
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 1035 **Hearing Date:** April 2, 2024
Author: Ashby
Version: February 6, 2024
Urgency: No **Fiscal:** Yes
Consultant: JD

Subject: *Criminal procedure: fines, fees, and restitution*

HISTORY

Source: Anti-Recidivism Coalition

Prior Legislation: AB 855 (Jackson, 2023) – Died Asm. Rev. & Tax
AB 1803 (Jones-Sawyer), Chapter 494, Statutes of 2022
SB 1106 (Wiener), Chapter 734, Statutes of 2022
AB 1530 (Skinner), Chapter 359, Statutes of 2010

Support: California Attorneys for Criminal Justice; California Public Defenders Association; California State Treasurer; Secure Justice

Opposition: California Association of Judgment Professionals

PURPOSE

The purpose of this bill is to change the maximum annual interest assessed on restitution orders from 10% to no more than 1% and to establish a sliding scale model for the Franchise Tax Board (FTB) to “consider income and ability to pay” when determining its withholding amount for restitution payments.

Existing law provides people the right to seek restitution when they suffer loss as a result of criminal activity, from the convicted party guilty of the criminal activity causing the loss (California Constitution Art. I Sec. 28 (13)(A)).

Existing law states 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 (California Constitution Art. I Sec. 28 (13)(B)).

Existing law states that restitution collected shall be first applied to pay the amounts ordered as restitution to the victim (California Constitution Art. I Sec. 28 (13)(C)).

Existing law provides that if a victim incurs an economic loss as a result of the commission of a crime, they shall receive restitution directly from the defendant convicted of the crime (Penal Code § 1202.4, subd. (a)(1).)

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 to the state and restitution to the victim or victims, if any. (Penal Code § 1202.4, subd. (a)(3).)

Existing law requires the courts to consider all relevant factors when setting the restitution fine amount, including the:

- Defendants inability to pay, including future earning capacity – defendant bears the burden to prove their inability to pay;
- Seriousness and gravity of the convicted offense;
- Circumstances that contributed to the commission of the crime;
- Defendants economic gain as a result of the crime, if any;
- Victim’s monetary losses as well as intangible losses like psychological harm; and,
- Number of victims. (Penal Code § 1202.4, subd. (d)(1).)

Existing law clarifies that if the amount of loss cannot be determined at the time of sentencing, the restitution order shall include a provision declaring that the responsibility of setting the amount shall fall to the direction of the court (Penal Code § 1202.4, subd. (f))

Existing law provides a defendant ordered to pay restitution the right to dispute the determination of the restitution order before a judge (Penal Code § 1202.4, subd. (f)(1))

Existing law prohibits an unfulfilled order of restitution or restitution fine from being considered as grounds for a defendant not fulfilling the conditions of their probation (Penal Code § 1203.4 subd. (c)(3)).

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. (Penal 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, post release community supervision or mandatory supervision, after a term in custody, or after completing diversion is enforceable by the California Victim Compensation Board. (Penal Code, § 1214, subd. (a).)

Existing law requires a restitution order to be a dollar amount that fully reimburses the victim(s) for every one of their economic losses incurred as a result of the defendants criminal action (Penal Code, § 1214, subd. (f)(3).)

Existing law assesses a 10 percent annual interest rate on restitution orders beginning on either the sentencing date or the date that the loss occurred, as determined by the court. (Penal Code § 1202.4 subd. (f)(3)(A).)

Existing law defines a withholding period as the time period beginning 10 days after an employer receives an earnings withholding order until the earliest of one of these occurrences:

- The date when the entire amount designated by the withholding order has been withheld
- A court serves an order to the employer forcing them to terminate the withholding period
- The levying officer serves a notice of termination to the employer
- The date of termination of a dormant or suspended earnings withholding order as determined pursuant to Section 706.032 (Code of Civil Procedure § 706.022 subd. (a)).

Existing law states that an employer must withhold the amounts required by an earnings withholding order from the earnings of the employee during the designated withholding period (Code of Civil Procedure § 706.022 subd. (b)).

Existing law clarifies that an employer is not liable for any amounts withheld and paid to the levying officer prior to the service of the withholding order (Code of Civil Procedure § 706.022 subd. (c)).

Existing law includes the addition of daily interest accrued after the issuance of a withholding order in the total amount required to satisfy an earnings withholding order (Code of Civil Procedure § 706.024).

Existing law requires the withholding order be paid monthly no later than the 15th of each month, the monthly payment shall include all the amounts required to be withheld from the pay period that ends closest to the end of the month. Employers have the option to pay more frequently than monthly (Code of Civil Procedure § 706.025).

Existing law provides that the maximum amount of disposable earnings subject to levy under an earnings withholding shall not exceed the lesser of the following:

- Twenty percent of the individual's weekly disposable income; or,
- Forty percent of the amount by which the individual's disposable earnings for that week exceed 48 times the state minimum hourly wage in effect at the time the earnings are payable. If a judgment debtor works in a location where the local minimum hourly wage is greater than the state minimum hourly wage, the local minimum hourly wage in effect at the time the earnings are payable shall be used for the calculation made (Code of Civil Procedure § 706.050 subd. (a)).

Existing law establishes multipliers for determining the maximum amount of disposable earnings subject to levy under an earnings withholding (Code of Civil Procedure § 706.050 subd. (b)).

Existing law allows for restitution fines and restitution orders be referred to the FTB for collection no sooner than 90 days after the payment becomes delinquent (Revenue and Taxation Code § 19280 subd. (a) and (b))

Existing law allows the Department of Corrections and Rehabilitation (CDCR) or county to refer restitution orders to the FTB for any person who is or has been under the jurisdiction of CDCR or the county (Revenue and Taxation Code § 19280 subd. (a)).

Existing law prohibits a restitution order from being referred to the FTB if a county agency has already been designated by the county board of supervisors to collect restitutions from individuals who are serving a sentence in a county jail, are on mandatory supervision, or are on post release community supervision (Revenue and Taxation Code § 19280 subd. (a)(1)(B)).

Existing law allows for a crime victim entitled to restitution to choose a preferred collecting agency, if they notify the county agency or CDCR, depending on the agency that is already responsible for restitution order (Revenue and Taxation Code § 19280 subd. (a)(1)(C)).

Existing law allows the withholding amount referred to the FTB to include an administrative fee and any amounts that a government entity may add to the court-imposed obligation (Revenue and Taxation Code § 19280 subd. (a)(2)(A)).

Existing law requires the FTB to treat the entire remaining withholding amount combined with any accrued to that date as final and due payable to the State of California (Revenue and Taxation Code § 19280 subd. (c)).

Existing law allows the FTB to collect the withholding amount from the debtor using any means authorized under the law for collection of a delinquent personal income tax liability (Revenue and Taxation Code § 19280 subd. (c)).

Existing law prohibits restitution payments collected by the FTB from being considered as a form of income tax payments (Revenue and Taxation Code § 19280 subd. (g)).

This bill establishes a sliding scale model for when withholding orders are issued by the FTB; this model will be used when determining the amounts collected for restitution payments.

This bill changes the maximum annual interest rate for restitution orders from 10% to no more than 1%, with the rate accruing beginning on the date of sentencing or loss as determined by the court.

This bill would require the collecting entity to use the money to completely pay off the restitution ordered to the victim before using any money to fulfill court ordered restitution fine or any administrative fees.

This bill changes the gendered distinction between fiancé and fiancée to the non-gendered term “fiance” in the California Penal Code § 1202.4.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Restitution is intended to compensate crime survivors for economic loss and harm done, while also holding offenders accountable for their actions. However, for a variety of reasons, less than 1% of survivors actually receive restitution as ordered.

80% of people who owe restitution live in poverty. An additional 10% interest rate required by the Franchise Tax Board (FTB) further exasperates an already dire situation. Inability to pay restitution often results in two things: the formerly incarcerated people living with debt — which can range from thousands to sometimes millions of dollars — for the rest of their lives, and the survivors receiving little to no compensation. This not only wreaks havoc on the lives of people ordered to pay, but also leaves many survivors without restitution.

SB 1035 will better ensure victims are properly compensated and receive their payments in a timely manner by reforming the current structure of restitution payments, while also easing the burden for people trying to reintegrate back into their communities, pay off their debt, and move forward with productive lives.

2. Background: FTB Restitution Involvement

According to California Department of Corrections and Rehabilitation:

Effective March 1, 2010, the California Department of Corrections and Rehabilitation (CDCR) began submitting all unpaid victim direct orders of restitution owed by persons who are, or have been, under CDCR's jurisdiction to the FTB for collection. The exception is persons who are currently inmates at a state prison, from whom restitution is collected only through CDCR's wage and deposit garnishment process.

For parolees and discharged offenders, the FTB works as a collection agent for CDCR, collecting the restitution through its Court-Ordered Debt Unit. Cities, counties, and other state agencies also use FTB's Court-Ordered Debt Unit. The procedures used by FTB to collect these debts are identical to those used with ordinary taxpayers who owe a tax debt. FTB sends a notice letter advising the debtor to contact FTB and set up a payment plan. Debtors who do not contact FTB are then subject to wage garnishment, bank account seizures, and other forms of collection.

No victim information is shared with the FTB, only offender information. FTB collects the restitution and sends the money to CDCR. CDCR allocates the collection to the appropriate victim and sends the money and victim information to the California Victim Compensation and Government Claims Board's Victim Compensation Program, the agency responsible for sending the money to the victim. The FTB collection process continues until the victim is paid in full.

FTB will pursue collection no matter how long it takes until the restitution is paid. There is no time limit. Further, offenders in bankruptcy cannot discharge their victim restitution obligation.

3. Restitution Fines

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).)

The amount of the fine varies in the trial court's discretion, ranging from a minimum of \$300 up to \$10,000 for felony convictions, and \$150 to \$1,000 for misdemeanor convictions. (Pen. Code,

§ 1202.4, subd. (b)(1).) The court may determine the amount of the fine by multiplying the minimum fine by the number of years of imprisonment to which the defendant is sentenced, and then by the number of convictions. (Pen. Code, § 1202.4, subd. (b)(2).) In this calculation, the court is permitted to consider the defendant's ability to pay although this factor is only to be considered in determining whether to set the fine in excess of the statutory minimum. (Pen. Code, § 1202.4, subd. (c).)

A restitution fine is not paid by the defendant directly to the victim. Instead, the fine is deposited in the Restitution Fund from which crime victims may obtain compensation. (Pen. Code, § 1202.4, subd. (e).) 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.)

This bill would mandate that restitution ordered to the victim be paid first, before any restitution fine can be collected.

4. Constitutional Right to Victim Restitution

In 1982, Proposition 8 was approved by California voters to amend the California Constitution to establish the right of crime victims to receive restitution. 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).)

A trial court is required to order 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. (f).) If the amount of restitution cannot be ascertained at the time of sentencing, the court shall include a provision in the restitution order that the restitution amount shall be determined at a future time. (Id.) The trial court must incorporate the restitution order in the defendant's conditions of probation. (Pen. Code, § 1202.4, subd. (m).)

When the court grants probation, payment of restitution must be made a condition of probation. (Pen. Code, 1202.4, subd. (m).) 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); Pen. Code, § 1214.) 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.)

5. Issues with Fulfilling Restitution Orders

This bill modifies how California's FTB assesses restitution orders upon formerly incarcerated individuals. One of its main provisions establishes a "sliding scale model" for the FTB to use when setting amounts to be withheld from a person's paycheck on a monthly basis. Currently, the FTB considers the ability of the defendant to pay on a case-by-case basis when determining

their withholding orders, which can result in a lack of uniformity across the system. The sole metric that the FTB is bound to when setting a withholding order amount is according to Civil Code of Procedure § 706.050, which states that an order may not exceed twenty percent of an individual's disposable income for the week, or if their wage exceeds forty percent of the amount by which the individual's disposable earnings for that week exceed 48 times the state minimum hourly wage in effect at the time the earnings are payable. By mandating the use of a single sliding scale model, this bill would ensure that each defendant's ability to pay is equally considered.

Currently, many restitution orders either go entirely unfulfilled or are only partially fulfilled. According to the Berkeley Law's [Policy Advocacy Clinic](#), in California, less than 1 percent of victims actually receive the amount as ordered, and 67 percent of victims receive no restitution or victim compensation at all. The clinic also found that the average restitution amount in California is about \$10,000 and the average total of restitution fines were about \$2,000.¹ People assessed with restitution will often live with this debt and victims in these cases receive little to no restitution at all.

The large percent of unfulfilled restitution payments can possibly be attributed to the ability of the defendant to pay the court-ordered amounts. A study conducted by the Brookings Institute found that nationally individuals who were incarcerated at some point during 2009-2013, in the first full year after their release, about 49 percent of formerly incarcerated individuals earn less than \$500, 32 percent earn between \$500 and \$15,000, and only 20 percent earn more than \$15,000.² The sponsor of this bill is concerned that formerly incarcerated individual's inability to pay restitution combined with other pressures facing them will result in more of these individuals recidivating. And by easing this burden and allowing individuals to enter into payment plans more understanding of their situation could lead to more restitution orders being fulfilled and less recidivism.

6. Argument in Support

According to the State Treasurer:

[SB 1035] will reduce the annual interest rates placed on restitution payments, increased payments, increased flexibility by requiring restitution payments be paid before administrative costs, and implementing a sliding scale model for FTB garnishments that considers income and ability to pay to determine the amount to be withheld while leaving the payments made toward victims intact. This step will reduce barriers to make these payments on time, which will ensure more money goes directly to victims and their families.

Current law requires a person who causes harm to pay restitution for any injury or loss caused to the victim. Restitution not only serves to indemnify the victim for a loss, but it also serves as a form of restorative justice for the offender. Interest is charged annually on restitution payments and collected by the Franchise Tax Board and Department of Corrections and Rehabilitation. Additional penalties, including wage garnishment, are assessed for delinquent payments. Many formerly incarcerated individuals often struggle to make payments once they fall behind.

¹ [Restitution Relief: Policy Advocacy Clinic Spearheads Reform Efforts to Lift a Lifelong Burden](#)

² [Brookings Institution study](#)

Unlike other debt, restitution has no statute of limitations and is not dischargeable in bankruptcy. Consequently, this debt can follow formerly incarcerated people for their entire lives. This can restrain their ability to build savings, support themselves and their families, successfully rehabilitate in their communities, and importantly, limit funds available to make restitution payments to victims since the state collects interest and penalties first. Approximately 80% of Californians owing restitution are living in poverty and unable to pay their debt. Not only does this make it nearly impossible for the victims' families to receive payments that are owed, but this inability to pay restitution and pay off restitution debt also can lead to higher cases of recidivism.

If enacted, SB 1035 will allow formerly incarcerated individuals to have a real chance in assimilating into society while ensuring their payments go to victims.

7. Argument in Opposition

According to the California Association of Judgment Professionals:

[...] A Crime Victim has a right to civil recovery against a criminal defendant for full economic losses he/she sustained as a result of the commission of a crime for which the defendant is found guilty.³ When a court of law orders monetary restitution from the criminal defendant to the Victim, the resulting Victim Restitution Order is enforced as a civil judgment.⁴

A Victim's Restitution "[s]hall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to...profits lost by the victim".⁵ A proposed interest rate "not exceeding 1 percent per annum" does not compensate the Victim for the economic loss of use of the funds owed. This proposed interest rate does not fully reimburse the Victim for his/her economic losses, and it rewards the defendant with an abnormally low interest rate. This measure incentivizes the defendant ignore the ordered restitution to the Victim.

[...] What SB 1035 fails to understand is that reducing the interest rate on a restitution order to "less than 1% interest", would only encourage recidivism for two reasons. First, even if the criminals ever get caught, are convicted, and ordered to return that money or the value of the property to the Victim, the criminals will only have to pay "less than 1% interest" on that stolen money or asset. This is the equivalent of borrowing a low interest loan from a bank that enables the criminal to earn a much higher rate of return whether that return be through legitimate means or through other means that are criminal and less savvy in nature.

[...]The California Constitution Article XV, Section 1 permits judgment interest up to 10 percent per annum. The Legislature had two purposes in setting the interest rate on judgments at the current 10 percent per annum: 1) to compensate

³ [Penal Code §§1202.4(a)(1), 1202.4(f) and 1202.4(k)]

⁴ [Penal Code §§1191.2, 1202.4(a)(3)(B) 1202.4(i)]

⁵ [Penal Code §1202.4(f)(3)]

Judgment Creditors (ie. Victims) for their loss of use of their money ordered restored to them but unpaid, and 2) to encourage Judgment Debtors (ie. Defendant/Criminal) to pay or settle their judgments (ie. Victim Restitution). This purpose is still applicable today. Interest rates fluctuate year-by-year, but over the long-term, 10 percent interest per annum is not an outlandish rate because properly invested, a Judgment Creditor could earn 10% per annum on money invested.

The second part of this measure affects “restitution fines”, which are separate and distinct from Restitution Orders owed to the Victim. These “restitution fines” are solely punitive in nature and are payable to the State Treasury, not payable to a Victim.

Lowering the interest rate on the “restitution fine” portion of this measure, only affects the income of the State Treasury and that has no effect on the Victims; however, the measure should leave the interest rate at 10 percent for Victim Restitution Orders to assure Victims are not further victimized.

-- END --