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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2295                      **Hearing Date:** May 10, 2016  
**Author:** Baker  
**Version:** March 15, 2016  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** JM

**Subject:** *Restitution for Crimes*

### HISTORY

Source: Crime Victims United of California

Prior Legislation: None known

Support: California Police Chiefs Association; California District Attorneys Association;  
Office of the District Attorney Contra Costa County; STAND!

Opposition: California Attorneys for Criminal Justice

Assembly Floor Vote: 76 - 0

### PURPOSE

*The purpose of this bill is to conform statutory restitution provisions to the requirement in the California Constitution that each victim is entitled restitution from the perpetrator of the crime in which the victim suffered a loss.*

*Existing provisions in the California Constitution* state that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the perpetrators of these crimes. Restitution shall be ordered in every case “regardless of the sentence or disposition imposed” and the Legislature shall enact statutes to implement the constitutional restitution provisions. (Cal. Const. Art. 1 § 28 (b).)

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

*Existing law* requires the court to order the defendant to pay victim restitution in every case in which a victim has suffered an economic loss as a result of the defendant's conduct. (Pen. Code, § 1202, subd. (f).)

*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. (Pen. Code, § 1202.4, subd. (g).)

*Existing law* specifies that inability to pay is not a compelling and extraordinary reason not to impose victim restitution. (Pen. Code, § 1202.4, subd. (g).)

*Existing law* states that inability to pay is not a ground for consideration at all in calculating victim restitution. (Pen. Code, § 1202.4, subd. (g).)

*This bill* removes the ability of a judge to order less than full restitution to the victim based on the defendant's ability to pay under the aggravated white collar crime enhancement.

*This bill* removes the ability of a judge to order less than full restitution to the victim based on the defendant's ability to pay under the "seize and freeze" provisions for aggravated elder or dependent adult financial abuse.

*This bill* removes court authority to order less than full restitution when it finds compelling and extraordinary reasons for doing so, as currently provided by the restitution statute.

### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

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

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

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

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

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

*Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

In 2008, California voters passed Proposition 9, also known as Marsy's Law, which codified that victims of crimes such as assault, abuse, homicide, robbery, human trafficking, and other violent offenses have enumerated rights. Various sections of the California Penal Code, including Sections 1202.4(f) and (g) permit trial courts to provide less than full restitution to victims. California's Penal code conflicts with Marsy's Law in the California Constitution as amended by voters in Proposition 9.

### 2. California Constitutional Right to Victim Restitution

The right of a victim to restitution from the person convicted of a crime from which the victim suffers a loss as result of the criminal activity became a constitutional right when adopted by vote of the people in June 1982 as part of Proposition 8. Proposition 8 added Article I, section 28, subdivision (b), to the California Constitution, and provided:

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. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

The restitution provisions in Proposition 8 adding Article I, Section 28 (d) to the Constitution were not self-executing. The initiative directed the Legislature to adopt implementing legislation. (*People v. Vega-Hernández* (1986) 179 Cal.App.3d 1084.) In response, the Legislature enacted Penal Code sections 1202.4 and 1203.04 (repealed section related to restitution as condition of probation). (*People v. Ortiz* (1997) 53 Cal.App.4th 791, 795, fn. 3.)

The constitutional provisions regarding restitution were amended by the voters again in 2008, when they approved Proposition 9, the Victims' Bill of Rights Act of 2008, also known as Marsy's Law. The amendments, among other things, make clear that a victim is entitled to restitution, expanded the definition of a victim to include a representative of a deceased victim, and gave that representative the ability to enforce a victim's right. (*See People v. Runyan* (2012) 54 Cal.4th 849, 858-859.)

### **3. *People v. Pierce* (2015) 234 Cal. App. 4th 1334 Questioned the Constitutionality of Statutes Authorizing a Court to Order a Defendant to Pay Less than Full Restitution**

*People v. Pierce* (2015) 234 Cal.App.4<sup>th</sup> 1334 was an appeal from a restitution order after the defendant pled to a home invasion robbery and admitted he acted in concert with two other men. One of his codefendants had left the scene in the victim's truck and crashed it into a telephone pole, damaging the pole and another house. (*Id.*, at p. 1336.) One of the claims raised by the defendant was that the trial court erred in imposing restitution for damages caused by a codefendant because the prosecutor explicitly waived the claim at the initial sentencing hearing. The appellate court rejected the argument. (*Id.*, at p. 1337.) The court held that the prosecutor cannot waive a victim's right to restitution because it is constitutionally mandated. (*Id.*, at p. 1338.) Citing Penal Code section 1202.4, subdivision (f), the court noted that the trial court cannot generally stray from the mandate of ordering full restitution. (*Ibid.*)

In dicta, the court observed that the language of Penal Code Section 1202.4, subdivision (f) allows the court to order the defendant to pay less than full restitution where the trial court finds "compelling and extraordinary reasons" to do so. The court in *Pierce* questioned whether this language remained valid after the passage of Proposition 9. The court noted that before the passage of Proposition 9, the constitutional provision regarding the right to restitution said, "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." Proposition 9 amended that provision to delete the language "unless compelling and extraordinary reasons exist to the contrary." On this basis, the appellate court encouraged the Legislature to conform the language of Penal Code section 1202.4. (*People v. Pierce, supra*, 234 Cal.App.4th 1334, 1338, fn. 2.)

This bill deletes language in several statutes which authorizes the court to order less than full restitution based either on the defendant's ability to pay or for compelling and extraordinary reasons because they conflict with the constitutional right of a victim to full restitution.