

Introduced by Senator SternFebruary 17, 2017

An act to amend Section 1202.4 of the Penal Code, relating to restitution, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 756, as introduced, Stern. Restitution: noneconomic losses: child sexual abuse.

Existing law requires the court to order a person who is convicted of a crime to pay restitution to the victim or victims for the full amount of economic loss, unless the court finds compelling and extraordinary reasons for not doing so and states them on the record. Existing law requires the restitution order to 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, noneconomic losses for psychological harm stemming from felony incidents of lewd and lascivious acts with a minor, as defined.

Restitution fines are deposited in the Restitution Fund, which is continuously appropriated, to the extent that a victim has been compensated by that fund.

This bill would include in the required restitution order amount noneconomic losses for psychological harm stemming from felony incidents of repeated or recurring incidents of sexual abuse of a child under 14 years of age or from felony incidents of sexual contact with a child under 10 years of age. By sending additional money to a continuously appropriated fund, this bill makes an appropriation.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 1202.4 of the Penal Code, as amended
2 by Section 240 of Chapter 37 of the Statutes of 2016, is amended
3 to read:

4 1202.4. (a) (1) It is the intent of the Legislature that a victim
5 of crime who incurs an economic loss as a result of the commission
6 of a crime shall receive restitution directly from a defendant
7 convicted of that crime.

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

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

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

15 (B) Restitution to the victim or victims, if any, in accordance
16 with subdivision (f), which shall be enforceable as if the order
17 were a civil judgment.

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

22 (1) The restitution fine shall be set at the discretion of the court
23 and commensurate with the seriousness of the offense. If the person
24 is convicted of a felony, the fine shall not be less than three hundred
25 dollars (\$300) and not more than ten thousand dollars (\$10,000).
26 If the person is convicted of a misdemeanor, the fine shall not be
27 less than one hundred fifty dollars (\$150) and not more than one
28 thousand dollars (\$1,000).

29 (2) In setting a felony restitution fine, the court may determine
30 the amount of the fine as the product of the minimum fine pursuant
31 to paragraph (1) multiplied by the number of years of imprisonment
32 the defendant is ordered to serve, multiplied by the number of
33 felony counts of which the defendant is convicted.

34 (c) The court shall impose the restitution fine unless it finds
35 compelling and extraordinary reasons for not doing so and states
36 those reasons on the record. A defendant's inability to pay shall
37 not be considered a compelling and extraordinary reason not to
38 impose a restitution fine. Inability to pay may be considered only

1 in increasing the amount of the restitution fine in excess of the
2 minimum fine pursuant to paragraph (1) of subdivision (b). The
3 court may specify that funds confiscated at the time of the
4 defendant's arrest, except for funds confiscated pursuant to Chapter
5 8 (commencing with Section 11469) of Division 10 of the Health
6 and Safety Code, be applied to the restitution fine if the funds are
7 not exempt for spousal or child support or subject to any other
8 legal exemption.

9 (d) In setting the amount of the fine pursuant to subdivision (b)
10 in excess of the minimum fine pursuant to paragraph (1) of
11 subdivision (b), the court shall consider any relevant factors,
12 including, but not limited to, the defendant's inability to pay, the
13 seriousness and gravity of the offense and the circumstances of its
14 commission, any economic gain derived by the defendant as a
15 result of the crime, the extent to which any other person suffered
16 losses as a result of the crime, and the number of victims involved
17 in the crime. Those losses may include pecuniary losses to the
18 victim or his or her dependents as well as intangible losses, such
19 as psychological harm caused by the crime. Consideration of a
20 defendant's inability to pay may include his or her future earning
21 capacity. A defendant shall bear the burden of demonstrating his
22 or her inability to pay. Express findings by the court as to the
23 factors bearing on the amount of the fine shall not be required. A
24 separate hearing for the fine shall not be required.

25 (e) The restitution fine shall not be subject to penalty
26 assessments authorized in Section 1464 or Chapter 12
27 (commencing with Section 76000) of Title 8 of the Government
28 Code, or the state surcharge authorized in Section 1465.7, and
29 shall be deposited in the Restitution Fund in the State Treasury.

30 (f) Except as provided in subdivisions (q) and (r), in every case
31 in which a victim has suffered economic loss as a result of the
32 defendant's conduct, the court shall require that the defendant
33 make restitution to the victim or victims in an amount established
34 by court order, based on the amount of loss claimed by the victim
35 or victims or any other showing to the court. If the amount of loss
36 cannot be ascertained at the time of sentencing, the restitution
37 order shall include a provision that the amount shall be determined
38 at the direction of the court. The court shall order full restitution.
39 The court may specify that funds confiscated at the time of the
40 defendant's arrest, except for funds confiscated pursuant to Chapter

1 8 (commencing with Section 11469) of Division 10 of the Health
2 and Safety Code, be applied to the restitution order if the funds
3 are not exempt for spousal or child support or subject to any other
4 legal exemption.

5 (1) The defendant has the right to a hearing before a judge to
6 dispute the determination of the amount of restitution. The court
7 may modify the amount, on its own motion or on the motion of
8 the district attorney, the victim or victims, or the defendant. If a
9 motion is made for modification of a restitution order, the victim
10 shall be notified of that motion at least 10 days prior to the
11 proceeding held to decide the motion. A victim at a restitution
12 hearing or modification hearing described in this paragraph may
13 testify by live, two-way audio and video transmission, if testimony
14 by live, two-way audio and video transmission is available at the
15 court.

16 (2) Determination of the amount of restitution ordered pursuant
17 to this subdivision shall not be affected by the indemnification or
18 subrogation rights of a third party. Restitution ordered pursuant to
19 this subdivision shall be ordered to be deposited in the Restitution
20 Fund to the extent that the victim, as defined in subdivision (k),
21 has received assistance from the California Victim Compensation
22 and Government Claims Board pursuant to Chapter 5 (commencing
23 with Section 13950) of Part 4 of Division 3 of Title 2 of the
24 Government Code.

25 (3) To the extent possible, the restitution order shall be prepared
26 by the sentencing court, shall identify each victim and each loss
27 to which it pertains, and shall be of a dollar amount that is sufficient
28 to fully reimburse the victim or victims for every determined
29 economic loss incurred as the result of the defendant's criminal
30 conduct, including, but not limited to, all of the following:

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

35 (B) Medical expenses.

36 (C) Mental health counseling expenses.

37 (D) Wages or profits lost due to injury incurred by the victim,
38 and if the victim is a minor, wages or profits lost by the minor's
39 parent, parents, guardian, or guardians, while caring for the injured
40 minor. Lost wages shall include commission income as well as

1 base wages. Commission income shall be established by evidence
2 of commission income during the 12-month period prior to the
3 date of the crime for which restitution is being ordered, unless
4 good cause for a shorter time period is shown.

5 (E) Wages or profits lost by the victim, and if the victim is a
6 minor, wages or profits lost by the minor's parent, parents,
7 guardian, or guardians, due to time spent as a witness or in assisting
8 the police or prosecution. Lost wages shall include commission
9 income as well as base wages. Commission income shall be
10 established by evidence of commission income during the
11 12-month period prior to the date of the crime for which restitution
12 is being ordered, unless good cause for a shorter time period is
13 shown.

14 (F) Noneconomic losses, including, but not limited to,
15 psychological harm, for felony violations of Section ~~288~~. 288,
16 288.5, or 288.7.

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

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

21 (I) Expenses incurred by an adult victim in relocating away
22 from the defendant, including, but not limited to, deposits for
23 utilities and telephone service, deposits for rental housing,
24 temporary lodging and food expenses, clothing, and personal items.
25 Expenses incurred pursuant to this section shall be verified by law
26 enforcement to be necessary for the personal safety of the victim
27 or by a mental health treatment provider to be necessary for the
28 emotional well-being of the victim.

29 (J) Expenses to install or increase residential security incurred
30 related to a violent felony, as defined in subdivision (c) of Section
31 667.5, including, but not limited to, a home security device or
32 system, or replacing or increasing the number of locks.

33 (K) Expenses to retrofit a residence or vehicle, or both, to make
34 the residence accessible to or the vehicle operational by the victim,
35 if the victim is permanently disabled, whether the disability is
36 partial or total, as a direct result of the crime.

37 (L) Expenses for a period of time reasonably necessary to make
38 the victim whole, for the costs to monitor the credit report of, and
39 for the costs to repair the credit of, a victim of identity theft, as
40 defined in Section 530.5.

1 (4) (A) If, as a result of the defendant's conduct, the Restitution
2 Fund has provided assistance to or on behalf of a victim or
3 derivative victim pursuant to Chapter 5 (commencing with Section
4 13950) of Part 4 of Division 3 of Title 2 of the Government Code,
5 the amount of assistance provided shall be presumed to be a direct
6 result of the defendant's criminal conduct and shall be included
7 in the amount of the restitution ordered.

8 (B) The amount of assistance provided by the Restitution Fund
9 shall be established by copies of bills submitted to the California
10 Victim Compensation and Government Claims Board reflecting
11 the amount paid by the board and whether the services for which
12 payment was made were for medical or dental expenses, funeral
13 or burial expenses, mental health counseling, wage or support
14 losses, or rehabilitation. Certified copies of these bills provided
15 by the board and redacted to protect the privacy and safety of the
16 victim or any legal privilege, together with a statement made under
17 penalty of perjury by the custodian of records that those bills were
18 submitted to and were paid by the board, shall be sufficient to meet
19 this requirement.

20 (C) If the defendant offers evidence to rebut the presumption
21 established by this paragraph, the court may release additional
22 information contained in the records of the board to the defendant
23 only after reviewing that information in camera and finding that
24 the information is necessary for the defendant to dispute the amount
25 of the restitution order.

26 (5) Except as provided in paragraph (6), in any case in which
27 an order may be entered pursuant to this subdivision, the defendant
28 shall prepare and file a disclosure identifying all assets, income,
29 and liabilities in which the defendant held or controlled a present
30 or future interest as of the date of the defendant's arrest for the
31 crime for which restitution may be ordered. The financial disclosure
32 statements shall be made available to the victim and the board
33 pursuant to Section 1214. The disclosure shall be signed by the
34 defendant upon a form approved or adopted by the Judicial Council
35 for the purpose of facilitating the disclosure. A defendant who
36 willfully states as true a material matter that he or she knows to
37 be false on the disclosure required by this subdivision is guilty of
38 a misdemeanor, unless this conduct is punishable as perjury or
39 another provision of law provides for a greater penalty.

1 (6) A defendant who fails to file the financial disclosure required
2 in paragraph (5), but who has filed a financial affidavit or financial
3 information pursuant to subdivision (c) of Section 987, shall be
4 deemed to have waived the confidentiality of that affidavit or
5 financial information as to a victim in whose favor the order of
6 restitution is entered pursuant to subdivision (f). The affidavit or
7 information shall serve in lieu of the financial disclosure required
8 in paragraph (5), and paragraphs (7) to (10), inclusive, shall not
9 apply.

10 (7) Except as provided in paragraph (6), the defendant shall file
11 the disclosure with the clerk of the court no later than the date set
12 for the defendant's sentencing, unless otherwise directed by the
13 court. The disclosure may be inspected or copied as provided by
14 subdivision (b), (c), or (d) of Section 1203.05.

15 (8) In its discretion, the court may relieve the defendant of the
16 duty under paragraph (7) of filing with the clerk by requiring that
17 the defendant's disclosure be submitted as an attachment to, and
18 be available to, those authorized to receive the following:

19 (A) A report submitted pursuant to subparagraph (D) of
20 paragraph (2) of subdivision (b) of Section 1203 or subdivision
21 (g) of Section 1203.

22 (B) A stipulation submitted pursuant to paragraph (4) of
23 subdivision (b) of Section 1203.

24 (C) A report by the probation officer, or information submitted
25 by the defendant applying for a conditional sentence pursuant to
26 subdivision (d) of Section 1203.

27 (9) The court may consider a defendant's unreasonable failure
28 to make a complete disclosure pursuant to paragraph (5) as any of
29 the following:

30 (A) A circumstance in aggravation of the crime in imposing a
31 term under subdivision (b) of Section 1170.

32 (B) A factor indicating that the interests of justice would not be
33 served by admitting the defendant to probation under Section 1203.

34 (C) A factor indicating that the interests of justice would not be
35 served by conditionally sentencing the defendant under Section
36 1203.

37 (D) A factor indicating that the interests of justice would not
38 be served by imposing less than the maximum fine and sentence
39 fixed by law for the case.

1 (10) A defendant's failure or refusal to make the required
2 disclosure pursuant to paragraph (5) shall not delay entry of an
3 order of restitution or pronouncement of sentence. In appropriate
4 cases, the court may do any of the following:

5 (A) Require the defendant to be examined by the district attorney
6 pursuant to subdivision (h).

7 (B) If sentencing the defendant under Section 1170, provide
8 that the victim shall receive a copy of the portion of the probation
9 report filed pursuant to Section 1203.10 concerning the defendant's
10 employment, occupation, finances, and liabilities.

11 (C) If sentencing the defendant under Section 1203, set a date
12 and place for submission of the disclosure required by paragraph
13 (5) as a condition of probation or suspended sentence.

14 (11) If a defendant has any remaining unpaid balance on a
15 restitution order or fine 120 days prior to his or her scheduled
16 release from probation or 120 days prior to his or her completion
17 of a conditional sentence, the defendant shall prepare and file a
18 new and updated financial disclosure identifying all assets, income,
19 and liabilities in which the defendant holds or controls or has held
20 or controlled a present or future interest during the defendant's
21 period of probation or conditional sentence. The financial
22 disclosure shall be made available to the victim and the board
23 pursuant to Section 1214. The disclosure shall be signed and
24 prepared by the defendant on the same form as described in
25 paragraph (5). A defendant who willfully states as true a material
26 matter that he or she knows to be false on the disclosure required
27 by this subdivision is guilty of a misdemeanor, unless this conduct
28 is punishable as perjury or another provision of law provides for
29 a greater penalty. The financial disclosure required by this
30 paragraph shall be filed with the clerk of the court no later than
31 90 days prior to the defendant's scheduled release from probation
32 or completion of the defendant's conditional sentence.

33 (12) In cases where an employer is convicted of a crime against
34 an employee, a payment to the employee or the employee's
35 dependent that is made by the employer's workers' compensation
36 insurance carrier shall not be used to offset the amount of the
37 restitution order unless the court finds that the defendant
38 substantially met the obligation to pay premiums for that insurance
39 coverage.

1 (g) A defendant’s inability to pay shall not be a consideration
2 in determining the amount of a restitution order.

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

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

11 (j) The making of a restitution order pursuant to subdivision (f)
12 shall not affect the right of a victim to recovery from the Restitution
13 Fund as otherwise provided by law, except to the extent that
14 restitution is actually collected pursuant to the order. Restitution
15 collected pursuant to this subdivision shall be credited to any other
16 judgments for the same losses obtained against the defendant
17 arising out of the crime for which the defendant was convicted.

18 (k) For purposes of this section, “victim” shall include all of
19 the following:

20 (1) The immediate surviving family of the actual victim.

21 (2) A corporation, business trust, estate, trust, partnership,
22 association, joint venture, government, governmental subdivision,
23 agency, or instrumentality, or any other legal or commercial entity
24 when that entity is a direct victim of a crime.

25 (3) A person who has sustained economic loss as the result of
26 a crime and who satisfies any of the following conditions:

27 (A) At the time of the crime was the parent, grandparent, sibling,
28 spouse, child, or grandchild of the victim.

29 (B) At the time of the crime was living in the household of the
30 victim.

31 (C) At the time of the crime was a person who had previously
32 lived in the household of the victim for a period of not less than
33 two years in a relationship substantially similar to a relationship
34 listed in subparagraph (A).

35 (D) Is another family member of the victim, including, but not
36 limited to, the victim’s fiancé or fiancée, and who witnessed the
37 crime.

38 (E) Is the primary caretaker of a minor victim.

1 (4) A person who is eligible to receive assistance from the
2 Restitution Fund pursuant to Chapter 5 (commencing with Section
3 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

4 (5) A governmental entity that is responsible for repairing,
5 replacing, or restoring public or privately owned property that has
6 been defaced with graffiti or other inscribed material, as defined
7 in subdivision (e) of Section 594, and that has sustained an
8 economic loss as the result of a violation of Section 594, 594.3,
9 594.4, 640.5, 640.6, or 640.7.

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

16 (m) In every case in which the defendant is granted probation,
17 the court shall make the payment of restitution fines and orders
18 imposed pursuant to this section a condition of probation. Any
19 portion of a restitution order that remains unsatisfied after a
20 defendant is no longer on probation shall continue to be enforceable
21 by a victim pursuant to Section 1214 until the obligation is
22 satisfied.

23 (n) If the court finds and states on the record compelling and
24 extraordinary reasons why a restitution fine should not be required,
25 the court shall order, as a condition of probation, that the defendant
26 perform specified community service, unless it finds and states on
27 the record compelling and extraordinary reasons not to require
28 community service in addition to the finding that a restitution fine
29 should not be required. Upon revocation of probation, the court
30 shall impose the restitution fine pursuant to this section.

31 (o) The provisions of Section 13963 of the Government Code
32 shall apply to restitution imposed pursuant to this section.

33 (p) The court clerk shall notify the California Victim
34 Compensation and Government Claims Board within 90 days of
35 an order of restitution being imposed if the defendant is ordered
36 to pay restitution to the board due to the victim receiving
37 compensation from the Restitution Fund. Notification shall be
38 accomplished by mailing a copy of the court order to the board,
39 which may be done periodically by bulk mail or email.

1 (q) Upon conviction for a violation of Section 236.1, the court
2 shall, in addition to any other penalty or restitution, order the
3 defendant to pay restitution to the victim in a case in which a victim
4 has suffered economic loss as a result of the defendant's conduct.
5 The court shall require that the defendant make restitution to the
6 victim or victims in an amount established by court order, based
7 on the amount of loss claimed by the victim or victims or another
8 showing to the court. In determining restitution pursuant to this
9 section, the court shall base its order upon the greater of the
10 following: the gross value of the victim's labor or services based
11 upon the comparable value of similar services in the labor market
12 in which the offense occurred, or the value of the victim's labor
13 as guaranteed under California law, or the actual income derived
14 by the defendant from the victim's labor or services or any other
15 appropriate means to provide reparations to the victim.

16 (r) (1) In addition to any other penalty or fine, the court shall
17 order a person who has been convicted of a violation of Section
18 350, 653h, 653s, 653u, 653w, or 653aa that involves a recording
19 or audiovisual work to make restitution to an owner or lawful
20 producer, or trade association acting on behalf of the owner or
21 lawful producer, of a phonograph record, disc, wire, tape, film, or
22 other device or article from which sounds or visual images are
23 derived that suffered economic loss resulting from the violation.
24 The order of restitution shall be based on the aggregate wholesale
25 value of lawfully manufactured and authorized devices or articles
26 from which sounds or visual images are devised corresponding to
27 the number of nonconforming devices or articles involved in the
28 offense, unless a higher value can be proved in the case of (A) an
29 unreleased audio work, or (B) an audiovisual work that, at the time
30 of unauthorized distribution, has not been made available in copies
31 for sale to the general public in the United States on a digital
32 versatile disc. For purposes of this subdivision, possession of
33 nonconforming devices or articles intended for sale constitutes
34 actual economic loss to an owner or lawful producer in the form
35 of displaced legitimate wholesale purchases. The order of
36 restitution shall also include reasonable costs incurred as a result
37 of an investigation of the violation undertaken by the owner, lawful
38 producer, or trade association acting on behalf of the owner or
39 lawful producer. "Aggregate wholesale value" means the average
40 wholesale value of lawfully manufactured and authorized sound

- 1 or audiovisual recordings. Proof of the specific wholesale value
- 2 of each nonconforming device or article is not required.
- 3 (2) As used in this subdivision, “audiovisual work” and
- 4 “recording” shall have the same meaning as in Section 653w.