
THIRD READING

Bill No: AB 2297
Author: Stefani (D)
Amended: 3/26/26 in Assembly
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 6-0, 6/9/26
AYES: Arreguín, Seyarto, Caballero, Cortese, Pérez, Wiener

ASSEMBLY FLOOR: 66-0, 4/20/26 - See last page for vote

SUBJECT: Restitution: diversion

SOURCE: San Diego County District Attorney's Office

DIGEST: This bill applies the general restitution statute to defendants who enter a diversion program.

ANALYSIS:

Existing law:

- 1) Provides that, in order to preserve and protect a victim's rights to justice and due process, a victim is entitled to specified rights, including restitution. (Cal. Const., art. I, § 28, subd. (b)(13).)
- 2) Requires that restitution is ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss. (Cal. Const., art. I, § 28, subd. (b)(13)(B).)
- 3) States that it is the intent of the Legislature that a victim of a crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime. (Pen. Code, § 1202.4, subd. (a)(1).)

- 4) Requires the court, upon a person being convicted of a crime, to order the defendant to pay a fine in the form of a penalty assessment. (Pen. Code, § 1202.4, subd. (a)(2).)
- 5) Requires the court, in addition to any other penalty provided or imposed under the law, to order the defendant to pay both of the following: a restitution fine and restitution to the victim or victims, if any, which is enforceable as if the order were a civil judgment and must be paid, as specified. (Pen. Code, § 1202.4, subd. (a)(3).)
- 6) Requires the court to impose a separate and additional restitution fine in every case where a person is convicted of a crime unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. Provides that the restitution fine is set at the discretion of the court and commensurate with the seriousness of the offense. (Pen. Code, § 1202.4, subd. (b).)
- 7) Requires the court to impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. Provides that a defendant's inability to pay is not a compelling and extraordinary reason not to impose a restitution fine. Provides that inability to pay may be considered only in increasing the amount of the restitution fine in excess of the minimum fine. (Pen. Code, § 1202.4, subd. (c).)
- 8) Requires the court, in setting the amount of the fine in excess of the minimum fine, to 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 losses as a result of the crime, and the number of victims involved in the crime. (Pen. Code, § 1202.4, subd. (d).)
- 9) Requires the court, in every case in which a victim has suffered economic loss as a result of the defendant's conduct, to 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. Provides that the defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution, and authorizes the court to modify the amount, on its own motion or on the motion

of the district attorney, the victim or victims, or the defendant. (Pen. Code, § 1202.4, subd. (f)(1).)

- 10) Requires, to the extent possible, that the restitution order be prepared by the sentencing court, identify each victim and each loss to which it pertains, and 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 full or partial payment for the value of stolen or damaged property, medical expenses, mental health counseling expenses, and wages or profits lost due to injury incurred by the victim, among other expenses. (Pen. Code, § 1202.4, subd. (f)(3)(A)-(L).)
- 11) Specifies that a restitution order is enforceable by the victim as a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. (Pen. Code, §§ 1202.4, subd. (i) & 1214, subd. (b).)
- 12) States that any portion of a restitution fine or restitution fee that remains unsatisfied after a defendant is no longer on probation, parole, postrelease community supervision or mandatory supervision, after a term in custody, or after completing diversion is enforceable by the California Victim Compensation Board (Cal VCB). (Pen. Code, §§ 1202.4, subd. (l) & 1214, subd. (a).)

This bill:

- 1) Requires the court to order restitution to the victim or victims, if any, which is enforceable as if the order were a civil judgment, and paid in the order required under existing law, when a defendant participates in a diversion program.
- 2) Requires a defendant to be informed of their right to have a judicial determination of the amount and is provided with a hearing, or they may waive the hearing or stipulate to the amount ordered.
- 3) Provides that if the court finds that restitution is owed to any victim as a result of the diverted offense, the court must order its payment during the period of diversion.

- 4) Prohibits a defendant's inability to pay restitution due to indigence or mental disorder from being used as grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.
- 5) Requires, if the defendant withdraws from diversion or fails to complete the terms of diversion, that a restitution order is suspended until criminal proceedings are resolved.
- 6) States that if the defendant completes diversion, a restitution order may be enforced in the same manner as a civil judgment pursuant to existing provisions of law.

Background

Diversion. Diversion is the suspension of criminal proceedings for a prescribed period of time with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that they have never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume.

Diversion programs may be pre-plea or post-plea (often called deferred entry of judgment). Pre-plea programs allow a defendant to participate in the program without admitting guilt. In post-plea programs, the defendant must first admit guilt before participating in the program. The primary difference between the two types of diversion is that in a pre-plea program, criminal proceedings resume if the defendant does not successfully complete the program, and the defendant has the option to plead guilty or pursue a defense against their case. In a post-plea diversion program, the defendant (having already pled guilty) would be sentenced if they do not successfully complete the program.

In recent years, the Legislature has enacted several pre-plea diversion programs such as military diversion (SB 1227 (Hancock), Chapter 658, Statutes of 2013), mental health diversion (SB 215 (Beall), Chapter 1005, Statutes of 2018), diversion for primary caretakers (SB 394 (Skinner), Chapter 593, Statutes of 2019), and court-initiated misdemeanor diversion (AB 3234 (Ting), Chapter 334, Statutes of 2020). Drug diversion was enacted as a pre-plea program and changed to a post-plea program in 1997 (SB 1369 (Kopp), Chapter 1132, Statutes of 1996), then changed back to a pre-plea program (AB 208 (Eggman), Chapter 778, Statutes

of 2017). Existing law also authorizes a city or county prosecuting attorney or county probation department, until January 1, 2031, to create a diversion or deferred entry of judgment program for individuals who commit a theft offense or repeat theft offenses. (Pen. Code, § 1001.81.)

Restitution. The California Constitution guarantees victims the right to restitution. Specifically, the California Constitution provides that, in order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to specified rights, including among others, restitution. (Cal. Const., art. I, § 28, subd. (b)(13); added by Proposition 8, approved by California voters in the general election on November 8, 1982.) It also states that "[i]t is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary." (Cal. Const., art. I, § 28, subd. (b).) "A victim's right to restitution is, therefore, a constitutional one; it cannot be bargained away or limited, nor can the prosecution waive the victim's right to receive restitution." (*People v. Gross* (2015) 238 Cal.App.4th 1313, 1317-1318.)

As directed by the voters, the Legislature enacted Penal Code section 1202.4 to implement the Victims' Bill of Rights. (*Gross, supra*, 238 Cal.App.4th at p. 1318; *People v. Seymour* (2015) 239 Cal.App.4th 1418, 1435.) This statute provides that "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." (Pen. Code, § 1202.4, subd. (f).) The statute further provides that a "defendant's inability to pay shall not be a consideration in determining the amount of a restitution order." (Pen. Code, § 1202.4, subd. (g).) Rather, victim restitution orders must be of a dollar amount that is sufficient to fully reimburse the victim, which can include an assortment of expenses such as medical expenses, mental health counseling expenses, wages or lost profits, noneconomic losses like psychological harm, actual and reasonable attorney's fees, and relocation fees. (Pen. Code, § 1202.4, subd. (f).) The victim restitution order must also include interest at the rate of 10% per annum. (Pen. Code, § 1202.4, subd. (f)(3)(G).)

If the amount of restitution cannot be ascertained at the time of sentencing, the court must include a provision in the restitution order that the restitution amount must be determined at a future time. (Pen. Code, § 1202.4, subd. (f).) The trial

court must incorporate the restitution order in the defendant's conditions of probation. (Pen. Code, § 1202.4, subd. (l).) If part of a restitution order has not been paid after a defendant is no longer on probation, it remains enforceable by the victim as though it were a civil judgment. (Pen. Code, § 1202.4, subd. (i); Pen. Code, § 1214.) Notably, if a defendant is unable to pay full restitution within the initial term of probation, the court can modify and extend the period of probation to allow the defendant to pay off all restitution within the probation term. (Pen. Code, § 1203.3, subd. (b)(4); *People v. Cookson* (1991) 54 Cal.3d 1091, 1097.) Generally, the probation term may be extended up to, but not beyond, the maximum probation period allowed for the offense. (*People v. Medeiros* (1994) 25 Cal.App.4th 1260, 1267-1268.)

Payment of victim restitution goes directly to the victim and compensates them for economic losses they have suffered because of the defendant's crime (i.e., to make the victim reasonably whole). (*People v. Guillen* (2013) 218 Cal.App.4th 975, 984.) A victim restitution order is an enforceable civil money judgment, and typical post-judgment enforcement tools are available to the victim. (Pen. Code, § 1214, subd. (b).) Victims have access to all available resources to enforce the order, including wage garnishment and lien procedures, even if the defendant is no longer in custody or on supervision. (*Ibid.*)

Restitution is specifically authorized in several of the existing diversion statutes. For example, the mental health diversion law provides that “[u]pon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion.” (Pen. Code, § 1001.36, subd. (f)(1)(D).) The court-initiated misdemeanor diversion program requires a defendant to “[m]ake full restitution.” (Pen. Code, § 1001.96, subd. (b).) Both statutes provide that a defendant's inability to pay restitution due to indigence “shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.” (Pen. Code, §§ 1001.36, subd. (f)(1)(D); 1001.96, subd. (b).)

The theft diversion statute provides that a condition of diversion may include “[m]aking adequate restitution or an appropriate substitute for restitution to the establishment or person from which property was stolen at the face value of the stolen property, if required by the program.” (Pen. Code, § 1001.81, subd. (e)(2).) The bad check diversion statute contains a similar provision that states that a condition of diversion may include “[f]ull restitution being made to the victim.” (Pen. Code, § 1001.64.) Comparatively, the statutes that established diversion for

individuals with developmental disabilities, parental diversion, military diversion, primary caregiver diversion, and drug diversion are silent on victim restitution. (Pen. Code, §§ 1001.20 et seq.; 1001.70 et seq.; 1001.80; 1001.83; 1000.)

This bill's proponents argue that the individual diversion statutes are inconsistent with respect to their approach to victim restitution which has resulted in courts frequently not ordering victim restitution. They contend that placing the authority to order diversion within the general restitution statute—Penal Code section 1202.4—will ensure more even application and provide an avenue for enforcement after the period of diversion has ended.

This bill amends Penal Code section 1202.4 to provide a right to restitution for victims of crimes where the defendant participates in a diversion program. Because existing law requires victim compensation after a conviction, and a defendant who participates successfully in a diversion program would not have a conviction for the underlying offense, courts may only order restitution if the individual diversion statute authorizes it. This bill applies the same rights to a hearing to determine the amount of restitution, if any, as exists for defendants who have been convicted of a crime. Consistent with the diversion statutes that explicitly provide for restitution, this bill prohibits a defendant's inability to pay restitution due to indigence or mental disorder from being used as grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion. Finally, the bill provides that if the defendant completes diversion, a restitution order may be enforced pursuant to Penal Code section 1214. Section 1214 states that any portion of a restitution fine that remains unsatisfied after a defendant has completed diversion is enforceable by the California Victim Compensation Board.

FISCAL EFFECT: Appropriation: No Fiscal Com.:No Local:No

SUPPORT: (Verified 6/9/26)

San Diego County District Attorney's Office (source)
American Property Casualty Insurance Association
Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Police Chiefs Association

California Reserve Peace Officers Association
Chief Probation Officers' of California
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
League of California Cities
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association

OPPOSITION: (Verified 6/9/26)

ACLU California Action
California Public Defenders Association
Debt Free Justice California
Ella Baker Center for Human Rights
Initiate Justice
Justice2Jobs Coalition
La Defensa

ASSEMBLY FLOOR: 66-0, 4/20/26

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Calderon, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Dixon, Ellis, Flora, Fong, Gabriel, Gallagher, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hoover, Irwin, Jackson, Johnson, Krell, Lackey, Lowenthal, Macedo, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Wicks, Wilson, Zbur, Rivas

NO VOTE RECORDED: Arambula, Bonta, Bryan, Caloza, Elhawary, Garcia, Hart, Kalra, Lee, McKinnor, Patterson, Celeste Rodriguez, Sharp-Collins, Ward

Prepared by: Stephanie Jordan / PUB. S. /

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