



AB-662 Restitution: tracking. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL

NO. 662

Introduced by Assembly Member Choi

February 14, 2017

An act to amend Sections 2085.5 and 2085.6 of the Penal Code, relating to restitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 662, Choi. Restitution: tracking.

Existing law allows an agency designated by the board of supervisors in a county where an inmate is incarcerated to deduct 20% to 50% of the county jail equivalent of wages and trust account deposits of the inmate in order to satisfy his or her restitution order.

Existing law imposes a continuing obligation on a person released from prison or a county jail facility who is subject to postrelease community supervision or mandatory supervision to pay his or her restitution order in full. Existing law allows the county board of supervisors in the county where the prisoner is released to elect to collect the restitution order in a manner to be established by the county board of supervisors.

Existing law establishes a local Community Corrections Partnership (CCP) in each county and requires the CCP to recommend a local plan to the county board of supervisors for the implementation of the 2011 public safety realignment. Existing law allows the plan to include recommendations to maximize the effective investment of criminal justice resources in evidence-based correction sanctions and programming, including specifically, among other things, victim restitution programs.

This bill would require a county agency or department administering the collection of restitution in the above circumstances to track restitution payments and send monthly notices to the individual responsible for paying restitution and quarterly statements to the victim, if victim contact information is available, detailing the payment status of the restitution order. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2085.5 of the Penal Code is amended to read:

2085.5. (a) If a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the secretary 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 California Victim Compensation Board for deposit in the Restitution Fund. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) (1) If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the agency designated by the board of supervisors in a county where the prisoner is incarcerated is authorized to 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 county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation Board for deposit in the Restitution Fund. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(2) If the board of supervisors designates the county sheriff as the collecting agency, the board of supervisors shall first obtain the concurrence of the county sheriff.

(c) If a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4 of this code, the secretary 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. The secretary shall transfer that amount to the California Victim Compensation Board 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. 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.

(d) (1) If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to 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 county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law. The agency shall transfer that amount to the California Victim Compensation Board 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, or may pay the victim directly. The sentencing court shall be provided a record of the payments made to the victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(2) The collecting agency shall track restitution payments. Tracking shall include sending monthly notices to the individual responsible for paying restitution and quarterly statements to the victim, if victim contact information is available, detailing the payment status of the restitution order.

(e) Except as provided in Section 2085.8, the secretary shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee to cover the actual administrative cost of collection, not to exceed 10 percent of the amount collected pursuant to subdivision (a) or (c). The secretary shall deposit the administrative fee moneys in

a special deposit account for reimbursing administrative and support costs of the restitution program of the department. The secretary, 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.

(f) Except as provided in Section 2085.8, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in a county where the prisoner is incarcerated may deduct and retain from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee to cover the actual administrative cost of collection, not to exceed 10 percent of the total amount collected, pursuant to subdivision (b) or (d). The agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the agency. The agency may retain any excess funds in the special deposit account for future reimbursement of the agency'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) 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 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, either the secretary or, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated may collect from the parolee any moneys owing on the restitution fine amount, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation Board for deposit in the Restitution Fund. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(h) In any case in which a parolee owes a direct order of restitution, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or paragraph (3) of subdivision (a) of Section 1202.4, either the secretary or, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated or a local collection program may collect from the parolee any moneys owing, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation Board 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, or the agency may pay the victim directly. The sentencing court shall be provided a record of the payments made by the offender pursuant to this subdivision.

(i) Except as provided in Section 2085.8, either the secretary or, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated may deduct and retain from moneys collected from parolees an administrative fee to cover the actual administrative cost of collection, not to exceed 10 percent of the total amount collected pursuant to subdivision (g) or (h), unless prohibited by federal law. The secretary or the agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the department or agency's restitution program, as applicable. The secretary, at his or her discretion, or the agency may retain any excess funds in the special deposit account for future reimbursement of the department's or agency'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.

(j) If a prisoner has both a restitution fine and a restitution order from the sentencing court, the department shall collect the restitution order first pursuant to subdivision (c).

(k) If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and that prisoner has both a restitution fine and a restitution order from the sentencing court, if the agency designated by the board of supervisors in the county where the prisoner is incarcerated collects the fine and order, the agency shall collect the restitution order first pursuant to subdivision (d).

(l) If a parolee has both a restitution fine and a restitution order from the sentencing court, either the department or, if the prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated may collect the restitution order first, pursuant to subdivision (h).

(m) 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.

(n) (1) Amounts transferred to the California Victim Compensation Board for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the California Victim Compensation Board. If the restitution payment to a victim is less than twenty-five dollars (\$25), then payment need not be forwarded to that victim until the payment reaches twenty-five dollars (\$25) or when the victim requests payment of the lesser amount.

(2) If a victim cannot be located, the restitution revenues received by the California Victim Compensation Board on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner. Amounts remaining in trust at the end of the specified period of time shall revert to the Restitution Fund.

(3) (A) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the department, which shall verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the department, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (c) or (h).

(B) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the agency designated by the board of supervisors in the county where the prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 is incarcerated, which may verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the agency, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (d) or (h).

SEC. 2. Section 2085.6 of the Penal Code is amended to read:

2085.6. (a) When a prisoner who owes a restitution fine, or any portion thereof, is subsequently released from the custody of the Department of Corrections and Rehabilitation or a county jail facility, and is subject to postrelease community supervision under Section 3451 or mandatory supervision under subdivision (h) of Section 1170, he or she shall have a continuing obligation to pay the restitution fine in full. The restitution fine obligation and any portion left unsatisfied upon placement in postrelease community supervision or mandatory supervision is enforceable and may be collected, in a manner to be established by the county board of supervisors, by the department or county agency designated by the board of supervisors in the county where the prisoner is released. If a county elects to collect restitution fines, the department or county agency designated by the county board of supervisors shall transfer the amount collected to the California Victim Compensation Board for deposit in the Restitution Fund in the State Treasury.

(b) When a prisoner who owes payment for a restitution order, or any portion thereof, is released from the custody of the Department of Corrections and Rehabilitation or a county jail facility, and is subject to postrelease community supervision under Section 3451 or mandatory supervision under subdivision (h) of Section 1170, he or she shall have a continuing obligation to pay the restitution order in full. The restitution order obligation and any portion left unsatisfied upon placement in postrelease community supervision or mandatory supervision is enforceable and may be collected, in a manner to be established by the county board of supervisors, by the agency designated by the county board of supervisors in the county where the prisoner is released. If the county elects to collect the restitution order, the agency designated by the county board of supervisors for collection shall transfer the collected amount to the California Victim Compensation for deposit in the Restitution Fund in the State Treasury or may pay the victim directly. The sentencing court shall be provided a record of payments made to the victim and of the payments deposited into the Restitution Fund.

(c) Any portion of a restitution order or restitution fine that remains unsatisfied after an individual is released from postrelease community supervision or mandatory supervision shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(d) If collection of restitution is being administered by a county agency or department, the county agency or department shall track restitution payments. Tracking shall include sending monthly notices to the individual responsible for paying restitution and quarterly statements to the victim, if victim contact information is available, detailing the payment status of the restitution order.

(e) At its discretion, a county board of supervisors may impose a fee upon the individual subject to postrelease community supervision or mandatory supervision to cover the actual administrative cost of collecting the restitution fine and the restitution order, not to exceed 10 percent of the amount collected, the proceeds of which shall be deposited into the general fund of the county.

(f) If a county elects to collect both a restitution fine and a restitution order, the amount owed on the restitution order shall be collected before the restitution fine.

(g) If a county elects to collect restitution fines and restitution orders pursuant to this section, the county shall coordinate efforts with the Franchise Tax Board pursuant to Section 19280 of the Revenue and Taxation Code.

(h) Pursuant to Section 1214, the county agency selected by a county board of supervisors to collect restitution fines and restitution orders may collect restitution fines and restitution orders after an individual is no longer on postrelease community supervision or mandatory supervision or after a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170.

(i) For purposes of this section, the following definitions shall apply:

(1) "Restitution fine" means a fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4.

(2) "Restitution order" means an order for restitution to the victim of a crime imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4.

SEC. 3. To the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.