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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:** June 27, 2023  
**Author:** Bonta  
**Version:** June 19, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Juveniles: restitution*

## HISTORY

**Source:** Debt Free Justice Coalition

**Prior Legislation:** SB 1290 (Durazo), Ch. 340, Stats. 2020  
SB 190 (Mitchell), Ch. 678, Stats. 2017  
AB 3169 (Hoge), Ch. 1106, Stats. 1994

**Support:** ACLU California Action; Attorney General Rob Bonta; California Public Defenders Association; Californians for Safety and Justice; Center for Juvenile and Criminal Justice; Communities United for Restorative Justice (CURYJ); Debt Collective; Dignity and Power Now; Ella Baker Center for Human Rights; Fresh LifeLines for Youth; Friends Committee on Legislation of California; Initiate Justice; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; National Association of Social Workers California Chapter; National Consumer Law Center; Peace Anger Love; Prosecutors Alliance California; Root & Rebound; Smart Justice California; Young Women's Freedom Center

**Opposition:** California District Attorneys Association

**Assembly Floor Vote:** 57 - 13

## PURPOSE

***The purpose of this bill is to remove the court's ability to require a minor to pay monetary victim restitution and instead requires the juvenile court to transmit the restitution order to the California Victim Compensation Board for issuance of payment to the victim.***

*Existing law* provides that, in order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled specified rights, including among others, restitution. (Cal. Const., art. I, § 28, subd. (b)(13).

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*Existing law* provides that restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss. (Cal. Const., art. I, § 28, subd. (b)(13)(B).)

*Existing law* states that the Legislature finds and declares that it is in the public interest to assist residents of the State of California in obtaining compensation for the pecuniary losses they suffer as a direct result of criminal acts. (Gov. Code, § 13950, subd. (a).)

*Existing law* establishes the California Victims Compensation Claims Board (CalVCB) to operate the California Victim Compensation Program. (Gov. Code, §§ 13950 *et. seq.*)

*Existing law* limits the total award to or on behalf of each victim to \$35,000, except that this amount may be increased up to \$70,000 if federal funds for that increase are available. (Gov. Code, § 13957, subd. (b).)

*Existing law* defines “victim” to mean an individual who sustains injury or death as a direct result of a crime as specified. (Gov. Code, § 13951, subd. (e).)

*Existing law* authorizes the board to reimburse for pecuniary loss for the following types of losses:

- Medical or medical-related expenses incurred by the victim for services provided by a licensed medical provider;
- Out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center, not to exceed \$10,000;
- Compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim’s injury or the victim’s death;
- Cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services;
- The expense of installing or increasing residential security, not to exceed \$1,000;
- The expense of renovating or retrofitting a victim’s residence or a vehicle to make them accessible or operational, if it is medically necessary;
- Relocation expenses, not to exceed \$3,418, if the expenses are determined by law enforcement to be necessary for the victim's personal safety, or by a mental health treatment provider to be necessary for the emotional well-being of the victim;
- Funeral or burial expenses, not to exceed \$12,818;
- Costs to clean the scene of the crime, not to exceed \$1,709; and,
- Costs of veterinary services, not to exceed \$10,000. (Gov. Code, § 13957, subd. (a).)

*Existing law* states that, in addition to any other penalty provided or imposed under the law, the court shall order the defendant to pay both a restitution fine and restitution to the victim or victims, if any. (Pen. Code § 1202.4, subd. (a)(3).)

*Existing law* authorizes the court to include within a restitution order reimbursement to the Restitution Fund any assistance provided to the victim from CalVCB as a result of the defendant’s conduct. (Pen. Code § 1202.4, subd. (f).)

*Existing law* specifies that a restitution order is enforceable by the victim as a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment.

Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order and a copy of the defendant's financial disclosure. (Pen. Code, §§ 1202.4, subd. (i), & 1214, subd. (b).)

*Existing law* states that any portion of a restitution fine or restitution fee that remains unsatisfied after a defendant is no longer on probation, parole, postrelease community supervision or mandatory supervision, after a term in custody, or after completing diversion is enforceable by CalVCB. (Pen. Code, § 1214, subd. (a).)

*Existing law* permits the juvenile court to, as appropriate, direct a minor to pay restitution to the victim or victims, and make a contribution to the victim restitution fund after all victim restitution orders and fines have been satisfied, in order to hold them accountable or restore the victim or community. (Welf. & Inst. Code, § 202, subd. (f).)

*This bill* removes the ability of the juvenile court to direct the offender to pay restitution to the victim or victims, and make a contribution to the victim restitution fund after all victim restitution orders and fines have been satisfied and instead authorizes the juvenile court to order the offender to participate in a community-based restoration program, perform community service, or participate in an educational, employment, youth development, or mental health program.

*Existing law* states that if a minor is found to be a ward of the juvenile court by reason of the commission of a battery on school property, and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, shall require the minor to make restitution to the victim of the battery. If restitution is found to be inappropriate, the court, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, shall require the minor to perform specified community service. (Welf. & Inst. Code, § 729.)

*This bill* removes the ability of the court to order monetary restitution to the victim for battery on school property and instead requires the court to order the minor to make amends by participating in a community-based restoration program, performing community service, or participating in an educational, employment, youth development, or mental health program. All of these nonmonetary restitution options shall be youth appropriate, limited to no more than 25 hours, not interfere with the minor's school or work commitments, and provided at no cost to the minor or their parent or guardian.

*Existing law* states that if a minor is found to be a ward of the juvenile court by reason of the commission of a crime which takes place on a public transit vehicle, and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, shall require the minor to wash, paint, repair or replace the damaged or destroyed property, or otherwise make restitution to the property owner. If restitution is found to be inappropriate, the court, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, shall require the minor to perform specified community service. (Welf. & Inst. Code, § 729.1.)

*This bill* removes the ability of the court to order monetary restitution to the property owner for crimes that take place on a public transit vehicle, and instead requires the court to order the

minor to make amends by participating in a community-based restoration program, performing community service, or participating in an educational, employment, youth development, or mental health program. All of these nonmonetary restitution options shall be youth appropriate, limited to no more than 25 hours, not interfere with the minor's school or work commitments, and provided at no cost to the minor or their parent or guardian.

*Existing law* authorizes a court to order any person ordered to perform community service or graffiti removal to undergo counseling. (Welf. & Inst. Code, § 729.1, subd. (c).)

*This bill* adds life coaching, at no cost to the defendant or their parents or guardians.

*Existing law* makes a minor's parent or guardian liable for the payment of the minor's restitution. Provides that execution may be issued on an order holding a parent or guardian liable for victim restitution in the same manner on a judgment in a civil action, including any balance unpaid at the termination of the court's jurisdiction over the minor. (Welf. & Inst. Code, § 729.5.)

*This bill* repeals Welfare and Institutions Code section 729.5.

*Existing law* permits the juvenile court to order a minor to make restitution, to pay a fine up to \$250 if the court finds that the minor has the financial ability to pay the fine, or to participate in uncompensated work programs. (Welf. & Inst. Code, § 730, subd. (a)(1)(A).)

*This bill* removes the ability of the court to order the ward to make restitution to pay a fine up to \$250 for deposit in the county treasury if the court finds that the minor has the financial ability to pay the fine, or to participate in uncompensated work programs and instead authorizes the court to order the ward to make nonmonetary restitution by participating in a community-based restoration program, performing community service, or participating in an educational, employment, youth development, or mental health program. All of these nonmonetary restitution options shall be youth appropriate, limited to no more than 25 hours, not interfere with the minor's school or work commitments, and provided at no cost to the minor or their parent or guardian.

*Existing law* states that when a minor is adjudged or continued as a ward of the court by reason of the commission of specified sex offenses, the court shall order the minor to complete a sex offender treatment program, if the court determines, in consultation with the county probation officer, that suitable programs are available. (Welf. & Inst. Code, § 730, subd. (d).)

*This bill* removes the requirement that the minor shall pay all or a portion of the reasonable costs of the sex offender treatment program after a determination is made of the ability of the minor to pay and instead provides that the minor or the minor's parent or guardian shall not be responsible for the costs of the sex offender treatment program.

*Existing law* states that it is the intent of the Legislature that a victim who incurs an economic loss because of a minor's conduct shall receive restitution directly from that minor. (Welf. & Inst. Code, § 730.6, subd. (a)(1).)

*This bill* deletes the above provision and instead states that it is the intent of the legislature that no minor or the minor's parent or guardian shall be ordered to pay monetary restitution to a victim that incurred economic loss as a result of the conduct of that minor. Upon issuance of a

monetary restitution order from the juvenile court, victims shall receive monetary restitution directly from CalVCB.

*Existing law* requires the court to order the minor to pay, in addition to any other penalty provided or imposed under the law, both a restitution fine and restitution to the victim or victims. (Welf. & Inst. Code, § 730.6, subds. (a)(2) & (d)(2).)

*Existing law* requires the court to order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. A minor's inability to pay shall not be considered a compelling or extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of the restitution order. (Welf. & Inst. Code, § 730.6, subd. (h).)

*Existing law* states that consideration of a minor's ability to pay may include his or her future earning capacity. A restitution order, to the extent possible, shall identify each victim, and the amount of each victim's loss to which it pertains, and shall be of a dollar amount sufficient to fully reimburse the victim or victims for all determined economic losses incurred as the result of the minor's conduct. 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 at any time during the term of the commitment or probation. (Welf. & Inst. Code, § 730.6, subd. (h).)

*This bill* states that if a minor is found to be a ward of the juvenile court and causes an economic loss to a victim as a result of their conduct, the minor may be ordered to make nonmonetary restitution by participating in a community-based restoration program, performing community service, or participating in an educational, employment, youth development, or mental health program. All of these nonmonetary restitution options shall be youth appropriate, limited to no more than 25 hours, not interfere with the minor's school or work commitments, and provided at no cost to the minor or their parent or guardian.

*This bill* prohibits a minor or minor's parent or guardian from being ordered to pay monetary restitution to a victim who incurs economic loss as a result of the minor's conduct.

*This bill* states that a minor or the minor's parent or guardian shall have the right to attend and participate in a hearing related to restitution, as provided. The minor's attendance and participation in the hearing may be credited toward participation in a nonmonetary restitution option.

*This bill* requires the juvenile court, after issuing a monetary restitution order, to transmit the order to CalVCB for issuance of the payment to the victim.

*This bill* provides that if the amount of victim restitution is not known at the time of the 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 the amount of restitution for each victim is to be determined.

*Existing law* states that when a minor is ordered to make restitution to the victim, or the minor is ordered to pay fines and penalty assessments, a parent or guardian who has joint or sole legal and physical custody and control of the minor shall be presumed to be jointly and severally liable with the minor for the amount of restitution, fines, and penalty assessments so ordered, subject to

the court's consideration of the parent's or guardian's inability to pay. When considering the parent's or guardian's inability to pay, the court may consider future earning capacity, present income, the number of persons dependent on that income, and the necessary obligations of the family, including, but not limited to, rent or mortgage payments, food, children's school tuition, children's clothing, medical bills, and health insurance. The parent or guardian has the burden of showing an inability to pay. (Welf. & Inst. Code, § 730.7, subd. (a).)

*This bill* deletes a court's ability to consider future earning capacity and deletes the provision related to a showing a parent or guardian's inability to pay.

*Existing law* requires a court to order a minor who is ordered to pay restitution or to perform community service to report to the court their compliance with the court's order no less than annually until the order is fulfilled. (Welf. & Inst. Code, § 730.8.)

*This bill* repeals the above provision and instead provides that CalVCB shall upon appropriation by the Legislature for this purpose, compensate a victim or victims in the amount outlined in a monetary restitution order transmitted by the juvenile court.

*This bill* states that if the victim also receives compensation for through CalVCB for statutorily-eligible expenses, the board shall deduct the amount received from any monetary restitution received.

*This bill* states notwithstanding any other provision of law, CalVCB shall not pursue reimbursement or recover in a separate action against a person who was adjudicated, or against the person's parent or guardian, for an offense committed while the person was a minor that resulted in loss or injury for which compensation was provided by the board pursuant to the provisions in this bill.

*This bill* makes additional technical and conforming changes.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

Our current restitution system is broken. Restitution was meant to make crime survivors whole, but in reality, it's creating a perpetual cycle of debt, especially for poor Black and brown families. Debt from restitution never expires and cannot be discharged in bankruptcy proceedings. There is no limit as to how much a court can order for restitution and a young person's ability to pay cannot be taken into consideration. We have ended up with a system where already struggling families cannot afford to pay this debt, leaving crime survivors without the ability to access the resources they need to heal and move on. California is in need of an alternative system that holds young people accountable while placing them, *and* survivors, on a more just and economically secure path.

AB 1186 replaces the existing system of youth restitution with a more timely and accessible system of payment for people harmed by youth. After holding a restitution

hearing to determine amounts, juvenile courts will refer restitution orders to the California Victim Compensation Board for direct payment to crime survivors. Instead of ordering youth to pay restitution, courts may order youth to participate in community service, take part in restoration programming, or complete employment, mental health, or other personal development programs.

Crime survivors will receive compensation that does not rely on payments from low-income youth and their families. Youth will have the opportunity to make amends for harm they caused while also receiving support for unmet needs, placing them and survivors on a more just and economically secure path.

## 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].)

While the restitution provision in the Victim's Bill of Rights specifically references those who are convicted, and juvenile adjudications are not convictions (Welf. & Inst. Code, § 203), determining whether the intent of the initiatives may require a closer look at the text and the voter information materials. Specifically looking at the text of the Victim's Bill of Rights, other subsections within Article I, § 28, subdivision (b) make clear when juveniles are meant to be included – subsection (1) distinguishes between the "criminal or juvenile justice process" and subsections (7) and (8) affirm the inclusion of delinquency proceedings within the definition of "proceedings." However, the right to seek restitution does not affirm nor mention youth, minors, or juveniles anywhere in subsection (13). The version of Proposition 9 that was ultimately qualified for the ballot did not include the term "juveniles" in the restitution provision, whereas the previous version that failed to qualify included the right to "right to "receive prompt and full restitution from the adult or juvenile offender for any loss or injury..." (See California Initiative 1321 (2008) < [CRIMINAL JUSTICE SYSTEM. VICTIMS' RIGHTS. CONSTITUTIONAL AMENDMENT AND STATUTE. \(uclawsf.edu\)](#) > [as of June 19, 2023].)

In *People v. West*, the court analyzed the addition of Art. I § 28(f) to the state constitution and found reference to "juvenile" alone was insufficient to capture youth charged with violations of juvenile court law as they are not "defendants" and adjudications are not "criminal convictions." The court also determined that the intent of the electorate was not to make juvenile adjudications convictions as the voters were not told that juvenile adjudications would be considered convictions. (*People v. West* (1984) 154 Cal.App.3d 100, 109-111.)

Additionally, the Legislative summary of Proposition 8 indicated that the initiative does not cover juvenile cases: “Since Juvenile court hearings are not criminal proceedings, and juvenile commitments are not considered “sentences,” the initiative does not appear to cover victims of crimes committed by juveniles unless tried in “adult” court.” (Assemb. Comm. on Crim. Just., Analysis of Proposition 8: The Criminal Justice Initiative, p. 49 (March 24, 1982).)

Thus, it appears that removing the authority of juvenile courts to order restitution from juvenile offenders does not implicate the California Victim’s Bill of Rights and the bill has been keyed majority vote.

### 3. Juveniles and Restitution

Like adults, juvenile courts are required to order minors to pay fees, restitution fines, and direct victim restitution orders. (Welf. & Inst. Code § 730.6, subs. (a) & (b).) A “restitution fine” is a fine imposed and paid to the State Restitution Fund. (Pen. Code, § 2085.6.) A restitution fine is required to be proportionate with the seriousness of the offense, and can only be waived for compelling and extraordinary reasons. (Welf. & Inst. Code, § 730.6, subs. (b) & (g).) Fines for misdemeanors range from \$100 to \$1,000. (The Board, *Juvenile Restitution Fine Guide* (Sept. 2021) <[https://victims.ca.gov/uploads/2021/09/Juvenile-Restitution-Guide\\_9.21.pdf](https://victims.ca.gov/uploads/2021/09/Juvenile-Restitution-Guide_9.21.pdf)> [as of March 22, 2023].) The restitution fine is in addition to any other disposition or fine imposed and is required to be imposed regardless of the minor’s inability to pay. In setting the amount of the fine the court must consider any relevant factors including, but not limited to, the minor’s ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the minor as a result of the offense, and the extent to which others suffered losses as a result of the offense. (Welf. & Inst. Code, § 730.6.) The consideration of a minor’s ability to pay may include his or her future earning capacity. (*Ibid.*)

Under existing law, juveniles must also pay, in addition to the restitution fine, a restitution order. A “restitution order” means an order for restitution to the victim of a crime. (Pen. Code, § 2085.6.) It is the intent of the legislature that a victim of conduct, for which a minor is under the jurisdiction of the juvenile court, who incurs any economic loss as a result of the minor’s conduct, shall receive restitution directly from that minor. (Welf. & Inst. Code, § 730.6, subd. (a)(1).) Direct victims, including corporations, commercial entities, and the government can receive direct restitution. (*Ibid.*) There is no cap on the amount of direct restitution—the court is required to order full restitution, in an amount to fully reimburse the victim(s) for all determined economic losses, such as medical expenses, wages, lost profits and property damage. (The Board, *Juvenile Restitution Order Guide* (Sept. 2021) <[https://victims.ca.gov/uploads/2021/09/Juvenile-Restitution-Guide\\_9.21.pdf](https://victims.ca.gov/uploads/2021/09/Juvenile-Restitution-Guide_9.21.pdf)> [as of March 22, 2023].) The term “economic losses” is entitled to an expansive interpretation and a victim’s right to restitution is broadly and liberally construed. (*In re Johnny M.* (2000) 100 Cal.App.4th 1128, 1132.)

While courts are required to order restitution for victims, statistics show that many victims receive little or no restitution. In a 2021 survey of victims in San Francisco, only 2% of respondents reported receiving any restitution and only 1% received the full amount of restitution ordered. Nearly 93% of respondents reported restitution was never ordered to them. And 68% of respondents who got restitution orders never received any payment. (San Francisco District Attorney’s Office, *2020 Victim Impact Survey Report* (2020) at p.16 <<https://sfdistrictattorney.org/wp-content/uploads/2021/04/4.19.21-Victim-Impact-Survey->



[Report.pdf](#)> [as of June 19, 2023].) Another survey of 771 survivors statewide found 66% of respondents had restitution ordered, but most received little or no payment, and what was received came slowly and in small amounts. (Castro Rodriguez, G., *Survivor Voices* (2021) at p. 20 <https://prosecutorsalliance.org/wp-content/uploads/2022/04/Survivor-Voices-Report-CA2022.pdf> [as of June 19, 2023].)

This bill would repeal the authority of the juvenile court to order a minor or their parents to pay a restitution order to the victim. Instead, this bill would require the juvenile court to identify the victims and determine the amount of their economic loss suffered because of the minor's conduct in a restitution order. The juvenile court would be required to transmit the restitution order to the board and the board would be required to compensate the victim the amount in the order. This bill does not change a juvenile's obligation to pay restitution fines to the board.

#### 4. Committee on Revision of the Penal Code's Recommendation on Restitution

On January 1, 2020, the Committee on the Revision of the Penal Code ("Committee") was established within the Law Review Commission to study the Penal Code and recommend statutory reforms. (SB 94, Ch. 25, Stats. 2019; Gov. Code, § 8280.) The Committee's objectives are as follows:

- (1) Simplify and rationalize the substance of criminal law;
- (2) Simplify and rationalize criminal procedures;
- (3) Establish alternatives to incarceration that will aid in the rehabilitation of offenders; and,
- (4) Improve the system of parole and probation.

(Gov. Code, § 8290.5, subd. (a).) In making recommendations to achieve these objectives, the Committee may recommend adjustments to the length of sentence terms. (Gov. Code, § 8290.5, subd. (b).) The Committee is required to prepare an annual report that describes its work in the prior calendar year and its expected work for the subsequent calendar year. (Gov. Code, § 8293, subd. (b).)

After holding meetings over the course of a year and hearing testimony from more than 50 witnesses, extensive public comment, thorough staff research, and deliberations of Committee members over the course of 6 public meetings, the Committee released its third annual report December 2022 describing its work and resulting 10 recommendations. (See < [http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2022.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2022.pdf)> [as of June 19, 2023].)

One of the Committee's recommendations is to establish a state-funded restitution system for crime victims. According to the Committee's report:

At the February 2022 Committee meeting, experts and practitioners in the field of victims' rights and services explained how California's array of restitution systems are failing to meet the needs of crime victims and urged the Committee to recommend reforms to ensure crime victims receive financial assistance sooner.

Former Secretary of CDCR and President of Stand up for Victims, Ralph Diaz explained that small restitution payments only serve as a reminder of prior

victimization and do not provide victims any real financial assistance. He suggested that California develop a system that allows the government to provide victims the financial assistance they need sooner. Dr. Gena Castro Rodriguez, Director of Survivor Policy at the Prosecutors Alliance of California, and former Chief of the San Francisco District Attorney's Office Victim Services Division, told the Committee that despite the millions of dollars ordered in restitution each year, crime victims rarely receive restitution payments, and what payments come are often in very low amounts.

The Committee recommends that California follow the model for victim compensation pioneered by Vermont, which almost 20 years ago created a restitution system which directed the state to pay restitution orders directly to victims, in amounts up to \$5,000.<sup>49</sup> Vermont continues efforts to collect payments from people convicted of crimes, but the slow and uncertain collection process no longer impacts victims. California should adopt a similar model in order to recognize the harm that victims have suffered and improve public safety by providing financial assistance more quickly than the traditional restitution system. Though victims in California have the right to recover restitution directly from the people convicted of the crime, they could waive that right in order to receive prompt payment directly from the state. To help manage costs, California should follow Vermont's model in setting a cap on the amount it will pay towards individual restitution orders. As explained further below, data analysis conducted for this report indicates that a \$4,000 cap would cover 75% of all restitution orders issued in the state. Adopting a state-funded restitution model would allow the state to continue its efforts to reduce the impact of criminal fines and fees on convicted persons. In recent years, the Legislature and Governor have acknowledged the counter-productive financial hardships created by excessive criminal fines and fees and have begun to take steps to provide relief to those ordered to pay, including committing in the most recent budget to end the imposition of restitution fines contingent on ongoing support from the General Fund.

(*Id.* at pp. 15-16.) This bill adopts a similar model recommended by the Committee on the Revision of the Penal Code but applies it juvenile restitution orders only. Specifically, this bill would require the court to determine the amount of restitution for the economic loss suffered as a result of a minor's conduct by each victim, to issue a restitution order in that amount, and to transmit the order to the Board for issuance of payment to the victim. This bill would require the Board, upon appropriation by the Legislature, to compensate victims in the amount outlined in a restitution order. In so doing, this bill would ensure that victims actually receive the full restitution owed to them in a timely and efficient manner.

## **5. 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 <<https://ebudget.ca.gov/2023-24/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](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.)

Notably, this bill eliminates juvenile restitution orders, but does not repeal the requirement that juveniles be required to pay restitution fines to the Restitution Fund.

## 6. Argument in Support

According to Prosecutors Alliance of California:

Crime survivors often need immediate care and resources that our current restitution system fails to provide, particularly in cases involving juveniles. Because most youth cannot pay, only a small fraction of crime survivors ever receive anything as a result of restitution orders in juvenile cases. Public records data received by the Berkeley Law Policy Advocacy Clinic shows that only about 20% of California youth restitution ordered since 2010 has been collected, and much of the outstanding debt is years old and unlikely ever to be paid.

Furthermore, the current restitution system drives already struggling families into cycles of poverty and incarceration. Under current state law, judges order youth who have been accused of causing harm to pay direct monetary compensation in the form of restitution to a person who has experienced loss or injury. Often, families cannot afford to pay these restitution orders, which are converted into civil judgments, enforceable through wage garnishment, tax refund intercept, and bank levy on the parents. Once a youth is eighteen years old, they are also subject to these penalties, hindering their economic stability as they enter the pivotal years of young adulthood.

In its most recent report, the Committee on Revision of the Penal Code recommended that the state assume responsibility for providing restitution to all

crime victims – not just in cases involving youth – as the state of Vermont does now.

AB 1186 will establish a public compensation fund that will provide restitution to crime survivors in cases where the harm was caused by a juvenile, ensuring that crime survivors can address immediate needs and recover from loss or injury. Under AB 1118, in lieu of ordering a juvenile to pay restitution, a judge will be empowered to order a youth to perform community service, participate in restorative justice programs, or engage in other activities to promote rehabilitation. AB 1186 will provide the opportunity for judges to better meet the needs of victims while also promoting racial and economic equity.

## **7. Argument in Opposition**

According to California District Attorneys Association:

AB 1186 requires the court to determine the economic loss and issue a restitution order but does not create a mechanism for payment. The bill would require the California Victim Compensation Board, upon appropriation by the Legislature, to compensate the victim for the amount in the order. Not all crimes qualify for compensation through the Victim Compensation Board. A qualifying crime must involve physical injury, threat of physical injury or death and certain crimes of emotion injury qualify. A governmental monetary source for victim restitution is needed, but this bill does not create this option.

Under Marsy's Law, a person who suffers a loss resulting from criminal activity shall have the right to seek and secure restitution. This bill would limit a victim's right to secure monetary restitution, as it eliminates from WIC 202(f) the requirement that a minor pay restitution to the victim

**-- END --**