 1714.3 of the Civil Code for the amount of restitution, fines, and penalty assessments so ordered, up to the limits provided in those sections, subject to the court's consideration of the parent's or guardian's ability to pay. When considering the parent's or guardian's ability to pay, the court may consider future earning capacity. The parent or guardian shall have the burden of showing the lack of ability to pay. The parent or guardian shall also have the burden of showing by a preponderance of the evidence that the parent or guardian was either not given notice of potential liability for payment of restitution, fines, and penalty assessments prior to the petition being sustained by an admission or adjudication, or that he or she was not present during the proceedings wherein the petition was sustained either by admission or adjudication and any hearing thereafter related to restitution, fines, or penalty assessments.

(b) In cases in which the court orders restitution to the victim or victims of the offense, each victim in whose favor the restitution order has been made shall be notified within 60 days after restitution has been ordered of the following:

(1) The name and address of the minor ordered to make restitution.

(2) The amount and any terms or conditions of restitution.

(3) The offense or offenses that were sustained.

(4) The name and address of the parent or guardian of the minor.

(5) The rebuttable presumption that the parent or guardian is jointly and severally liable with the minor for the amount of restitution so ordered in accordance with Sections 1714.1 and 1714.3 of the Civil Code, up to the limits provided in those sections, and that the parent or guardian has the burden of showing by a preponderance of the evidence that the parent or guardian was either not given notice of potential liability for payment of restitution prior to the petition being sustained by an admission or adjudication, or that he or she was not present during the proceedings wherein the petition was sustained by an admission or adjudication and any hearings thereafter related to restitution.

(6) Whether the notice and presence requirements of paragraph (5) were met.

(7) The victim's rights to a certified copy of the order reflecting the information specified in this subdivision.

(c) The victim has a right, upon request, to a certified copy of the order reflecting the information specified in subdivision (b).

SEC. 23. Section 731.1 of the Welfare and Institutions Code is repealed.

SEC. 24. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:



In order to provide immediate relief to crime victims, it is necessary that this act take effect immediately.



Approved \_\_\_\_\_, 1995

\_\_\_\_\_  
*Governor*

