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**SENATE COMMITTEE ON PUBLIC SAFETY**  
**Senator Aisha Wahab, Chair**  
**2023 - 2024 Regular**

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**Bill No:** AB 1186                      **Hearing Date:** July 2, 2024  
**Author:** Bonta  
**Version:** June 24, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject: *Restitution fines***

**HISTORY**

**Source:** Debt Free Justice Coalition

**Prior Legislation:** AB 177 (Committee on Budget), Ch. 257, Stats. 2021  
SB 1290 (Durazo), Ch. 740, Stats. 2020  
AB 227 (Jones-Sawyer), held Assem. Approps., 2019  
SB 190 (Mitchell), Ch. 678, Stats. 2017  
SB 504 (Lara), Chapter 388, Statutes of 2015

**Support:** All of Us or None Los Angeles; ACLU California Action; California Alliance for Youth and Community Justice; California Alliance of Child and Family Services; California for Safety and Justice; California Public Defenders Association; Californians United for a Responsible Budget; City and County of San Francisco; Communities United for Restorative Youth Justice; Community Works; Courage California; East Bay Community Law Center; Ella Baker Center for Human Rights; Empowering Women Impacted by Incarceration; Felony Murder Elimination Project; Freedom 4 Youth; Fresh Lifelines for Youth; Friends Committee on Legislation of California; Indivisible CA Strong; Initiate Justice; Initiate Justice Action; La Defensa; Lawyers Committee for Civil Rights of the San Francisco Bay Area; Legal Services for Prisoners with Children; Maven Collaborative; Pacific Juvenile Defender Center; Reentry Council of the City and County of San Francisco; Restoring Hope California; Root & Rebound; Rubicon Programs; San Francisco Financial Justice Project; San Francisco Public Defender; Smart Justice California; Uncommon Law; United Core Alliance; University of the Pacific McGeorge School of Law Homeless Advocacy Clinic; Western Center on Law & Poverty; 1 Individual

**Opposition:** None known

**Assembly Floor Vote:** 57 - 13

**PURPOSE**

***The purpose of this bill is to eliminate restitution fines for juveniles starting January 1, 2025, and to make the outstanding balance of any restitution fines, including any collection fees, unenforceable and uncollectible 10 years after the fine was imposed.***

*Existing law* establishes the jurisdiction of the juvenile court over minors who are between 12 and 17 years of age, inclusive, who have violated a federal, state, or local law or ordinance, as specified, and over minors under 12 years of age who have been alleged to have committed specified crimes. Existing law authorizes a juvenile court to adjudge a person under these circumstances to be a ward of the court. (Welf. & Inst. Code, § 602.)

*Existing law* states that it is the intent of the Legislature that a victim of conduct for which a minor is found to be a ward of the court who incurs an economic loss as a result of the minor's conduct shall receive restitution directly from the minor. (Welf. & Inst. Code, § 730.6, subd. (a)(1).)

*Existing law* provides that upon a minor being adjudged a ward of the court the court shall consider levying a fine in accordance with Section 730.5. In addition, the court shall order the minor to pay, in addition to any other penalty provided or imposed under the law, a restitution fine and any restitution owed to the victim or victims. (Welf. & Inst. Code, § 730.6, subd. (a)(2).)

*Existing law* states that when a minor is adjudged a ward of the court, in addition to any of the authorized orders, the court may levy a fine against the minor up to the amount that could be imposed on an adult for the same offense, if the court finds that the minor has the financial ability to pay the fine. (Welf. & Inst. Code, § 730.5.)

*Existing law* specifies that if the minor is found to have committed one or more felony offenses, the restitution fine shall not be less than one \$100 and not more than \$1,000. A separate hearing for the fine shall not be required. (Welf. & Inst. Code, § 730.6, subd. (b)(1).)

*Existing law* specifies that if the minor is found to have committed one or more misdemeanor offenses, the restitution fine shall not exceed \$100. A separate hearing for the fine shall not be required. (Welf. & Inst. Code, § 730.6, subd. (b)(2).)

*Existing law* states that the restitution fine shall be in addition to any other disposition or fine imposed and shall be imposed regardless of the minor's inability to pay. This fine shall be deposited in the Restitution Fund. (Welf. & Inst. Code, § 730.6, subd. (b)(2).)

*Existing law* states that consideration of a minor's ability to pay may include his or her future earning capacity. A minor shall bear the burden of demonstrating a lack of his or her ability to pay. (Welf. & Inst. Code, § 730.6, subd. (d)(2).)

*Existing law* provides that for a minor is has been found to have committed a felony offense, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the restitution fine. If a waiver is granted, the court shall state on the record all reasons supporting the waiver. (Welf. & Inst. Code, § 730.6, subd. (g)(1).)

*This bill* prospectively eliminates the requirement that a minor adjudged to be a ward of the court pay a restitution fine.

*Existing law* includes types of costs that a victim may be reimbursed for in a restitution order which includes, among other things, 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.

*This bill* clarifies that the restitution ordered may be the lesser of the cost of repairing the property or replacement cost like property.

*Existing law* provides that a minor 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 minor. 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 hearing on the motion. If the amount of victim restitution is not known at the time of disposition, the court order shall identify the victim or victims, unless the court finds for good cause that the order should not identify a victim or victims, and state that the amount of restitution for each victim is to be determined. (Welf. & Inst. Code, § 730.6, subd. (h)(2).)

*Existing law* states that if feasible, the court shall also identify on the court order, any co-offenders who are jointly and severally liable for victim restitution. (Welf. & Inst. Code, § 730.6, subd. (h)(2).)

*This bill* instead provides that for the purposes of victim restitution, each minor shall be held severally liable, and shall not be held jointly and severally liable as co-offenders. The court shall apportion liability based on each minor's percentage of responsibility or fault for all economic losses included in the order of restitution.

*Existing law* repealed the authority, starting January 1, 2022, to collect specified criminal justice administration fees and made the unpaid balance of specified court-imposed costs unenforceable and uncollectible and required any portion of a judgment imposing those costs to be vacated. (Pen. Code, §1465.9, Veh. Code, § 42240.)

*Existing law* vacates certain county-assessed or court-ordered costs imposed before January 1, 2018, for the parents or guardians of wards in specified circumstances, minors who were ordered to participate in drug and substance abuse testing, and adults who were 21 years of age and under at the time of their home detention. (Welf. & Inst. Code, § 223.2.)

*This bill* provides that upon the expiration of 10 years after the date of imposition of a restitution fine pursuant to Penal Code Section 1202.4 or Welfare and Institutions Code Section 730.6, the outstanding balance, including any collection fees, shall be unenforceable and uncollectible and shall be vacated.

*Existing law* transferred duties from DJJ to the Office of Youth and Community Restoration (OYCR) within the Health and Human Services agency. (SB 823 (Committee on Budget and Fiscal Review), Ch. 337, Stats. 2020.)

*Existing law* establishes the distribution of trust funds of a ward committed to the Division of Juvenile Justice, including payment of restitution orders and restitution fines. (Welf. & Inst. Code, §§ 1752.81 and 1752.82.)

*This bill* repeals Welfare & Institutions Code sections 1752.81 and 1752.82.

*This bill* makes conforming changes.

## COMMENTS

### 1. Need for this Bill

According to the author of this bill:

California's youth restitution system is not working. Many victims/survivors receive little, if any, compensation due to the burdensome eligibility and administrative obstacles and because the State Restitution Fund is largely dependent on the collection of fines and fees from people unable to pay them. California has already taken meaningful steps toward reducing harm in the restitution system. Assembly Bill 177 eliminated collection fees for restitution<sup>1</sup> and restitution fines<sup>2</sup> ordered against adults, as well as interest on restitution when imposed as a condition of probation.<sup>3</sup> However, numerous features of the system still in place compound the collateral consequences of an adjudication or conviction, exacerbate the cycle of poverty, and further criminalize Black and brown youth and families.

AB 1186, as amended, provides meaningful relief from our broken restitution system to adjudicated youth in California by:

- Eliminating prospective youth restitution fines;
- Vacating debt for youth and adult restitution fines that are older than 10 years, in perpetuity;
- Prospectively ending wage and trust account garnishment for youth restitution;
- Clarifying loss calculations for property repair or replacement for youth restitution orders; and
- Prospectively ending joint and several liability for youth co-defendants.

### 2. Victim Restitution vs. Restitution Fines

California law provides for two types of restitution: victim restitution and restitution fines. The purposes of the two kinds of restitution are different. The imposition of a restitution fine is to inflict additional punishment. (*People v. Dueñas* (2019) 30 Cal.App.5th 157, 1169; *People v. Hanson* (2000) 23 Cal.4th 355, 363.) The purpose of victim restitution is to reimburse the victim for economic loss cause by the crime. (*People v. Giordano* (2007) 42 Cal.4th 644, 652.)

In 1982, California voters passed Proposition 8, the Victims' Bill of Rights, which added article I, section 28, subdivision (b) to the California Constitution, which gives victims the right to seek and secure restitution from the persons convicted of the crimes causing the loss that the suffer. (*People v. Gross* (2015) 238 Cal.App.4th 1313, 1317-1318.) "A victim's right to restitution is,

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<sup>1</sup> Cal. Penal Code §§ 1203.1(l), 2085.5, 2085.6, 2085.7.

<sup>2</sup> Cal. Penal Code §1202.4(l)

<sup>3</sup> Formerly Cal. Penal Code § 1214.5.

therefore, a constitutional one; it cannot be bargained away or limited, nor can the prosecution waive the victim's right to receive restitution.” (*Ibid.*)

As directed by the voters, the Legislature enacted Penal Code section 1202.4 to implement the Victims’ Bill of Rights. (*Gross, supra*, 238 Cal.App.4th at p. 1318; *People v. Seymour* (2015) 239 Cal.App.4th 1418, 1435.) This statute provides that “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.” (Pen. Code, § 1202.4, subd. (f).) The statute further provides that a “defendant’s inability to pay shall not be consideration in determining the amount of a restitution order.” (Pen. Code, § 1202.4, subd. (g).) Rather, victim restitution orders must be of a dollar amount that is, in the court’s opinion, sufficient to fully reimburse the victim, which can include an assortment of expenses such as medical expenses, mental health counseling expenses, wages or lost profits, noneconomic losses like psychological harm, interest at the rate of 10 percent per annum, actual and reasonable attorney’s fees, and relocation fees. (Pen. Code, § 1204.5, subd. (f)(3).)

Payment of victim restitution goes directly to the victim and compensates them for economic losses they have suffered because of the defendant’s crime, i.e., to make the victim reasonably whole. (*People v. Guillen* (2013) 218 Cal.App.4th 975, 984.) A victim restitution order is an enforceable civil money judgment, and typical post-judgment enforcement tools are available to the victim. (Pen. Code, § 1202.4, subd. (i).) Victims have access to all available resources to enforce the order, including wage garnishment and lien procedures, even if the defendant is no longer in custody or on supervision. (*Ibid.*) Also, victim restitution orders can be referred to the Franchise Tax Board (FTB) for collection and crime victims are entitled to their preference of collection agencies. (Rev. & Tax. Code, § 19820.)

On the other hand, restitution fines, which are separate from victim restitution, are deposited in the Restitution Fund in the State Treasury. (Pen. Code, § 1204.4 subd. (e); *Guillen, supra*, 218 Cal.App.4th at p. 985.) Every 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).) For felony convictions, the minimum restitution fine is \$300, and the maximum fine is \$10,000. For misdemeanors, the minimum fine is \$150 and the maximum is \$1,000. (Pen. Code, § 1202.4, subd. (b)(1).) A defendant’s inability to pay may be considered a factor in setting the amount of the restitution fine above the statutory minimum, but a court is not permitted to consider the defendant’s inability to pay as a reason not to assess the fine. (Pen. Code, § 1202.4, subds. (c), (d).) Restitution fines are enforceable by the California Victim Compensation Board, even after a defendant is no longer in custody or on supervision, and can be referred to the FTB for collection. (Pen. Code, § 1214; Rev. & Tax Code, § 19820.)

Minors adjudged a ward of the court for committing a crime are also required to pay victim restitution and a restitution fine. (Welf. & Inst. Code, § 730.6.) If the minor is found to have committed one or more felony offenses, the restitution fine shall not be less than one \$100 and not more than \$1,000. (Welf. & Inst. Code, § 730.6, subd. (b)(1).) If the minor is found to have committed one or more misdemeanor offenses, the restitution fine shall not exceed \$100. (Welf. & Inst. Code, § 730.6, subd. (b)(2).) Existing law requires the restitution fine to be imposed regardless of the minor’s inability to pay and the fine shall be deposited in the Restitution Fund. (Welf. & Inst. Code, § 730.6, subd. (c).)

Combined, the restitution fine and victim restitution, can easily exceed amounts in the tens of thousands of dollars, not including the accruing interests. The obligation to pay restitution does not vanish, even if expungement relief is granted. (*Seymour, supra*, 239 Cal.App.4th 1418 at p.1430 [“victim restitution is still an obligation the defendant must meet”]; *In Re Timothy N.* (2013) 216 Cal.App.4th 725, 738 [the defendant “is not escaping his restitution obligation” and “will be required to pay the restitution pursuant to the trial court's orders, which the victims may enforce as they would a civil judgment.”]; *People v. Allen* (2019) 41 Cal.App.5th 312, 329.)

This bill prospectively eliminates the requirement that a juvenile court order a minor adjudged a ward of the court to pay a restitution fine. Additionally, the bill makes the outstanding balance of any restitution fines for both juveniles and adults unenforceable and uncollectible 10 years after the imposition of the fine. According to the supporters of this bill, restitution fines deepens poverty for minors and their families and does not meet the financial needs of crime survivors. Budget trailer bill language implementing the 2022 Budget Act contained language declaring the Legislature’s commitment to provide a General Fund augmentation for the Restitution Fund for the purpose of eliminating restitution fines, subject to a fiscal determination being made that resources are available to support that spending. (SB 189 (Committee on Budget and Fiscal Review), Ch. 48, Stats. 2022.)

### **3. Joint and Several Liability for Restitution**

Joint and several liability refers to a legal principle where multiple defendants share responsibility for harm caused so that each defendant can be held individually responsible for the full amount of the restitution, regardless of their degree of fault. Existing law provides that when feasible, the court shall identify on the court order for restitution any co-offenders who are jointly and severally liable for victim restitution. (Welf. & Inst. Code, § 730.6, subd. (h)(4).) The juvenile court is vested with discretion to apportion restitution in a manner that will effectuate the legislative objectives of making the victim whole and rehabilitating the minor. (*In re S.S.* (1995) 37 Cal.App.4th 543.)

This bill instead provides that for purposes of victim restitution, each juvenile co-offender shall be held severally liable and shall not be held jointly and severally liable as co-offenders. This bill requires the court to apportion liability based on each minor’s percentage of responsibility or fault for all economic losses included in the order of restitution and states that the aggregate amount of apportioned liability for all minors involved shall not exceed 100 percent in total. This change is intended to address situations where one minor has complied with their portion of restitution owed but may still be held liable for the other co-offenders’ who have not paid their portion.

### **4. Recent Changes to Juvenile Fees**

SB 190 was enacted by the Legislature in 2017 and eliminated a number of fees counties were previously authorized to charge for a youth’s involvement in the juvenile justice system. Specifically, SB 190 prohibited counties from assessing new fees for a youth’s detention, representation by counsel, electronic monitoring, probation supervision, and drug testing. In addition, SB 190 prohibited counties from assessing new fees for home detention, electronic monitoring, and drug testing for individuals under 21 years of age and prosecuted in the adult criminal system.

Although SB 190 prohibited counties from assessing new fees after January 1, 2018, it did not require counties to stop collecting previously assessed fees or to vacate existing fee judgments. A recent report published by the UC Berkeley Law School’s Policy Advocacy Clinic found that 36 of the state’s 58 counties had voluntarily stopped collecting juvenile fees assessed prior to January 1, 2018. (UC Berkeley Law School Policy Advocacy Clinic, *Fee Abolition and the Promise of Debt-Free Justice for Young People and Their Families in California: A Status Report on the Implementation of Senate Bill 190* (2019) p. 7 <[https://www.law.berkeley.edu/wp-content/uploads/2019/10/SB-190-Implementation-Report11\\_10\\_31\\_19.pdf](https://www.law.berkeley.edu/wp-content/uploads/2019/10/SB-190-Implementation-Report11_10_31_19.pdf)> [as of June 24, 2024].) The report also found that slightly more than half of those 36 counties had formally discharged outstanding fee accounts, agreements, and civil judgments. (*Id.*) The report noted that the state’s remaining 22 counties were continuing to collect those outstanding juvenile fees, with five counties—San Diego, Orange, Riverside, Stanislaus, and Tulare—continuing to collect more than 95% of all outstanding fees. (*Id.*)

In 2020, SB 1290 (Durazo) vacated those county-assessed or court-ordered costs imposed prior to January 1, 2018 and made them unenforceable and uncollectable.

This bill eliminates the requirement to impose a restitution fine for juveniles and makes restitution fines unenforceable and uncollectable 10 years after the fines were imposed.

## 5. Arguments in Support

According to the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area:

California’s current restitution system is broken and harms justice-involved youth and adults, and their families. This system creates a cycle of debt for those who are ordered to pay and does not meet the financial needs of crime survivors.

Restitution fines and fees are burdensome, create barriers to economic mobility, and deepen poverty. Under current state law, restitution fine debt never expires and cannot be discharged in bankruptcy proceedings. These fines can be ordered up to \$1,000, and a young person’s ability to pay cannot be considered. Studies have found that juvenile legal system debt limits social mobility for young people and their families. These negative outcomes only make reentry harder. An analysis by researchers at U.C. Berkeley found that fee debt can cause families to spend less on positive social goods such as education and preventative healthcare, which imposes long term costs on families, communities, and society by prolonging and exacerbating poverty.

Restitution fines and fees disproportionately burden low-income youth and their families and communities of color, exacerbating inequality. Low-income people and people of color are overrepresented at every stage in the criminal legal system, even when controlling for alleged criminal behavior. Black and brown people are overrepresented in prisons in California. Due to over policing and targeted policing in Black and brown communities, they are punished more frequently and harshly at a variety of discretion points. They are more likely to be arrested, incarcerated, and put on probation, and they serve longer jail and probation terms. As a result, they are more likely to face higher fee and fine burdens and the collateral consequences that stem from being unable to pay off

related debt. In fact, the proportion of Black residents in a jurisdiction is robustly connected to the use of fees and fines for revenue.

Restitution fines and fees are an ineffective source of revenue. Research shows that restitution fine collection rates have decreased across every collection agency, and the total dollars collected annually for the State Restitution Fund has decreased by nearly 30% since 2010. Public Records Request data indicates that jurisdictions spend approximately \$1.22 to collect each dollar of youth restitution fine debt. This indicates that assessing restitution fines to young people and their families is an unsustainable and costly revenue model for the state and for crime survivors.

Research does NOT support the use of fines as a deterrent. Fines do not create effective deterrence. Instead, they are linked to higher recidivism rates. One study found that people who receive more severe fines are more likely to commit additional crimes than people who received lesser fines. Criminologists have found that young people who had outstanding debt from fines, fees, and restitution had a higher risk of recidivism. There are better, more effective ways to deter behavior and ensure accountability besides issuing monetary sanctions.

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