



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-2432 California Victims of Crime Act. (2023-2024)

SHARE THIS:  

Date Published: 09/30/2024 02:00 PM

Assembly Bill No. 2432

CHAPTER 651

An act to amend Section 1202.4 of, to add Section 1398 to, and to add Article 5 (commencing with Section 13839) to Chapter 4 of Title 6 of Part 4 of, the Penal Code, relating to crime, and making an appropriation therefor.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2432, Gabriel. California Victims of Crime Act.

(1) Existing federal law, the Victims of Crime Act of 1984, creates the Crime Victims Fund and authorizes federal financial assistance to states for the purpose of supporting eligible crime victim assistance programs. Existing law creates various programs under the Office of Emergency Services related to crime prevention and education, including, among other things, programs concerning family violence prevention and domestic violence prevention.

This bill, the California Victims of Crime Act, would establish the California Crime Victims Fund in the State Treasury and would require that moneys deposited in the fund be continuously appropriated to the Office of Emergency Services to support crime victims services. The bill would require the Office of Emergency Services to seek advisement from the Victims of Crime Act Steering Committee on priorities for utilizing the funds and would require the Treasurer to provide an annual report to the Legislature on the amounts deposited into the fund. By continuously appropriating moneys to the Office of Emergency Services for the support of crime victim services, the bill would make an appropriation.

(2) Existing law establishes the aggravated white-collar crime enhancement which imposes enhanced penalties against a person who commits 2 or more related felonies, a material element of which is fraud or embezzlement, that involve a pattern of related felony conduct, and the pattern of related felony conduct involves the taking or loss of more than \$100,000, as specified.

This bill would authorize a court to impose an additional fine, known as the corporate white collar criminal enhancement, against a corporation that is convicted of a misdemeanor or felony. The bill would authorize the court to determine the amount of the fine, but would set specified limits. The bill would require the court to consider certain factors when determining the amount of the fine, including, among other things, the nature and seriousness of the offense and the corporation's assets, liabilities, and net worth, as specified. The bill would require that any moneys collected under this provision be deposited into the California Crime Victims Fund.

(3) The California Constitution entitles the victim of a crime to restitution. Existing law requires the court in each criminal case to order a convicted defendant to pay full restitution to the victim and a separate restitution fine, as specified.

This bill would, if a corporation is convicted of a misdemeanor or felony offense, require the court to impose a separate and additional restitution fine, as specified. The bill would authorize the court to determine the amount of the restitution fine, but would

impose specified maximums. The bill would require any moneys collected under this provision to be distributed to the California Crime Victims Fund and the prosecuting agency that brought the criminal prosecution, as specified.

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: no

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

SECTION 1. This act shall be known, and may be cited, as the California Victims of Crime Act.

SEC. 2. 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 an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime.

(2) Upon a person being convicted of a 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.

(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. If the person is convicted of a felony, the fine shall not be less than three hundred dollars (\$300) and not more than ten thousand dollars (\$10,000). If the person is convicted of a misdemeanor, the fine shall not be less than one hundred fifty dollars (\$150) and not more than one thousand dollars (\$1,000).

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of the minimum fine pursuant to paragraph (1) 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 minimum fine pursuant to paragraph (1) of subdivision (b). The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Chapter 8 (commencing with Section 11469) of Division 10 of the Health and Safety Code, be applied to the restitution fine if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the minimum fine pursuant to paragraph (1) of subdivision (b), 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 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 the victim's dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include the defendant's future earning capacity. A defendant shall bear the burden of demonstrating the defendant's 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 authorized in Section 1464 or Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, or the state surcharge authorized in Section 1465.7, and shall be deposited in the Restitution Fund in the State Treasury.

(f) Except as provided in subdivisions (p) and (q), 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. The court may specify that funds confiscated at the

time of the defendant's arrest, except for funds confiscated pursuant to Chapter 8 (commencing with Section 11469) of Division 10 of the Health and Safety Code, be applied to the restitution order if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(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, the victim or victims, 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. A victim at a restitution hearing or modification hearing described in this paragraph may testify by live, two-way audio and video transmission, if testimony by live, two-way audio and video transmission is available at the court.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of a third party. Restitution ordered pursuant to this subdivision shall be ordered to be deposited in the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance from the California Victim Compensation Board pursuant to Chapter 5 (commencing with Section 13950) 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) Mental health counseling expenses.

(D) 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. Lost wages shall include commission income as well as base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(E) 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. Lost wages shall include commission income as well as base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

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

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

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

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

(J) Expenses to install or increase residential security incurred related to a violation of Section 273.5, or a violent felony as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The district 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.

(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 to 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 all of the following:

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

(2) A 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.

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

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

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

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

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

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

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

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

- (l) 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.
- (m) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine 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 a restitution fine should not be required. Upon revocation of probation, the court shall impose the restitution fine pursuant to this section.
- (n) The provisions of Section 13963 of the Government Code shall apply to restitution imposed pursuant to this section.
- (o) The court clerk shall notify the California Victim Compensation and Government Claims Board within 90 days of an order of restitution being imposed if the defendant is ordered to pay restitution to the board due to the victim receiving compensation from the Restitution Fund. Notification shall be accomplished by mailing a copy of the court order to the board, which may be done periodically by bulk mail or email.
- (p) Upon conviction for a violation of Section 236.1, the court shall, in addition to any other penalty or restitution, order the defendant to pay restitution to the victim in a 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 another showing to the court. In determining restitution pursuant to this section, the court shall base its order upon the greater of the following: the gross value of the victim's labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim's labor as guaranteed under California law, or the actual income derived by the defendant from the victim's labor or services or any other appropriate means to provide reparations to the victim.
- (q) (1) In addition to any other penalty or fine, the court shall order a person who has been convicted of a violation of Section 350, 653h, 653s, 653u, 653w, or 653aa that involves a recording or audiovisual work to make restitution to an owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of a phonograph record, disc, wire, tape, film, or other device or article from which sounds or visual images are derived that suffered economic loss resulting from the violation. The order of restitution shall be based on the aggregate wholesale value of lawfully manufactured and authorized devices or articles from which sounds or visual images are devised corresponding to the number of nonconforming devices or articles involved in the offense, unless a higher value can be proved in the case of (A) an unreleased audio work, or (B) an audiovisual work that, at the time of unauthorized distribution, has not been made available in copies for sale to the general public in the United States on a digital versatile disc. For purposes of this subdivision, possession of nonconforming devices or articles intended for sale constitutes actual economic loss to an owner or lawful producer in the form of displaced legitimate wholesale purchases. The order of restitution shall also include reasonable costs incurred as a result of an investigation of the violation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner or lawful producer. "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized sound or audiovisual recordings. Proof of the specific wholesale value of each nonconforming device or article is not required.
- (2) As used in this subdivision, "audiovisual work" and "recording" shall have the same meaning as in Section 653w.
- (r) (1) If a corporation, as defined in Section 1398, is convicted of a misdemeanor or felony offense, the court shall impose a separate and additional restitution fine, unless it finds a compelling and extraordinary reason for not doing so and states those reasons on record.
- (2) The court may determine the amount of the restitution fine. The fine shall be commensurate with the seriousness of the offense. If the corporation is convicted of a felony, the fine shall not be more than one hundred thousand dollars (\$100,000). If the corporation is convicted of a misdemeanor, the fine shall not be more than one thousand dollars (\$1,000).
- (3) Any moneys collected pursuant to this subdivision shall be distributed as follows:
- (A) Seventy-five percent shall be deposited into the California Crime Victims Fund established under Section 13839.
- (B) Twenty-five percent shall be distributed as follows:
- (i) If the action was brought by the Department of Justice, the moneys shall be deposited in a special account in the General Fund, and, upon appropriation, may be expended by the Department of Justice to offset costs incurred for investigation and prosecution.

(ii) If the action was brought by a district attorney or county counsel, the moneys shall be paid to the treasurer of the county in which the judgment is entered.

(iii) If the action was brought by a city attorney or city prosecutor, one-half of the moneys shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city, except that if the action was brought by a city attorney of a city and county the entire amount of the moneys shall be paid to the treasurer of the city and county in which the judgment is entered.

SEC. 3. Section 1398 is added to the Penal Code, to read:

1398. (a) In addition to any other penalty or fine provided by law, if a corporation is convicted of a misdemeanor or felony offense, the court may order the corporation to pay an additional fine, known as the corporate white collar criminal enhancement, pursuant to this section.

(b) The court may determine the amount of the fine. The fine shall not exceed the greater of either of the following:

(1) Two times the value of the taking or loss, whichever is greater, if the offense resulted in the taking of, or loss to, another person's or entity's money, labor, or real or personal property.

(2) Twenty-five million dollars (\$25,000,000).

(c) In determining the amount of the fine under this section, the court shall consider all of the following:

(1) The nature and seriousness of the offense.

(2) The number of offenses committed.

(3) The persistence of the criminal conduct.

(4) The length of time over which the criminal conduct occurred.

(5) The willfulness of the corporation's criminal conduct.

(6) The corporation's assets, liabilities, and net worth, if available to the court.

(d) If, after a hearing in open court, the judge exercises their discretion in assessing the fine, they shall state the reason on the record.

(e) Any moneys collected pursuant to this section shall be deposited into the California Crime Victims Fund established under Section 13839.

(f) For purposes of this section, a "corporation" means a firm, association, organization, partnership, business trust, company, corporation, limited liability company, public entity, or any other legal entity.

SEC. 4. Article 5 (commencing with Section 13839) is added to Chapter 4 of Title 6 of Part 4 of the Penal Code, to read:

Article 5. California Crime Victims Fund

13839. (a) The California Crime Victims Fund is hereby established within the State Treasury.

(b) Notwithstanding Section 13340 of the Government Code, moneys deposited in the California Crime Victims Fund are continuously appropriated, without regard to fiscal years, to the Office of Emergency Services to support crime victim services that are eligible for federal Victims of Crime Act Victim Assistance Formula Grant funding. The office shall expend moneys for purposes of this section within three years after receipt of the moneys.

(c) The moneys in the California Crime Victims Fund are intended to supplement and not replace federal Victims of Crime Act funds.

(d) The Office of Emergency Services shall seek advisement from the Victims of Crime Act Steering Committee on the priorities for utilizing the moneys made available pursuant to this section, in addition to federal Victims of Crime Act funds.

(e) Not more than 5 percent of the moneys made available pursuant to this section shall be utilized for administrative purposes.

(f) The Treasurer shall provide an annual report to the Legislature on the amounts deposited into the California Crime Victims Fund. A report submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.