
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1054 **Hearing Date:** April 5, 2016
Author: Pavley
Version: February 16, 2016
Urgency: No **Fiscal:** Yes
Consultant: JM

Subject: *Restitution Orders: Collection*

HISTORY

Source: Los Angeles County District Attorney

Prior Legislation: SB 1210 (Lieu) – Chapter 762, Stats. of 2012

Support: California District Attorneys Association; California Public Defenders Association; California State Sheriffs' Association

Opposition: None known

PURPOSE

The purpose of this bill is to 1) clarify that county collection entities may deduct an administrative fee for collecting payments for restitution orders and restitution fines from a jail inmate prior to the inmate's release; 2) provide that if a county collection agency objects to the referral, collection of direct restitution from offenders shall not be referred to the Franchise Tax Board, subject to the preference of the victim; and 3) consistently provide that an administrative fee retained by a county entity shall cover the actual costs of collection, to a maximum of 10% of the total.

Existing provisions in the California Constitution state that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the perpetrators of these crimes. Restitution shall be ordered in every case unless compelling and extraordinary reasons exist and the Legislature shall enact statutes to implement the constitutional restitution provisions. (Cal. Const. Art. 1 § 28 (b).)

Existing law states legislative intent that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime. (Pen. Code § 1202.4, subd. (a)(1).)

Existing law provides that where a defendant is committed to prison and subject to parole, the court shall impose a separate parole restitution fine in the same amount as the restitution fine itself. This additional parole revocation restitution fine is not subject to penalty assessments, as specified, or a specified state surcharge, and shall be suspended unless the person's parole is

revoked. Parole revocation restitution fine moneys are deposited in the Restitution Fund in the State Treasury. (Pen. Code § 1202.45, subd. (a) and (c).)

Existing law provides that in every case where a person is convicted of a crime and subject to either postrelease community supervision (Pen. Code § 3451 - PRCS), or mandatory supervision as a felon sentenced to a jail term pursuant to Penal Code section 1170(h)(5), the court shall impose an additional supervision revocation restitution fine and stay that fine until and unless the person's supervision is revoked. Post Release Community Supervision (PRCS) and mandatory supervision revocation restitution fines are deposited in the Restitution Fund in the State Treasury. (Pen. Code § 1202.45, subd. (b)-(c).)

Existing law provides that where a person on PRCS or mandatory supervision is incarcerated pursuant to a supervision revocation, the person shall pay the fine previously ordered and stayed by the court that shall be collected by the agency designated by the board of supervisors of the county in which the prisoner is incarcerated. (Pen. Code § 1202.45, subd. (b).)

Existing law provides that any "portion of a [direct] restitution order that remains unsatisfied after a defendant is no longer on probation, parole, mandatory supervision or PRCS is enforceable by the victim" as though the order was a civil judgment. (Penal Code § 1214, subd. (b).)

Existing law provides for the Secretary of the California Department of Corrections and Rehabilitation (CDCR) to make deductions from an inmate's wages and trust account deposits and transferred for deposit in the Restitution Fund where a prisoner owes a restitution fine, as specified. (Penal Code § 2085.5.)

Existing law provides that the agency designated by the board of supervisors in the county of incarceration may make deductions from the wages and jail trust account of an inmates serving a sentenced felony jail term pursuant to Penal Code section 1170 (h).

Existing law provides that that the agency designated by the board of supervisors in the county of incarceration may collect outstanding restitution orders and restitution fines from persons on PRCS or mandatory supervision. (Pen. Code § 2085.6.)

Existing law generally provides that the entity collecting criminal fines, restitution fines and restitution orders may retain a 10 % administrative fee or an administrative fee that covers the cost of collection, up to a maximum of 10%, as specified. (Pen. Code § 2085.5-2085.6.)

Existing law provides that court-ordered restitution fines for criminal offenses and juvenile adjudications may be referred to the Franchise Tax Board (FTB) for collection, as specified. (Rev, and Tax. Code § 19280.)

This bill authorizes the agency designated by the county to collect restitution fines and orders from sentenced felony jail inmates to retain an administrative fee to cover the actual costs of collection, up to 10%.

This bill clarifies that the agency designated by the county to collect restitution fines and orders from sentenced felony jail inmates may retain the administrative fee at the time the restitution order or fine is collected.

This bill provides that if a county agency has been designated to collect restitution orders from sentenced felony jail inmates, persons on PRCS or mandatory supervision and the county agency has a collection system and objects to referral of the order to FTB for collection, CDCR or the county shall not refer the order to FTB. The victim entitled to the restitution may designate the agency that will collect the restitution.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and

- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

SB 1054 addresses legal ambiguities in the collection of victim restitution fines from inmates sentenced to county jail pursuant to Penal Code Section 1170(h) and inmates released from state prison to Post-Release Community Supervision (PRCS). It is unclear when a county sheriff is authorized to collect a state authorized administrative fee. Consequently, sheriffs may be unable to collect administrative fees to pay for restitution collection from sentenced 1170 (h) inmates. In addition, because of an anomaly in current law, an individual on PRCS can be referred to the state Franchise Tax Board for collection of restitution, despite being on local supervision. This dual state-local authority could lead to unfair restitution collection from an individual released to PRCS. SB 1054 would specify that counties that supervise criminal populations can collect the restitution and related administrative costs and thus help victims received restitution. The bill provides fairness in collecting restitution from criminal offenders released to PRCS, who at the present time may be ordered to pay the same restitution fines to the state and the county.

In 2012, the Legislature authorized the collection of restitution from county jail inmate accounts from sentenced Penal Code section 1170(h) inmate. Since that time, there has been confusion regarding the collection of administrative fees by county sheriffs pursuant to this statute. Because of this confusion, some counties (Monterey, San Diego and Sacramento) believe that the collection of the fee is not authorized until the inmate is released. However, inmates may empty out their account to prevent the county sheriff from collecting an administrative fee upon their release. The California Department of Corrections and Rehabilitation has always interpreted the language to allow for immediate collection of the administrative fee, but not all counties agree. This bill is consistent with recent legislation and clarifies the issue for counties.

CDCR may refer a former prison inmate to the FTB for collection of restitution. Currently an individual on Post Release Community Supervision (PRCS) can be referred to the FTB, despite the fact that their supervision is local. AB 109 transferred supervision of inmates to local control. It is inconsistent with AB 109 for the State to continue to collect restitution from an individual who is being supervised at the county level. Current law could lead to unfair double collection of restitution, hindering the successful reentry of an individual back into the community.

SB 1054 will resolve these issues to clearly express that a county sheriff can collect the 10% administrative fee *at the time restitution is collected* on behalf of the victim, and by amending the Revenue and Tax Code to allow a county that is collecting restitution from an individual on PRCS to have primary authority to do so. After an individual is released from PRCS the county would then transfer responsibility to the FTB to collect remaining restitution.

2. Administrative Fee Provisions and Rules for referring a Collection order to the Franchise Tax Board for Collection where a County Agency has a Collection System

This bill does not set new policy. It is largely a technical bill to conform restitution collections procedures to the Public Safety Realignment of 2011 and make collection administrative fee procedures consistent. That realignment provided for some felons to be supervised locally on Post Release Community Supervision immediately following release from prison. In sentencing an inmate to a realignment felony jail term, the court may stay a portion of the sentence and place the person on “mandatory supervision.”

Agencies charged with collecting restitution orders and restitution fines from sentenced felony jail inmates generally may retain an administrative fee of 10% of the amount collected. Agencies charged with collecting restitution orders and restitution fines from persons on PRCS or mandatory supervision may retain an administrative fee that covers the cost of collection up to 10%. This bill provides that the amount collected as an administrative fee shall cover the actual cost of collection and not exceed 10%. Further, the bill addresses an apparent inconsistency in the law and clarifies that the administrative fee may be collected at the time the order or fine is collected, not only upon release of the inmate from jail.

This bill also provides that if a county has designated an agency for the collection of restitution orders and the agency has a collection system, the following shall apply: neither CDCR nor a county shall not refer collection of a restitution order to FTB if the designated agency objects to referral of the order to FTB. However, the victim may choose which agency shall collect the order.

3. Sponsor’s Proposed Technical Amendments

The sponsor – the Los Angeles County District Attorney – has concluded that some of the confusion in the statutes concerning collection of direct restitution orders and restitution fines arises from the way the statutes are organized. The provisions concerning collection from inmates in custody and convicted defendants who have been released, with or without supervision, are in the same code section. The sponsor has proposed that the existing section be divided into two sections, such that the existing collection provisions and the substantive changes proposed by this bill will clearer and more efficiently implemented.