
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 433 **Hearing Date:** June 25, 2019
Author: Ramos
Version: April 2, 2019
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Probation: Notice to Victim*

HISTORY

Source: Crime Victims United

Prior Legislation: AB 194 (Patterson), failed passage in Senate Public Safety in 2017
AB 2477 (Patterson), failed passage in Assembly Public Safety in 2016

Support: California District Attorneys Association; Peace Officers' Research Association of California

Opposition: California Attorneys for Criminal Justice

Assembly Floor Vote: 73 - 1

PURPOSE

The purpose of this bill is to require that the prosecutor be given two days written notice of a hearing for early termination of probation, and to require the prosecutor to notify the victim if the victim has asked to be notified about the case.

Existing law establishes the right of crime victims to receive restitution directly from the persons convicted of the crimes for losses they suffer. (Cal. Const., art I, § 28, subd. (b).)

Existing law provides that it is the intent of the Legislature that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime. (Pen. Code, § 1202.4, subd. (a)(1).)

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. (Pen. Code, § 1202.4, subd. (b)(1).)

Existing law requires that the defendant make 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 in every case in which a victim has suffered economic loss as a result of the defendant's conduct. Requires the restitution order to include a provision that the amount will be determined at the direction of the court if the amount of loss cannot be ascertained at the time of sentencing. Requires the court to order full restitution. (Pen. Code, § 1202.4, subd. (f).)

Existing law prohibits a defendant's inability to pay from being considered a compelling and extraordinary reason not to impose a restitution fine. Provides that inability to pay may be considered only in increasing the amount of the restitution fine in excess of the minimum fine. (Pen. Code, § 1202.4, subd. (c).)

Existing law provides that restitution to the victim or victims, if any, is enforceable as if the order were a civil judgment. (Pen. Code, § 1202.4, subd. (a)(3)(B).)

Existing law requires a court which grants probation to make the payment of the victim restitution order a condition of probation. Requires any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation to continue to be enforceable by a victim until the obligation is satisfied (Pen. Code, § 1202.4, subd. (m).)

Existing law requires the court, when the economic losses of a victim cannot be ascertained at the time of sentencing, to retain jurisdiction over a person subject to a restitution order for the purpose of imposing or modifying restitution until such time as the losses may be determined. Does not prohibit a victim, the district attorney, or a court on its own motion from requesting correction, at any time, of a sentence when the sentence is invalid due to the omission of a restitution order. (Pen. Code, § 1202.46.)

Existing law defines probation as “the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer.” (Pen. Code, § 1203, subd. (a).)

Existing law gives the court discretion in felony cases to grant probation for up to five years, or no longer than the prison term that can be imposed when the prison term exceeds five years. (Pen. Code, § 1203.1, subd. (a).)

Existing law gives the court discretion in misdemeanor cases to generally grant probation for up to three years, or no longer than the consecutive sentence imposed if more than three years. (Pen. Code, § 1203a.)

Existing law authorizes the court to revoke, modify, extend, or terminate its order of probation. (Pen. Code, §§ 1203.2, 1203.3.)

Existing law requires a hearing to be held in open court before the judge before any sentence or term or condition of probation or condition of mandatory supervision is modified. (Pen. Code, § 1203.3, subd. (b)(1).)

Existing law authorizes the court to modify the dollar amount of restitution at any time during the term of probation. (Pen. Code, § 1203.3, subd. (b)(5).)

Existing law prohibits the court from modifying the restitution obligations due to the defendant's good conduct. (Pen. Code, § 1203.3, subd. (b)(4).)

This bill requires a hearing to be held in open court before the judge before early termination of probation.

This bill requires the prosecuting attorney to be given a two-day written notice and an opportunity to be heard on the decision to terminate probation early.

This bill requires the prosecuting attorney to provide notice to the victim if the victim has requested to be notified about the progress of the case.

This bill requires the prosecuting attorney to request a continuance of the hearing if the victim advises the prosecuting attorney that there is an outstanding restitution.

COMMENTS

1. Need for This Bill

According to the author:

Under current law, while victims are required to be provided restitution to cover economic losses associated with their victimization, occasions arise where the victim's losses may not be able to be determined at the time of sentencing. Current law allows for restitution to be revisited, but that must occur prior to the end of probation when the court loses jurisdiction associated with the defender.

Crime victims do not have any way of knowing that a defendant may be poised to have their probation terminated early, cutting off any opportunity for revisiting restitution to the victim and potentially limiting a victim's safety in cases of possible re-offense.

AB 433 seeks to provide victims and prosecuting attorney's notice prior to a hearing to terminate probation early. For victims, such notice would provide benefits of being made aware that probation and the associated terms that may include prohibition on contact may be void without further action to institute an ongoing protective order. Additionally, the notice would provide the opportunity, where the victim can demonstrate justification for additional restitution to be ordered, for the victim to request that the court to consider additional restitution to cover constitutionally mandated restitution at a level that makes a victim whole based on their losses.

2. Jurisdiction to Modify Restitution

In *Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, the Court of Appeal held that once probation expires, the judge cannot modify a restitution order. In *Hilton*, the defendant pled to driving under the influence and the court placed him on probation for three years. At a subsequent restitution hearing, the court ordered the defendant to pay \$3,000 restitution to the victim, which he did. (*Id.* at pp. 769-770.) The victim then sued the defendant civilly and won \$3.5 million. Probation then expired on the criminal case. One year and seven months after probation expired, the victim went back to court and requested that the court order \$886,000 more in restitution in order to pay for the costs of the civil suit as well as additional lost wages. The defendant objected based on lack of jurisdiction. (*Id.* at p. 770.) The Court of Appeal reversed the order, holding that once probation expires, the court loses jurisdiction to modify a restitution order and that any extension of probation was an act in excess of jurisdiction and void. (*Id.* at p. 772.) The court noted that termination of probation occurs by operation of law at the end of the probationary period. (*Id.* at p. 773.) The court also held that the language of Penal

Code section 1203.3 reflects legislative intent, consistent with pre-existing law on probation, that the trial court lacks jurisdiction to impose restitution once probation expires. (*Id.* at pp. 775-776.)

People v. Waters (2015) 241 Cal.App.4th 822, agreed with the holding in *Hilton*. In this case, the court sought to order restitution two years after the probationary period expired, even though the victim impact statement seeking \$20,000 was filed before the entry of the plea. (*Id.* at p. 825.) The court noted that Penal Code section 1202.4, subdivision (f) requires the trial court to order victim restitution unless the trial court finds compelling and extraordinary reasons for not doing so. Regarding jurisdiction, a trial court's authority to modify a sentence usually expires 120 days after judgment. (See Pen. Code, § 1170, subd. (d).) (*Id.* at p. 827.) But there is an exception where victim restitution cannot be ascertained at the time of sentencing and the trial court retains jurisdiction to order restitution. (Pen. Code, § 1202.46.) However, section 1202.46 must be harmonized with the preexisting statutory scheme concerning probation, which limits a trial court's jurisdiction to modify probation to the term of probation (Pen. Code, § 1203.3, subds. (a), (b)(4).) (*Id.* at p. 830-831.) Therefore, the court concluded that the trial court lacked jurisdiction to order restitution after the expiration of the defendant's probationary period. (*Id.* at p. 831.)

Because a court lacks jurisdiction to order or modify restitution after the expiration of a defendant's probationary period, this bill would give the prosecution two-days' notice of a hearing for early termination of probation, as well as require the prosecutor to notify a victim in the event that there are outstanding restitution claims which need to be brought to the court's attention. In the event the victim advises there is outstanding restitution, the prosecutor would then be required to request a continuance which would allow remaining restitution issues to be addressed before the court loses jurisdiction.

3. Constitutional Right to Victim Restitution

Proposition 8, approved by the voters in 1982, amended the state Constitution to establish the right of crime victims to receive restitution. The relevant text of the initiative 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. (Cal. Const., art. I, § 28, subd. (b).)

A trial court is required to order the defendant to pay full restitution to victims of a crime "unless it finds compelling and extraordinary reasons for not doing so and states them on the record." (Pen. Code, § 1202.4, subd. (b).) If the amount of restitution cannot be ascertained at the time of sentencing, the restitution order is required to include a provision that the amount will be determined at the direction of the court. (Pen. Code, § 1202.4, subd. (f).) The trial court must incorporate the restitution order in the defendant's conditions of probation. (Pen. Code, § 1202.4, subd. (m).)

It has been held that a sentence is invalid where a trial court fails to issue a restitution award to the victim. (*People v. Rowland* (1997) 51 Cal.App.4th 1745, 1750-1752.) Generally, a valid sentence may not be modified in a way that increases the sentence. The modification of a sentence to include restitution may constitute an increase in sentence. However, a sentence that is

invalid due to the omission of a restitution order may be corrected upon request of a victim, the district attorney, or by a court on its own motion. (*Ibid.*; see also Pen. Code, § 1202.46.)

4. Restitution as a Condition of Probation

When the court grants probation, payment of restitution must be made a condition of probation. (Pen. Code, 1202.4, subd. (m).) When ordering restitution as a condition of probation, the court is not restricted to directing payment to only those victims as defined in the restitution statute. Additionally, the court can order restitution as a condition of probation even when the losses are not necessarily caused by the conduct underlying the defendant's conviction. Rather than having a causal connection, the restitution condition must only be reasonably related to either the defendant's crime or to the goal of deterring future criminality. (*People v. Anderson* (2010) 50 Cal.4th 19, 26-27; see also *People v. Carbajal* (1995) 10 Cal.4th. 1114, 1121–1124.)

The court is expressly authorized to modify the dollar amount of restitution at any time during the term of the probation. (Pen. Code, § 1203.3, sub. (b)(5).) If part of a restitution order has not been paid after a defendant is no longer on probation, it remains enforceable by the victim as though it were a civil judgment. (Pen. Code, 1202.4, subd. (m).) Additionally, if the defendant is unable to pay full restitution within the initial term of probation, the court can modify and extend the period of probation to allow the defendant to pay off all restitution within the probation term. (Pen. Code, §1203.3, subd. (b)(4); *People v. Cookson* (1991) 54 Cal.3d 1091, 1097.) Generally, the probation term may be extended up to, but not beyond, the maximum probation period allowed for the offense. (*People v Medeiros* (1994) 25 Cal.App.4th 1260, 1267–1268.)

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