SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No:	AB 1643	**Hearing Date:**	June 6, 2023
Author:	Bauer-Kahan		
Version:	March 14, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SJ		

Subject: ***Juveniles: informal supervision***

HISTORY

Source: Pacific Juvenile Defender Center

Prior Legislation: SB 383 (Cortese), Ch. 603, Stats. 2021
SB 1275 (Presley), Ch. 1117, Stats. 1989
AB 332 (Nolan), Ch. 930, Stats. 1989

Support: ACLU California Action; Anti-Recidivism Coalition; California Alliance for Youth and Community Justice; California Public Defenders Association; Center on Juvenile and Criminal Justice; Ceres Policy Research; Children's Defense Fund- California; Communities United for Restorative Youth Justice; Community Interventions; Ella Baker Center for Human Rights; Fresh Lifelines for Youth; Fresno County Public Defender's Office; Kids in Common; National Center for Youth Law; Prosecutors Alliance of California; San Francisco Public Defender; Santa Clara Juvenile Justice Commission; Santa Cruz Barrios Unidos; W. Haywood Burns Institute; Young Women's Freedom Center

Opposition: None known

Assembly Floor Vote: 56 - 8

PURPOSE

The purpose of this bill is to increase the threshold amount of victim restitution which makes a minor presumptively ineligible for a program of informal supervision from $1,000 to $5,000.

Existing law provides, generally, that a minor who is between 12 years of age and 17 years of age, inclusive, when the minor violates any law defining a crime, is subject to the jurisdiction of the juvenile court and to adjudication as a ward. (Welf. & Inst. Code, § 602, subd. (a).)

Existing law provides that in any case in which a probation officer, after investigation of an application for a petition or any other investigation the probation officer is authorized to make, concludes that a minor is within the jurisdiction of the juvenile court, or would come within the jurisdiction of the court if a petition were filed, the probation officer may, in lieu of filing a petition to declare a minor a ward of the court or requesting that a petition be filed by the prosecuting attorney to declare a minor a ward of the court and with consent of the minor and the minor's parent or guardian, refer the minor to services provided by a health agency, community-

based organization, local educational agency, an appropriate non-law-enforcement agency, or the probation department. Provides that if the services are provided by the probation department, the probation officer may delineate specific programs of supervision for the minor, not to exceed six months, and attempt thereby to adjust the situation that brings the minor within the jurisdiction of the court. (Welf. & Inst. Code, § 654, subd. (a).)

Existing law provides that if a petition has been filed by the prosecuting attorney to declare a minor a ward of the court under Section 602, the court may, without adjudging the minor a ward of the court and with the consent of the minor and the minor's parents or guardian, continue any hearing on a petition for six months and order the minor to participate in a program of informal supervision. (Welf. & Inst. Code, § 654.2, subd. (a).)

Existing law explicitly excludes from eligibility for informal supervision, a minor in the following cases, except in an unusual case where the interests of justice would best be served and the court specifies on the record the reasons for its decision. Provides that minors presumptively excluded are those alleged to have committed an offense in which victim restitution exceeds $1,000. (Welf. & Inst. Code, § 654.3.)

Existing law prohibits a court from using a minor's inability to pay restitution due to indigence as grounds for finding them ineligible for the program of supervision or a finding that the minor has failed to comply with the terms of the program of supervision. (Welf. & Inst. Code, § 654.3, subd. (a)(5)(A).)

Existing law requires the probation officer to refer specified cases to the prosecutor within 48 hours, including cases in which it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds $1,000. (Welf. & Inst. Code, § 653.5, subd. (c)(7).)

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).)

Existing law states 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 seek and secure restitution from the persons convicted of the crimes causing the losses they suffer. (Cal. Const., art. I, § 28, subd. (b)(13)(A).)

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 permits the juvenile court to, as appropriate, direct a minor under its jurisdiction 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).)

Existing law states 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).)

Existing law requires the court to order the minor to pay, in addition to any other penalty provided or imposed under the law, restitution to the victim or victims in the amount of losses, as determined. (Welf. & Inst. Code, § 730.6, subds. (a)(2)(B) & (h)(1).)

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. Prohibits a minor's inability to pay from being considered a compelling or extraordinary reason not to impose a restitution order. Prohibits the minor's inability to pay from being considered in determining the amount of the restitution order. (Welf. & Inst. Code, § 730.6, subd. (h)(1).)

This bill provides that a minor is not eligible for a program of informal supervision, except where the interests of justice would best be served and the court specifies on the record the reasons for its decision, if it appears that the minor has committed an offense in which victim restitution exceeds $5,000, instead of $1,000.

This bill raises the amount which requires the probation officer to commence proceedings within 48 hours if the minor is alleged to have committed an offense in which victim restitution is owed, from exceeding $1,000 to exceeding $5,000.

COMMENTS

1. Need For This Bill

According to the author:

> Our laws have not kept up with our world. A $1,000 theft in the 1980's is not the same as today. One iPhone in a snatched purse can be the difference between rehabilitation and jail for a misguided youth offender. Informal probation has been repeatedly shown to improve outcomes for youth, diverting them away from the system and saving them from the traps of repeat offenses. Outdated financial barriers should not stand in the way of helping youth who would otherwise be eligible for diversion from the system.

2. Informal Supervision

Juvenile delinquency actions are begun by the filing of a petition under Welfare and Institutions Code section 602. The petition alleges criminal offenses and is brought by the district attorney. Welfare and Institutions Code section 654 provides an opportunity for pre-petition informal supervision, also known as diversion. (Welf. & Inst. Code, § 654.) If the probation officer concludes that the minor is within the juvenile court's jurisdiction, or likely soon will be, the officer can delineate a specific program of supervision for the minor for up to six months to try to adjust the situation that brings the minor within the juvenile court's jurisdiction. (Welf. & Inst. Code, § 654; *In re Adam R*. (1997) 57 Cal.App.4th 348.) After the filing of a petition, the court may also offer informal supervision. (Welf. & Inst. Code, § 654.2.)

Informal supervision is a voluntary contract between the probation officer, the minor, and the parents or guardians. If the juvenile successfully completes this program, the case is then closed. If the juvenile is unsuccessful at any time during the six-month period, the probation department may make a referral to the district attorney's office for a formal petition to the juvenile court.

(Welf. & Inst. Code, § 654.) Importantly, the court cannot require a minor to admit the truth of the petition before granting informal supervision. (*In re Ricky J.* (2005) 128 Cal.App.4th 783.)

Under current law, a number of circumstances render a minor presumptively ineligible for informal supervision. For example, a minor is presumptively ineligible for informal supervision where the petition alleges that the minor has committed an offense in which victim restitution exceeds $1,000. (Welf. & Inst. Code, § 654.3, subd. (a)(5).) Additionally, probation is required to refer certain types of cases to the prosecutor within 48 hours. These include cases in which it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds $1,000. (Welf. & Inst. Code, § 653.5, subd. (b)(7).)

These dollar thresholds were established in 1989 via AB 332 (Nolan, Chapter 930, Statutes of 1989) and SB 1275 (Presley, Chapter 1117, Statutes of 1989). They have not been updated since that time. This bill would increase the thresholds to $5,000 which the bill's sponsor asserts partly reflects inflation but also recognizes that diversion of youth leads to better outcomes for both the youth and public safety than formal processing through the juvenile justice system.

3. Argument in Support

The Pacific Juvenile Defender Center, the bill's sponsor writes:

> The $1,000 threshold for minors to be informally supervised by probation or allowed to participate in informal supervision by the juvenile court has not been adjusted since first codified in 1989. Most obviously, the figure has not been adjusted for inflation. But even more importantly, the figure does not account for technological change: In 1989, smartphones — perhaps the most commonly-stolen technology item — had not yet been invented, let alone reached total ubiquity as today. Under the current statutory scheme, if a youth steals or damages an iPhone, even if the youth has no record and is doing well in all other aspects of their life, two decisions must follow. First, the youth must be referred to the DA's Office for filing of charges and is not eligible for pre-filing diversion. Second, once charges are filed, the youth is presumptively ineligible for informal probation.
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> A.B. 1643 will increase the presumptive disqualifying dollar threshold for informal supervision to $5,000. This is a common-sense change that recognizes that diversion of youth produces better outcomes for the youth and public safety than formal juvenile justice system processing. It also recognizes that there is a slim (if any) connection between a restitution amount and a youth's likelihood of success on diversion….
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> It has become well-recognized that diverting youth away from formal justice system processing for lower-level offenses leads to better, healthier, and more equitable outcomes for youth and the community, and permits diverted youth to connect to services without juvenile court involvement and extended contact with law enforcement. With the restitution threshold raised to $5,000, more youth will be able to access informal supervision and take advantage of the benefits of the program, allowing the harm caused by low-risk youth to be addressed outside of the formal juvenile justice system. The expansion of informal supervision will contribute to decreasing recidivism rates and increase the accessibility of

community-based interventions. Youth who receive responses to their behavior that are restorative (rather than punitive) are healthier, less likely to recidivate, and more likely to repair harm. Research also shows that community-based strategies can increase public safety and lessen exposure to the justice system, reducing the need for the system to expend resources. As such, studies consistently recommend increasing community-based interventions like diversion, and reducing the detention of youth except when necessary for public safety.

Moreover, allowing more youth to access informal supervision directly facilitates more equitable outcomes for youth of color, who are more likely to be criminalized for the same behavior and less likely to be given access to diversion. Specifically, Black and Latino youth who are referred to probation are more likely than white youth to have a petition filed for every category of offense. A.B. 1643 thus places an additional safeguard in place to protect youth of color from being ensnared in the juvenile justice system.

The juvenile justice system strives to rehabilitate and support youth, and to remove them from the school-to-prison pipeline. Current law, however, reflects an outdated standard based on a disproven mentality of requiring formal system involvement for low-level offenses, and invokes a restitution metric that has no actual relation to whether a youth can be successful without formal system involvement. A.B. 1643 will help ensure that more youth are able to participate in community-based solutions.

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