
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2432 **Hearing Date:** June 25, 2024
Author: Gabriel
Version: June 13, 2024
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Corporations: criminal enhancements*

HISTORY

Source: Author

Prior Legislation: None

Support: Asian Women's Shelter; Beloved Survivors Trauma Recovery Center; Ben Tzedek Legal Services; Black Women for Wellness; Black Women Revolt Against Domestic Violence; California Coalition for Youth; California Crime Victims Assistance Association; California District Attorneys Association; California Elder Justice Coalition; California Environmental Voters; California Partnership to End Domestic Violence; California State Association of Counties; California Women's Law Center; Californians for Safety and Justice; Casa of Stanislaus County; Catalyst; Center for Community Solutions; Center for Family Strengthening; Central Valley Justice Coalition; Child & Family Center; Children's Advocacy Centers of California; Children's Law; Coalition for Family Harmony; Coalition to Abolish Slavery and Trafficking; Community Action Partnership of Madera County, INC.; Community Beyond Violence; Community Legal Aid SoCal; Community Resource Center; Community Solutions; Community Violence Solutions/Children's Interview Center; Contra Costa Senior Legal Services; CORA - Community Overcoming Relationship Abuse; Culturally Responsive Domestic; Violence Network (CRDVN); Democrats for Israel – CA; Democrats for Israel Los Angeles; Domestic Violence Solutions; Domestic Violence Solutions for Santa Barbara; Doves of Big Bear Valley, INC.; East Los Angeles Women's Center; Ella Baker Center for Human Rights; Empower Tehama; ETTA; Family Assistance Program; Hadassah; Healthy Alternatives to Violent Environments; Hias; Holocaust Museum LA; House of Ruth; Humboldt Domestic Violence Services; Initiate Justice; Initiate Justice Action; Interface Children & Family Services; JCRC Bay Area; Jewish Center for Justice; Jewish Community Federation and Endowment Fund; Jewish Democratic Club of Marin; Jewish Democratic Club of Solano County; Jewish Democratic Coalition of The Bay Area; Jewish Family and Children's Service of Long Beach and Orange County; Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties; Jewish Family Service of Los Angeles; Jewish Family Service of San Diego; Jewish Family Services of Silicon Valley; Jewish Federation of Greater Los Angeles, the; Jewish Federation of The Greater San Gabriel and Pomona Valleys; Jewish Free Loan Association; Jewish Long Beach; Jewish Public Affairs Committee; Jewish Silicon Valley; Journey Out; Justice At Last;

Korean American Family Services, INC (KFAM); LACBA Counsel for Justice Domestic Violence Legal Services Project; Lake Family Resource Center; Lassen Family Services, INC.; Laura's House; Legal Aid Association of California; Legal Aid Foundation of Santa Barbara County; Legal Aid of Marin; Live Violence Free; Los Angeles Center for Law and Justice; Los Angeles LGBT Center; Lumina Alliance; Modoc County Victim Services; Modoc Crisis Center; Monarch Services; New Directions Counseling Center; News - Domestic Violence and Sexual Abuse Services; North American Climate, Conservation and Environment (NACCE); North Coast Rape Crisis Team; North County Rape Crisis and Child Protection Center Operation Care; Partners Against Violence, INC.; Peace Over Violence; Progressive Zionists of California; Rape Trauma Services; Riverside Area Rape Crisis Center; Rural Human Services; S.A.V.E Safe Alternatives for Violent Environments; Sabila Psychotherapy; Sacramento LGBT Community Center; Safe Family Justice Centers; San Mateo County Child Advocacy Center; Santa Clara County Wage Theft Coalition Senior Advocacy Network; Sierra Community House Crisis Intervention Services; Sisters of St. Joseph of Orange Healthcare Foundation; Smart Justice California, a Project of Tides Advocacy; South Bay Coalition to End Human Trafficking; Stand Up Placer, INC; Sunita Jain Anti-trafficking Initiative; Tri Valley Haven; Valorus; Ventura County District Attorney's Office; Verity; Victims Empowerment Support Team; Walnut Avenue Family & Women's Center; Waymakers; Women's Center-high Desert, INC.; Women's & Children's Crisis Shelter INC.; YWCA Golden Gate Silicon Valley

Opposition: None known

Assembly Floor Vote: 71 - 0

PURPOSE

The purpose of this bill is to establish a criminal restitution fine and separate corporate criminal enhancement for corporations, as defined, convicted of a misdemeanor or felony

Existing law provides that the word “person” includes a corporation as well as a natural person. (Penal Code §7.)

Existing law provides that when a fine is imposed upon a corporation on conviction, the fine may be collected by virtue of the order imposing it in a manner provided for enforcement of money judgments generally. (Penal Code § 1397.)

Existing law provides that victims have a right to restitution from the convicted wrongdoer in every case and that all payments collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to victim. (Cal. Const. art. I, § 28 (b).)

Existing law requires the court, in every case where a person is convicted of a crime, to 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. (Penal Code § 1202.4 (b).)

Existing law provides that the restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense. (Penal Code § 1202.4 (b)(1).)

Existing law provides that a person convicted of a felony shall be fined between \$300 and \$10,000, and a person convicted of a misdemeanor shall be fined between \$150 and \$1,000. (Penal Code § 1202.4 (b)(1).)

Existing law authorizes the court, in setting a felony restitution fine, to determine the amount of the fine as the product of the minimum fine, as specified, 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. (Penal Code § 1202.4 (b)(2).)

Existing law requires the court to impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record, and prohibits a defendant's inability to pay from being considered a compelling and extraordinary reason not to impose a restitution fine. (Penal Code § 1202.4 (c).)

Existing law provides that inability to pay may be considered only in increasing the amount of the restitution fine in excess of the minimum fine. (Penal Code § 1202.4 (c).)

Existing law requires the court to consider all relevant factors in setting the fine, including, but not limited to:

- a) The defendant's inability to pay;
- b) The seriousness and gravity of the offense and the circumstances of its commission;
- c) Any economic gain derived by the defendant as a result of the crime;
- d) The extent to which any other person suffered losses as a result of the crime; and,
- e) The number of victims involved in the crime. (Penal Code, § 1202.4 (d).)

Existing law requires the court, in every case in which a victim has suffered economic loss as a result of the defendant's conduct, to require that the defendant make full 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. (Penal Code § 1202.4 (f).)

Existing law requires the sentencing court to prepare the restitution order and to identify each victim and each loss to which the order pertains, and requires the 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, as specified. (Penal Code § 1202.4 (f).)

Existing law provides that a defendant's inability to pay shall not be a consideration in determining the amount of a restitution order. (Penal Code § 1202.4. (f)(3).)

Existing law authorizes the district attorney to request an order of examination, as specified, to determine the defendant's financial assets for purposes of collecting on the restitution order. (Penal Code § 1202.4 (h).)

Existing law provides that a restitution order is enforceable as if the order were a civil judgment. (Penal Code § 1202.4. (i).)

Existing law authorizes the court to order probation instead of the restitution fine if the court finds and states on the record compelling and extraordinary reasons why a restitution fine should not be required, but that the restitution fine must be imposed if probation is revoked. (Penal Code § 1202.4 (m).)

Existing law provides that the restitution fine shall be payable to the clerk of the court, the probation officer, or any other person responsible for the collection of criminal fines. (Penal Code 1202.43 (a).)

Existing law provides that, if the defendant is unable or otherwise fails to pay the restitution fine in a felony case and there is an amount unpaid of \$1,000 or more within 60 days after the imposition of sentence, or in a case in which probation is granted, within the period of probation, the clerk of the court, probation officer, or other person to whom the fine is to be paid shall forward to the Controller the abstract of judgment along with any information which may be relevant to the present and future location of the defendant and their assets, if any, and any verifiable amount which the defendant may have paid to the victim as a result of the crime. (Penal Code 1202.43 (a).)

Existing law provides that a restitution fine shall be deemed a debt of the defendant owing to the state, as specified, excepting any amounts the defendant has paid to the victim as a result of the crime. (Penal Code 1202.43 (b).)

Existing law provides that a corporation, limited liability company, or person who is a manager with respect to a product, facility, equipment, process, place of employment, or business practice, is guilty of a public offense does both of the following:

- a) Has actual knowledge of a serious concealed danger that is subject to the regulatory authority of an appropriate agency and is associated with that product or a component of that product or business practice;
- b) Knowingly fails during the period ending 15 days after the actual knowledge is acquired, or if there is imminent risk of great bodily harm or death, immediately, to inform the Division of Occupational Safety and Health in the Department of Industrial Relations in writing, unless the corporation, limited liability company, or manager has actual knowledge that the division has been so informed; and to warn its affected employees in writing, unless the corporation, limited liability company, or manager has actual knowledge that the employees have been so warned. (Penal Code § 387. (a).)

This bill establishes the California Crime Victims Fund within the State Treasury.

This bill provides that if a corporation is convicted of a misdemeanor or felony, the court shall impose a separate and additional restitution fine unless it finds a compelling and extraordinary reason for not doing so.

This bill provides that the court may determine the amount of the restitution fine which shall be commensurate with the seriousness of the offense but it shall not be more than \$100,000 if convicted of a felony nor more than \$1,000 if convicted of a misdemeanor.

This bill provides that moneys collected pursuant to this restitution fine shall be distributed as follows:

- a) 75% shall be deposited into the California Crime Victims Fund
- b) 25% shall be distributed as follows:
 - i. If the action was brought by DOJ the moneys deposited in the General Fund.
 - 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 judgement 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 city and county in which the judgement is entered.

This bill provides that in addition to any other penalty 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 which shall not exceed the greater of either of the following:

- a) Two times the value of the taking or loss, whichever is greater, if the offense resulted in the taking of another person's or entity's money, labor, or real or personal property.
- b) \$25,000,000.

This bill lists factors that should be considered in determining the amount of the fine under the section.

This bill establishes the California Crime Victims Fund within the State Treasury.

This bill provides that moneys deposited in the California Crime Victims Fund are continuously appropriated, without regard to fiscal years, to the Office of Emergency Services (OES) to support crime victim services that have traditionally been funded with federal Victims of Crime Act Victim Assistance Formula Grant Funding.

This bill provides that OES shall seek advisement from the Victims of Crime Act Steering Committee on the priorities for utilizing the moneys made available, in addition to federal Victims of Crime Act funds.

This bill provides that not more than 5% of the money shall be utilized for administrative purposes.

This bill provides that the Treasurer shall provide an annual report to the Legislature on the amounts deposited into the California Crime Victims Fund.

This bill defines corporation as a firm, association, organization, partnership, business trust, company, corporation, limited liability company, public entity, or other legal entity.

COMMENTS

1. Need for This Bill

According to the author

AB 2432 will provide a critical revenue source for crime victim services programs across the state. These programs serve vulnerable populations, including domestic violence victims, survivors of human trafficking, and vulnerable LGBTQ+ youth. By modeling after the federal Victims of Crime program, we can create better financial stability for crucial crime victim services in California.

2. Constitutional Right to Victim Restitution

In 1982, Proposition 8 was approved by California voters to amend the California Constitution to enact the Victim's Bill of Rights. The initiative provided that "It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary." (Cal. Const., art. I, sec. 28, subd. (b).)

In 2008, Proposition 9, also known as Marsy's Law, was approved by California voters to expand the Victim's Bill of Rights to include more notification to victims and opportunity for input during different phases of the criminal proceedings. One of the specified rights include the right to restitution. Proposition 9 also removed exceptions to waive restitution against those in criminal proceedings for "compelling and extraordinary reasons." (See Proposition 9 Voter Information Guide (2008 General Election) < [Voter Information Guide for 2008, General Election \(uclawsf.edu\)](#) > [as of June 19, 2023].)

3. Condition of the Restitution Fund

The Restitution Fund, which funds the victim compensation program, has been operating under a structural deficiency for a number of years. In 2015, the Legislative Analyst's Office (LAO) reported the Restitution Fund was depleting and would eventually face insolvency. (LAO, Improving State Programs for Crime Victims (2015) <<https://lao.ca.gov/reports/2015/budget/crime-victims/crime-victims-031815.aspx>> [as of Feb. 8, 2023].) Although revenue has remained consistent, expenditures have outpaced revenues since FY 2015-16. The Governor's 2021-22 budget proposed \$33 million dollars in one-time General Fund monies to backfill declining fine and fee revenues in the Restitution Fund, and \$39.5 million annually afterwards. This amount will allow the Board to continue operating at its current resource level. The Budget Act allows for additional backfill upon a determination that revenues are insufficient to support the Board. (Department of Finance, California State Budget –2023-24 at p. 90 <

24/pdf/BudgetSummary/CriminalJustice.pdf> [as of Feb. 8, 2023].) In addition, the 2022 Budget prioritized changes to the victim compensation program and the elimination of the restitution fine, if a determination is made in the spring of 2024 that the General Fund over the multiyear forecast is available to support this ongoing augmentation. (Ibid.)

Restitution fines are a major source of funding for the Restitution Fund. (The Board, Juvenile Restitution Fines Guide (Sept. 2021) <https://victims.ca.gov/uploads/2021/09/Juvenile-Restitution-Guide_9.21.pdf> [as of March 22, 2023].) In addition to victim restitution, a convicted defendant must pay a restitution fine. (Pen. Code, § 1202.4, subd. (b).) The fine can only be waived if the court finds compelling and extraordinary reasons not to impose it, and inability to pay does not qualify as a compelling and extraordinary reason to waive the fine. (Pen. Code, § 1202.4, subd. (c).) Similar to victim restitution, a defendant's obligation to pay a restitution fine does not expire once the sentence is completed or probation has ended. (Pen. Code, § 1202.4, subd. (f); Pen. Code, § 1214.) The California Victim Compensation Board is authorized with collecting any restitution fines that the defendant is ordered to pay. (Pen. Code, § 1214.)

4. Background: Victims of Crime Act of 1984 (VOCA).

Under VOCA, the federal government provides grants for qualifying state victim compensation and victim assistance programs. Funds that are distributed to California are distributed through CalOES, which provides financial assistance and reimbursement to victims.

VOCA funding in California is expected to decline. While the amount of money available to be distributed is capped each year, funding is still expected to decline in future years amid uncertainty about its long-term stability. According to the Assembly Appropriations Committee, VOCA funding is expected to decline from \$154 million in 2023-24 to \$87.5 million in 2024-25, a 43% decline.

5. Background: Victims of Corporate Fraud Compensation Fund (VCFCF).

In 2002, the Legislature established the VCFCF to provide limited restitution to victims of corporate fraud who have otherwise been unable to collect on their judgment. Payment from the VCFCF is limited to \$50,000 for any one claimant per single judgment. In order to be eligible, the claimant must have a final civil court judgment, judgment based on an arbitration award, or a criminal restitution order. If it's a criminal restitution order, that order must be against a corporation, or a corporation's officers or director, based on corporate fraud, misrepresentation, or deceit made with the intent to defraud.

Like with VOCA and the programs it supports, the VCFCF faces significant financial uncertainty. The VCFCF is administered by the Secretary of State and funded by a \$2.50 for each corporate annual Statement of Information Filed with the Secretary, and current funding levels can support only a fraction of applications that are submitted each year.

6. Additional Restitution Fine

This bill provides that if a corporation, defined as a firm, association, organization, partnership, business trust, company, corporation, limited liability company, public entity, or any other legal entity, 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. This fine which is not less than \$100,000 for a felony and not less than \$1,000 for a misdemeanor is in addition to existing fines and restitution amounts.

Even without the additional fines, the actual cost to a corporation for violating the law could be significant. For example, a small business committing a felony for which no fine is prescribed may be fined \$10,000. (Penal Code, Section 672.) And, a base fine of \$10,000 would be subject to the following addition fees and assessments:

- a) Penal Code Section 1464 state penalty on fines: \$10,000 (\$10 for every \$10)
- b) Penal Code Section 1465.7 state surcharge: \$2,000 (20% surcharge)
- c) Penal Code Section 1465.8 court operation assessment: \$40 (\$40 fee per criminal offense)
- d) Government Code Section 70372 court construction penalty: \$5,000 (\$5 for every \$10)
- e) Government Code Section 70373 assessment: \$35 (\$35 for each infraction)
- f) Government Code Section 76000 penalty: \$7,000 (\$7 for every \$10)
- g) Government Code Section 76000.5 EMS penalty: \$2,000 (\$2 for every \$10)
- h) Government Code Section 76104.6 DNA fund penalty: \$1,000 (\$1 for every \$10)
- i) Government Code Section 76104.7 additional DNA fund penalty: \$4,000 (\$4 for every \$10)

After fines and assessments, and assuming no other fines on separate counts, a crime with a \$10,000 base fine would actually cost the small business \$31,075. A corporation who willfully defrauds any person in connection with the offer, purchase, or sale of any security may be fined up to \$10,000,000, costing up to \$31,000,075 after fees and assessments. (Corporations Code, Section 25541, subdivision (a).)

These figure does not include victim restitution, or the restitution fine, or other fines and fees (e.g., attorney fees) that may be assessed.

Is an additional restitution fine of up to \$100,000 appropriate for a corporation convicted of a felony? The definition of "corporation" is broad enough to include most types of businesses even a small mom and pop. Is restitution this high into a fund that will help victims unrelated to the corporate malfeasance appropriate? Restitution is not dischargeable in a liquidation or "straight" bankruptcy under Chapter 7 of the Bankruptcy Code. (See II U.S.C. § 523(a)(7).) Nor is restitution a dischargeable debt under Chapter 13. (11 U.S.C. § 1328(a)(3).) would this apply to this type of restitution also and saddle a small business owner with a debt they will never be able to repay?

7. Corporate white collar criminal enhancement

In addition to the existing fine, restitution, and any other penalty or fine provided by law, if a corporation is convicted of a misdemeanor or felony the court may order an additional corporate white collar criminal enhancement which shall not exceed the greater of either of the following:

- Two times the value of the taking or loss, whenever is greater, if the offense resulted in the taking of another person or entity's money, labor, or real or personal property.
- Twenty-five million dollars.

In determining the amount of the fine the court shall consider: the nature of the offense; the number of offenses committed; the persistence of the criminal conduct; the length of time over which the criminal conduct occurred; the willfulness of the corporation's criminal conduct; the corporation's assets, liabilities, and net worth.

The money collected shall be deposited in the California Crime Victims Fund. The intent is this fund will help replace the VOCA funds that have been declining. Is this additional fine appropriate for a "corporation" that commits a misdemeanor? Some labor code misdemeanors could be not paying overtime, failing to pay minimum wage, delated payment, and unreimbursed business expenses, all of which are not good but should they mean an additional fine be imposed on top of restitution to the victim, restitution to the restitution fund, criminal fine plus penalty assessments and the additional restitution discussed above?

8. Argument in Support

A large coalition of supporters in support of this bill state:

Congress is cutting critical funding for crime victim services nationwide, leading to a 44.7% reduction in programmatic spending across all crime victim service providers in California funding through the Victims of Crime Act (VOCA). This leaves California's crime victim services funded through the Office of Emergency Services needing up to \$200 million to maintain funding levels.

These programs provide vital, lifesaving, services to survivors of domestic violence, sexual assault, human trafficking, child abuse, and other violent crimes. Reduced funding will mean that survivors have fewer safe housing options when fleeing violence, experience longer wait times for counseling, reduced access to emergency support in moments of trauma, and reduced legal assistance to navigate through complex court cases. The impacts of these cuts will fall hardest on smaller programs, communities that have been historically underserved, and rural programs.

Our coalition is dedicated to supporting victims of crime, advocates, and their communities. With a common goal to fearlessly advocate for our communities, we center equitable access to victim services in our decisions. We represent the diverse types of crime victim services supported by VOCA funding and are at risk of devastating cuts.

In addition to immediate action to prevent a shortfall to victim services, California also needs a long-term, permanent funding stream to support crime victims' service providers, and crime victims and survivors by extension. Federal funding has typically been sustained through the prosecution of large companies with deep pockets. But comparable legal options are not available at the state level.

Like many states, the California code lacks a sufficient mechanism to hold bad corporate actors criminally accountable for certain harms committed against Californians. Individuals who are found responsible for crimes in a criminal court in California face significant sentences. Yet, corporations that harm Californians face minimal accountability. For example, PG&E was charged with 84 counts of involuntary manslaughter and required to pay a fine of \$3.5 million, which is “equivalent to two weeks’ worth of annual revenue” for the corporation.

This bill will ensure that victims of crime in California have access to the vital services they need. By establishing a permanent funding stream, AB 2432 will insulate California’s crime victim services from federal budget issues and support victims and their service providers.

This bill creates a new and permanent funding mechanism for the crime victim services funded through the federal VOCA administered in California by the Governor’s Office of Emergency Services and those administered by the California Victim Compensation Board by holding corporations accountable for wrongdoing.

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