

Senate Bill No. 1685

CHAPTER 629

An act to amend Sections 155.5, 1191.2, 1202.4, 1202.8, 1214, and 13835.5 of the Penal Code, relating to restitution.

[Approved by Governor September 19, 1996. Filed
with Secretary of State September 19, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1685, Kopp. Restitution.

(1) Under existing law, any defendant convicted of a crime who, prior to sentencing, sells, conveys, assigns, or conceals his or her property with the intent to lessen or impair his or her financial ability to pay any fine or restitution ordered, is guilty of a crime.

This bill would make this provision applicable during the period that a restitution fine or order remains unsatisfied and enforceable. Because the bill would expand the scope of an existing crime, the bill would impose a state-mandated local program.

(2) Under existing law, the probation officer is required to notify victims of their right to attend and participate in all sentencing proceedings, and to provide victims with information concerning a victim's right to civil recovery against the defendant and to be compensated from the Restitution Fund.

This bill would require that notice to include information about the victim's responsibility to furnish information relevant to his or her losses to the probation department, district attorney, and court, the right to receive a copy of the restitution order, and the right to enforce a restitution order as a civil judgment.

(3) Under existing law, a court is required to order every person convicted of a crime to pay a restitution fine and restitution to the victim or victims, unless the court finds compelling and extraordinary reasons. Existing law requires the court to determine the amount of losses that the victim incurred, including property repair or replacement, medical expenses, and lost wages or profits.

This bill would revise and recast these provisions to, among other things, require the court to impose a specific dollar amount, including interest, attorney's fees, and costs, for restitution. The bill would authorize the district attorney, as the victim's attorney, to request an order of examination be held to determine the defendant's financial assets. The bill would require an order of examination to be held if the defendant requests a restitution hearing. The bill also would require a victim to receive at least 10 days' notice before any subsequent proceeding held, or court order made, to modify a restitution order. The bill would provide that the determination of

the amount of restitution ordered shall not be affected by the indemnification or subrogation rights of any third party.

(4) Existing law requires persons placed on probation by a court to be under the supervision of a county probation officer, who determines the level and type of supervision consistent with the court-ordered conditions of probation.

This bill would require the probation officer to establish an account into which any restitution payments to the victim or to the Restitution Fund that are not deposited in the Restitution Fund would be deposited. Because the bill would increase the duties of probation officers, the bill would impose a state-mandated local program.

(5) Under existing law, when a defendant is ordered to pay restitution, the order is deemed a money judgment, enforceable as a civil judgment, if the defendant is given certain due process rights.

This bill instead would provide that a restitution order shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. The bill would require a victim to have access to all resources available under the law to enforce the restitution order. The bill would provide that any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant to these provisions. The bill would require victims and the State Board of Control to notify the court whenever a restitution order is satisfied.

(6) This bill would require the Judicial Council, in consultation with the State Board of Control, to develop or amend forms, consistent with the purposes of the bill, by June 30, 1997.

(7) Under existing law, an agency that provides assistance to victims and witnesses may receive funds from the Victim-Witness Assistance Fund if it provides, among other things, comprehensive services. Those services may include, among other things, assistance in obtaining restitution for victims.

This bill instead would require those services to include, upon request of a victim, assisting victims in obtaining restitution and assisting local probation departments in ascertaining the victim's economic loss and providing relevant information to the district attorney, probation department, and court prior to the imposition of sentence.

(8) This bill would incorporate additional changes in Section 1214 of the Penal Code proposed by AB 2898, to be operative only if AB 2898 and this bill are both enacted and become effective on January 1, 1997, and this bill is enacted last.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that



reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. Section 155.5 of the Penal Code is amended to read:

155.5. (a) Any defendant who is ordered to pay any fine or restitution in connection with the commission of a misdemeanor and who, after the plea or judgment and prior to sentencing, or during the period that a restitution fine or order remains unsatisfied and enforceable, sells, conveys, assigns, or conceals his or her property with the intent to lessen or impair his or her financial ability to pay in full any fine or restitution which he or she may lawfully be ordered to pay, or to avoid forfeiture of assets pursuant to the California Control of Profits of Organized Crime Act (Chapter 9 (commencing with Section 186) of this title), is guilty of a misdemeanor.

(b) Any defendant who is ordered to pay any fine or restitution in connection with the commission of a felony and who, after the plea or judgment and prior to sentencing for the same felony offense, or during the period that a restitution order remains unsatisfied and enforceable, sells, conveys, assigns, or conceals his or her property with the intent to lessen or impair his or her financial ability to pay in full any fine or restitution which he or she may lawfully be ordered to pay or to avoid forfeiture of assets derived from either criminal profiteering pursuant to Chapter 9 (commencing with Section 186) of this title or trafficking in controlled substances pursuant to Chapter 8 (commencing with Section 11470) of Division 10 of the Health and Safety Code, is guilty of a felony.

SEC. 2. Section 1191.2 of the Penal Code is amended to read:

1191.2. In providing notice to the victim pursuant to Section 1191.1, the probation officer shall also provide the victim with information concerning the victim's right to civil recovery against the defendant, the requirement that the court order restitution for the victim, the victim's right to receive a copy of the restitution order from the court and to enforce the restitution order as a civil judgment, the victim's responsibility to furnish the probation department, district attorney, and court with information relevant to his or her losses, and the victims' opportunity to be compensated from the Restitution Fund if eligible under Article 1 (commencing



with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code. This information shall be in the form of written material prepared by the Judicial Council in consultation with the State Board of Control, shall include the relevant sections of the Penal Code, and shall be provided to each victim for whom the probation officer has a current mailing address.

SEC. 3. 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), which shall be enforceable as if the order were a civil judgment pursuant to Section 1214.

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

(1) 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.

(2) In setting a felony restitution fine, 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 court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar (\$200) or one-hundred-dollar (\$100) minimum.

(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 inability 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 inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability 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) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and 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 in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution payments made pursuant to this subdivision shall be made to the Restitution Fund to the extent that the victim, as defined in subdivision (k), 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.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall 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, but not limited to, all of the following:



(A) 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.

(B) Medical expenses.

(C) 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.

(D) 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.

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

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

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

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

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

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment, pursuant to Section 1214.

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

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



(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 this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record 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, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

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

SEC. 4. Section 1202.8 of the Penal Code is amended to read:

1202.8. (a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

(b) Within 30 days of a court making an order to provide restitution to a victim or to the Restitution Fund, the probation officer shall establish an account into which any restitution payments that are not deposited into the Restitution Fund shall be deposited.

SEC. 5. 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 (1) 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 (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and 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. A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant to this section. Victims and the State Board of Control shall inform the court whenever an order to pay restitution is satisfied.

(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. 5.5. 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 Section 1203.04, as operative on or before August 2, 1995, 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 (1) 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 (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and 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. A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's financial assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant to this section. Victims



and the State Board of Control shall inform the court whenever an order to pay restitution is satisfied.

(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 or restitution ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994.

SEC. 6. Section 13835.5 of the Penal Code is amended to read:

13835.5. (a) Comprehensive services shall include all of the following primary services:

(1) Crisis intervention, providing timely and comprehensive responses to the individual needs of victims.

(2) Emergency assistance, directly or indirectly providing food, housing, clothing, and, when necessary, cash.

(3) Resource and referral counseling to agencies within the community which are appropriate to meet the victim's needs.

(4) Direct counseling of the victim on problems resulting from the crime.

(5) Assistance in the processing, filing, and verifying of claims filed by victims of crime pursuant to Article 1 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code.

(6) Assistance in obtaining the return of a victim's property held as evidence by law enforcement agencies, if requested.

(7) Orientation to the criminal justice system.

(8) Court escort.

(9) Presentations to and training of criminal justice system agencies.

(10) Public presentations and publicity.

(11) Monitoring appropriate court cases to keep victims and witnesses apprised of the progress and outcome of their case.

(12) Notification to friends, relatives, and employers of the occurrence of the crime and the victim's condition, upon request of the victim.

(13) Notification to the employer of the victim or witness, if requested by the victim or witness, informing the employer that the employee was a victim of or witness to a crime and asking the employer to minimize any loss of pay or other benefits which may result because of the crime or the employee's participation in the criminal justice system.

(14) Upon request of the victim, assisting in obtaining restitution for the victim, in ascertaining the victim's economic loss, and in providing the probation department, district attorney, and court with information relevant to his or her losses prior to the imposition of sentence.



(b) Comprehensive services may include the following optional services, if their provision does not preclude the efficient provision of primary services:

- (1) Employer intervention.
- (2) Creditor intervention.
- (3) Child care.
- (4) Notification to witnesses of any change in the court calendar.
- (5) Funeral arrangements.
- (6) Crime prevention information.
- (7) Witness protection, including arranging for law enforcement protection or relocating witnesses in new residences.
- (8) Assistance in obtaining temporary restraining orders.
- (9) Transportation.
- (10) Provision of a waiting area during court proceedings separate from defendants and families and friends of defendants.

SEC. 7. In order to ensure that restitution is ordered in every case, as required by law, the Judicial Council, in consultation with the State Board of Control, shall do both of the following, and shall report thereon to the Legislature, by June 30, 1997:

(a) Develop or amend forms, as appropriate, that do all of the following:

(1) Indicate clearly, with a reference to Section 1202.4 of the Penal Code, that a restitution fine and restitution to the victim is required to be ordered in every case, and that an order for restitution is enforceable by a victim as a civil judgment.

(2) Require an order of restitution or a restitution fine to specify a dollar amount owed by the defendant to the victim and the state.

(3) Include a reference to Section 1214 of the Penal Code, regarding a victim's right to enforce a restitution order as a civil judgment and to have access to any information necessary to assist him or her in collecting on the order, and a victim's responsibility to notify the court when the restitution order is satisfied.

(b) Provide continuing education to all judges and court personnel to inform them of the legal obligation of a court to order restitution of a specified dollar amount in every case and of a victim's right to enforce a restitution order as a civil judgment at any time, regardless of whether the defendant is still under the jurisdiction of the court or the correctional system or whether the defendant has declared bankruptcy.

SEC. 8. Section 5.5 of this bill incorporates amendments to Section 1214 of the Penal Code proposed by both this bill and AB 2898. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1997, (2) each bill amends Section 1214 of the Penal Code, and (3) this bill is enacted after AB 2898, in which case Section 5 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain



costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

