

AMENDED IN ASSEMBLY APRIL 2, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1132

Introduced by Assembly Member Alby

February 27, 1997

An act to amend Section 2085.5 of the Penal Code, *and to amend Section 1752.81 of the Welfare and Institutions Code*, relating to restitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1132, as amended, Alby. Restitution.

(1) 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.

This bill would require any compensatory or punitive damages awarded to a prisoner in connection with any civil action or a civil action brought against any jail, prison, or correctional facility, or any official or agent thereof, to be paid directly to satisfy any outstanding restitution orders or restitution fines against the prisoner. The bill would require the Department of Corrections to notify the victims of the crime for which the prisoner was convicted concerning the pending payment of any compensatory or punitive damages. The bill also would authorize the Director of Corrections to deduct an administrative fee of 10% of any amount paid from

a prisoner settlement or award in satisfaction of an outstanding restitution order or fine.

(2) Existing law authorizes the Director of the Youth Authority to release any trust funds of a ward committed to the authority in his or her possession for any purpose when authorized by the ward, and when the sum held in trust for any ward exceeds \$500 the amount in excess may be expended by the director pursuant to a lawful order of a court directing payment of the funds without the authorization of the ward.

This bill would require the Director of the Youth Authority to deduct the balance owing on a restitution order or restitution fine from the trust account deposits of a ward, and to transfer that amount directly to the victim or the State Board of Control for deposit in the Restitution Fund. The bill also would require any compensatory or punitive damages awarded to a minor or adult committed to the Department of the Youth Authority in connection with any civil action or a civil action brought against any jail or correctional facility, or any official or agent thereof, to be paid directly to satisfy any outstanding restitution orders or restitution fines against the minor or adult. The bill would require the Department of the Youth Authority to notify the victims of the crime for which the minor or adult was committed concerning the pending payment of any compensatory or punitive damages. The bill also would authorize the Director of the Youth Authority to deduct an administrative fee of 10% of any amount transferred pursuant to these provisions.

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

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

1 SECTION 1. Section 2085.5 of the Penal Code is
2 amended to read:
3 2085.5. (a) In any case in which a prisoner owes a
4 restitution fine imposed pursuant to subdivision (a) of
5 Section 13967 of the Government Code, as operative prior
6 to September 28, 1994, or subdivision (b) of Section
7 1202.4, the Director of Corrections shall deduct a
8 minimum of 20 percent or the balance owing on the fine



1 amount, whichever is less, up to a maximum of 50 percent
2 from the wages and trust account deposits of a prisoner,
3 unless prohibited by federal law, and shall transfer that
4 amount to the State Board of Control for deposit in the
5 Restitution Fund in the State Treasury. Any amount so
6 deducted shall be credited against the amount owing on
7 the fine. The sentencing court shall be provided a record
8 of the payments.

9 (b) In any case in which a prisoner owes a restitution
10 order imposed pursuant to subdivision (c) of Section
11 13967 of the Government Code, as operative prior to
12 September 28, 1994, or subdivision (f) of Section 1202.4,
13 the Director of Corrections shall deduct a minimum of 20
14 percent or the balance owing on the order amount,
15 whichever is less, up to a maximum of 50 percent from the
16 wages and trust account deposits of a prisoner, unless
17 prohibited by federal law. If the restitution is owed to a
18 person who has filed an application with the Victims of
19 Crime Program, the director shall transfer that amount
20 to the State Board of Control for direct payment to the
21 victim, or payment shall be made to the Restitution Fund
22 to the extent that the victim has received assistance
23 pursuant to that program. No deductions shall be made
24 on behalf of victims who have not filed an application
25 with the Victims of Crime Program. The sentencing court
26 shall be provided a record of the payments made to
27 victims and of the payments deposited to the Restitution
28 Fund pursuant to this subdivision.

29 (c) The director shall deduct and retain from the
30 wages and trust account deposits of a prisoner, unless
31 prohibited by federal law, an administrative fee that
32 totals 10 percent of any amount transferred to the State
33 Board of Control pursuant to subdivision (a) or (b). The
34 director shall deduct and retain from any prisoner
35 settlement or trial award, an administrative fee that totals
36 10 percent of any amount paid from the settlement or
37 award to satisfy an outstanding restitution order or fine
38 pursuant to subdivision (j), unless prohibited by federal
39 law. The director shall deposit the administrative fee
40 moneys in a special deposit account for reimbursing



1 administrative and support costs of the restitution
 2 program of the Department of Corrections. The director,
 3 at his or her discretion, may retain any excess funds in the
 4 special deposit account for future reimbursement of the
 5 department's administrative and support costs for the
 6 restitution program or may transfer all or part of the
 7 excess funds for deposit in the Restitution Fund.

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

20 (e) In any case in which a parolee owes a restitution
 21 fine, subject to an order, imposed pursuant to subdivision
 22 (c) of Section 13967 of the Government Code, as
 23 operative prior to September 28, 1994, or paragraph (3)
 24 of subdivision (a) of Section 1202.4, the Director of
 25 Corrections may collect from the parolee any moneys
 26 owing, unless prohibited by federal law. If the restitution
 27 is owed to a person who has filed an application with the
 28 Victims of Crime Program, the director shall transfer that
 29 amount to the State Board of Control for direct payment
 30 to the victim, or payment shall be made to the Restitution
 31 Fund to the extent that the victim has received assistance
 32 pursuant to that program. No deductions shall be made
 33 on behalf of victims who have not filed an application
 34 with the Victims of Crime Program. The sentencing court
 35 shall be provided a record of the payments made by the
 36 offender pursuant to this subdivision.

37 (f) The director may deduct and retain from any
 38 moneys collected from parolees an administrative fee
 39 that totals 10 percent of any amount transferred to the
 40 State Board of Control pursuant to subdivision (d) or (e),



1 unless prohibited by federal law. The director shall
2 deposit the administrative fee moneys in a special deposit
3 account for reimbursing administrative and support costs
4 of the restitution program of the Department of
5 Corrections. The director, at his or her discretion, may
6 retain any excess funds in the special deposit account for
7 future reimbursement of the department's
8 administrative and support costs for the restitution
9 program or may transfer all or part of the excess funds for
10 deposit in the Restitution Fund.

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

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

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

30 (j) Any compensatory or punitive damages awarded
31 to a prisoner in connection with any civil action or a civil
32 action brought against any federal, state, or local jail,
33 prison, or correctional facility, or any official or agent
34 thereof, shall be paid directly to satisfy any outstanding
35 restitution orders or restitution fines against the prisoner.
36 The balance of any award shall be forwarded to the
37 prisoner after full payment of all outstanding restitution
38 orders and restitution fines, subject to subdivision (c).
39 The Department of Corrections shall make all reasonable
40 efforts to notify the victims of the crime for which the



1 prisoner was convicted concerning the pending payment
2 of any compensatory or punitive damages. This
3 subdivision shall apply to cases settled on or after April 26,
4 1996, pursuant to Sections 807 and 808 of the federal
5 Prison Litigation Reform Act of 1995 (Title 8, P.L.
6 104-134).

7 *SEC. 2. Section 1752.81 of the Welfare and Institutions*
8 *Code is amended to read:*

9 1752.81. (a) Whenever the Director of the Youth
10 Authority has in his *or her* possession in trust funds of a
11 ward committed to the authority, ~~such~~ *the* funds may be
12 released for any purpose when authorized by the ward.
13 When the sum held in trust for any ward by the Director
14 of the Youth Authority exceeds five hundred dollars
15 (\$500), the amount in excess of five hundred dollars
16 (\$500) may be expended by the director pursuant to a
17 lawful order of a court directing payment of ~~such~~ *the*
18 funds, without the authorization of the ward thereto.

19 (b) *Notwithstanding subdivision (a), whenever a*
20 *ward owes a restitution fine imposed pursuant to Section*
21 *729.6, as operative on or before August 2, 1995, or Section*
22 *730.6, the Director of the Youth Authority shall deduct*
23 *the balance owing on the fine amount from the trust*
24 *account deposits of a ward, up to a maximum of 50*
25 *percent of the total amount held in trust, unless*
26 *prohibited by federal law. The director shall transfer that*
27 *amount to the State Board of Control for deposit in the*
28 *Restitution Fund in the State Treasury. Any amount so*
29 *deducted shall be credited against the amount owing on*
30 *the fine. The sentencing court shall be provided a record*
31 *of the payments.*

32 (c) *Notwithstanding subdivision (a), whenever a*
33 *ward owes a restitution order imposed pursuant to*
34 *Section 729.6, as operative on or before August 2, 1995,*
35 *Section 731.1, as operative on or before August 2, 1995, or*
36 *Section 730.6, the Director of the Youth Authority shall*
37 *deduct the balance owing on the order amount from the*
38 *trust account deposits of a ward, up to a maximum of 50*
39 *percent of the total amount held in trust, unless*
40 *prohibited by federal law. The director shall transfer that*



1 amount directly to the victim. If the restitution is owed
2 to a person who has filed an application with the Victims
3 of Crime Program, the director shall transfer that amount
4 to the State Board of Control for direct payment to the
5 victim or payment shall be made to the Restitution Fund
6 to the extent that the victim has received assistance
7 pursuant to that program. The sentencing court shall be
8 provided a record of the payments made to victims and
9 of the payments deposited to the Restitution Fund
10 pursuant to this subdivision.

11 (d) Any compensatory or punitive damages awarded
12 to a minor or adult committed to the Department of the
13 Youth Authority in connection with any civil action or a
14 civil action brought against any federal, state, or local jail
15 or correctional facility, or any official or agent thereof,
16 shall be paid directly to satisfy any outstanding restitution
17 orders or restitution fines against the minor or adult. The
18 balance of any award shall be forwarded to the minor or
19 adult committed to the Department of the Youth
20 Authority after full payment of all outstanding restitution
21 orders and restitution fines subject to subdivision (e). The
22 Department of the Youth Authority shall make all
23 reasonable efforts to notify the victims of the crime for
24 which the minor or adult was committed concerning the
25 pending payment of any compensatory or punitive
26 damages. This subdivision shall apply to cases settled on
27 or after April 26, 1996, pursuant to Sections 807 and 808 of
28 the federal Prison Litigation Reform Act of 1995 (Title 8,
29 P.L. 104-134).

30 (e) The director shall deduct and retain from the trust
31 account deposits of a ward, unless prohibited by federal
32 law, an administrative fee that totals 10 percent of any
33 amount transferred pursuant to subdivision (b), (c), or
34 (d). The director shall deposit the administrative fee
35 moneys in a special deposit account for reimbursing
36 administrative and support costs of the restitution and
37 victims program of the Department of the Youth
38 Authority. The director, at his or her discretion, may
39 retain any excess funds in the special deposit account for
40 future reimbursement of the department's



1 *administrative and support costs for the restitution and*
2 *victims program or may transfer all or part of the excess*
3 *funds for deposit in the Restitution Fund.*

4 *(f) When a ward has both a restitution fine and a*
5 *restitution order from the sentencing court, the*
6 *Department of the Youth Authority shall collect the*
7 *restitution order first pursuant to subdivision (c).*

