CALIFORNIA JUDGES BENCHGUIDES

Benchguide 83

RESTITUTION

[REVISED 2013]

ADMINISTRATIVE OFFICE
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I. [§83.1] SCOPE OF BENCHGUIDE

This benchguide provides an overview of the law and procedure relating to restitution fines, fees, and orders in adult, juvenile, and diversion matters. Sections 83.2–83.3 contain procedural checklists. Sections 83.4–83.104 summarize the applicable law. Sections 83.105–83.110 contain forms. Sections 83.111–83.112 provide information about the California Victim Compensation Program (CalVCP) and the California Department of Corrections and Rehabilitation (CDCR) restitution collection program.

II. PROCEDURAL CHECKLISTS

A. [§83.2] Restitution Fines

(1) *Before accepting a plea of guilty or no contest:*

(a) *Advise defendant that the sentence will include a restitution fine of $280 to $10,000 for a felony conviction, and $140 to $1000 for a misdemeanor conviction, in addition to any other fine the court may impose.* For discussion, see §83.11.

☛ JUDICIAL TIPS: The admonition may be, and often is, part of a written form. Defendant should be advised of the range of the fine and not merely the possible maximum. The admonition should also cover any additional probation, parole, postrelease

community supervision, or mandatory supervision revocation restitution fines.

(b) *Determine whether the disposition is part of a plea bargain.*

- *If so, ascertain on the record whether the bargain limits the court's discretion with respect to the restitution fine.*

☛ JUDICIAL TIP: Proposed dispositions that purport to waive the fine or set it below the statutory minimum should be rejected. Pen C §1202.4(b); see §83.5.

(2) *Before sentencing:*

(a) *Preliminarily determine the amount of the restitution fine by considering*

- *Any limitation imposed by a negotiated plea.* Illustrations: fine to be in amount of statutory minimum; "wobbler" to be sentenced as misdemeanor.

☛ JUDICIAL TIP: In the aftermath of a plea bargain that failed to address the restitution fine, which was not mentioned in the court's advisements of the consequences of the plea, the court must either impose the minimum fine or give defendant an opportunity to withdraw the plea. But if the court, in accepting the plea, advises the defendant that a restitution fine at or above the minimum will be imposed, the court is not precluded from imposing a fine above the statutory minimum. For discussion, see §83.13.

- *The statutory range:*

	Minimum	*Maximum*
Misdemeanor	$140	$1,000
Felony	$280	$10,000

For juvenile offenders, see §83.9.

- *Seriousness and circumstances of the offense.* Pen C §1202.4(b)(1), (d).
- *Inability to pay*. Pen C §1202.4(d).

☛ JUDICIAL TIPS: (1) Defendant has the burden of showing inability to pay. Pen C §1202.4(d). (2) Inability to pay only affects the amount of the fine above the statutory minimum. Pen C §1202.4(c). (3) The California Department of Corrections and Rehabilitation (CDCR) collects restitution fines from the wages and trust account deposits of prisoners. See §§83.5, 83.16, 83.25.

- *Defendant's economic gains, if any, from the crime; losses suffered by others; the number of victims, and any other relevant factors.* Pen C §1202.4(d); for discussion, see §83.15.

☛ JUDICIAL TIP: Judges often consider the amount of restitution to victims and other fines defendant will be ordered to pay. Again, these considerations only affect the amount of the restitution fine in excess of the statutory minimum.

- *The formula set out in Pen C §1202.4(b)(2) permits, but does not require, the court to set a restitution fine in a felony case as follows:* $280 x number of years to be served x number of felony counts of which defendant was convicted.

☛ JUDICIAL TIP: Some judges simplify the formula to $280 x number of counts. In the view of some judges, a life sentence calls for the maximum fine.

(b) *Determine whether an additional probation revocation restitution fine must be imposed and suspended under Pen C §1202.44.* Such a fine is mandatory whenever a defendant receives a conditional sentence or a sentence that includes a period of probation. For discussion, see §83.6.

(c) *In a felony case determine whether any of the following additional fines must be imposed and suspended under Pen C §1202.45:*

- *Parole revocation restitution fine.* This fine is mandatory when defendant will be sentenced to state prison and will be eligible for parole. For discussion, see §83.7.
- *Postrelease community supervision revocation restitution fine.* This fine is mandatory when defendant will be sentenced to state prison and will be subject to postrelease community supervision under Pen C §3451. See §83.8.
- *Mandatory supervision revocation restitution fine*. This fine is mandatory when defendant will be sentenced to county jail and will be subject to mandatory supervision under Pen C §1170(h)(5)(B). See §83.8.

(d) *Consider whether there are compelling and extraordinary reasons not to impose a restitution fine.* Pen C §1202.4(c); for discussion, see §83.21. If yes, make notes for statement of reasons and proceed to (e); if no, proceed to (f).

☛ JUDICIAL TIPS: Inability to pay is not an adequate reason. Pen C §1202.4(c). Nor, in the view of most judges, is a prison sentence. See §§83.5, 83.16.

(e) *Determine either (i) how much community service to require of defendant instead of the restitution fine or (ii) whether there are compelling and extraordinary reasons to waive the requirement.* Pen C §1202.4(n). In the event of (ii), make notes for a second statement of reasons at sentencing.

(3) *At sentencing:*

(a) *Consider matters raised by counsel and make final decision concerning the restitution fine.*

☛ JUDICIAL TIP: Restitution fines are normally imposed at the sentencing hearing; defendant is not entitled to a separate hearing. See §83.14.

To impose a restitution fine proceed to (b); to waive the fine proceed to (f).

(b) *Impose a restitution fine (Pen C §1202.4).*

☛ JUDICIAL TIPS:

- No portion of this fine may be stayed, suspended, or offset by the amount of victim restitution defendant is ordered to pay. See §83.22.
- As long as the fine is imposed, findings are unnecessary (Pen C §1202.4(d)) and usually not made. See §83.19.
- The court should not enter a separate money judgment. Although restitution fines are enforceable in the manner of money judgments, the court may not actually enter a money judgment against a defendant for these amounts. See §83.29.

(c) *If defendant is granted probation:*

- *Make payment of the fine a condition of probation*. Pen C §1202.4(m).
- *Impose an additional probation revocation restitution fine in the same amount as the restitution fine and order it suspended unless probation is revoked.* Pen C §1202.44. The court cannot waive or reduce this fine absent compelling and extraordinary reasons, which must be stated on the record. See §83.6.

(d) *If the defendant is sentenced to state prison and the sentence includes a period of parole, impose an additional parole revocation*

restitution fine in the same amount as the restitution fine and order it suspended unless parole is revoked. Pen C §1202.45(a). If a state prison sentence is imposed, but execution of the sentence is suspended pending completion of probation, impose both a probation revocation restitution fine and a parole revocation restitution fine. See §§83.6–83.7.

(e) *If the defendant is sentenced to state prison and the sentence includes a period postrelease community supervision under Pen C §3451, impose an additional postrelease community supervision revocation restitution fine in the same amount as the restitution fine and order it suspended unless postrelease community supervision is revoked.* Pen C §1202.45(b). See §83.8.

(f) *If the defendant is convicted of a felony and sentenced to county jail, and the sentence includes a period mandatory supervision under Pen C §1170(h)(5)(B), impose an additional mandatory supervision revocation restitution fine in the same amount as the restitution fine and order it suspended unless mandatory supervision is revoked.* Pen C §1202.45(b). See §83.8.

(g) *When no restitution fine is imposed:*

(i) *State compelling and extraordinary reasons for this action on the record and*

(ii) *Order defendant, as a condition of probation, to perform community service as specified by the court instead of the fine, or state on the record compelling and extraordinary reasons for not ordering community service.* Pen C §1202.4(n). See §83.21.

☛ JUDICIAL TIP: This statement should be in addition to the statement of reasons for not imposing a restitution fine. Pen C §1202.4(n).

B. [§83.3] Victim Restitution

(1) *Before accepting a plea of guilty or no contest:*

(a) *Advise defendant that the sentence may include an order to pay restitution to the victim in an amount to be determined by the court.* For discussion, see §83.34; for form, see §83.105.

☛ JUDICIAL TIPS: (1) When it is clear that the court will order restitution, many judges say so at this point. (2) The admonition can be incorporated into a written form.

(b) *Advise defendant that he or she is entitled to a hearing in court to dispute the amount of restitution but not the actual order to make restitution.* See §83.46.

☛ JUDICIAL TIP: Many judges prefer to give this advice at the time of sentencing.

(c) *When there is a Harvey waiver that will give the court authority to consider dismissed counts for restitution purposes, make sure that the waiver is stated clearly on the record, that its scope is clear, and that defendant understands it.* For discussion, see §83.101.

(2) *Before sentencing consider the probation report, when available, and*

(a) *Whether restitution should be ordered*

- Because one or more victims suffered or will suffer an economic loss as a result of the crime(s) of which defendant was convicted (Pen C §1202.4(a)(1); for discussion, see §§83.44–83.97; or
- As a condition of probation under Pen C §1203.1(j), when the victim's losses are reasonably related to the crime of which the defendant was convicted; for discussion, see §83.98; or
- For other reasons (*e.g.*, *Harvey* waiver; hit-run victim; see §§83.99–83.104).

☛ JUDICIAL TIP: Judges may order victim restitution, if appropriate, for infractions. Although restitution *fines* are expressly limited to felonies and misdemeanors, there is no such express limitation with respect to victim restitution. See Pen C §§19.7 (statutes relating to misdemeanors generally applicable to infractions), 1202.4(a)(1) (legislative intent that crime victims who suffer economic loss receive restitution), 1202.4(f) (restitution required in every case in which victim suffered economic loss as result of defendant's crime), and 1203b (courts may grant probation in infraction cases).

(b) *Whether the report includes detailed loss figures for each victim and whether they appear to be reasonable.*

(3) *At sentencing*

(a) *Announce either:*

(i) *The court's preliminary views on restitution and inquire whether the victim or the defendant wishes to be heard.* If yes, proceed to (c); if no, proceed to (d) to order restitution.

Or

(ii) *That the probation report does not contain (sufficient) restitution information and proceed to (b).*

(b) *When the probation report lacks restitution data:*

(i) *Ascertain whether the victim is present.* If yes, receive the victim's loss information; permit defendant to challenge it; upon request continue to give defendant time to rebut it. If no, proceed to (ii).

Or

(ii) *When the victim is not present and the report recommends a continuance, grant a reasonable continuance as to restitution issues.*

☛ JUDICIAL TIPS:

- Judges usually sentence the defendant even though restitution will be determined later. In such cases, the judge should include in the sentence an order for the defendant to pay restitution in an amount to be determined by the court. The court retains jurisdiction for the purpose of imposing restitution until the losses are determined.
- Judges often seek a waiver of defendant's presence at the subsequent restitution hearing. This is particularly important when the defendant is sentenced to prison. See §83.80.

Or

(iii) *When the victim is not present, was notified, has not made a claim, and the report does not request a continuance, do not order restitution, except for any benefits that the victim received from the Restitution Fund.*

☛ JUDICIAL TIP: In many cases, the victim is not notified, and the prosecutor may not have any information regarding losses. In these situations, the court should order restitution for benefits that the victim received from the Restitution Fund. Any additional restitution may be ordered at a later date.

(c) *Conduct a hearing when the victim or defendant requests one.*

☛ JUDICIAL TIP: The hearing does not have the formality of a trial. Hearsay is admissible. For discussion, see §83.50.

(d) *Order defendant to pay restitution* (for discussion, see §§83.79–83.85):

Use a separate order for each victim. For form, see §83.107.

- *Identify each loss separately by name of victim and amount; do not merely order a lump sum payment.*
- *Specify whether interest (at 10 percent) will accrue from the date of the order or of the loss.* Pen C §1202.4(f)(3)(G).

- *Specify whether codefendants are jointly and severally responsible for restitution.*
- *Do not delegate determination of restitution amount unless the defendant consents to a determination by the probation officer; determination of the number and dollar amounts of installment payments is often delegated to the probation department or other county agency.* For discussion, see §83.82.
- *When the sentence includes probation, make payment of the restitution order a condition of probation.* Pen C §1202.4(m).
- *Order defendant to pay restitution to the California Victim Compensation and Government Claims Board to reimburse payments from the Restitution Fund for crime-related losses.* Pen C §1202.4(f)(2).

☛ JUDICIAL TIP: The court should not enter a separate money judgment. Although restitution orders are enforceable in the manner of money judgments, the court may not actually enter a money judgment against a defendant based on an order to pay restitution. See §83.38.

(e) *Make and stay a separate income deduction order upon determining that defendant has the ability to pay restitution.* Pen C §1202.42; for discussion, see §83.88. For sample income deduction order and related forms, see §§83.107–83.110.

☛ JUDICIAL TIP: Penal Code §1202.42 does not apply to juvenile court restitution or to any restitution order not made under Pen C §1202.4. For discussion of orders to apply a specified portion of earnings to restitution, see §83.89.

III. APPLICABLE LAW

A. Restitution Fine

1. [§83.4] Purpose of Fine

Restitution fines are a major source of financing the state Restitution Fund (see Pen C §§1202.4(e), 1202.44, 1202.45); penalty assessments on other fines provide additional financing. See Pen C §1464. Eligible victims of criminal acts may obtain restitution from the Restitution Fund, which is administered by the California Victim Compensation and Government Claims Board. For detailed information about the Board's Victim Compensation Program, see §83.111.

2. Major Statutory Requirements

a. [§83.5] Restitution Fine (Pen C §1202.4)

The principal statutes that govern the imposition of restitution fines on adult offenders are Pen C §§1202.4, 1202.44, and 1202.45. For discussion of Pen C §§1202.44 and 1202.45, see §§83.6–83.7; for juvenile offenders, see §§83.9–83.10. Key features of Pen C §1202.4 include:

- *Mandatory nature of fine.* Imposition of the fine is mandatory except for compelling and extraordinary reasons stated on the record. See §83.21.
- *Statutory minimums and maximums:*

Felonies:	$280–$10,000
Misdemeanors:	$140–$1,000

- *Limited effect of inability to pay.* Defendant's lack of ability to pay does not justify waiver of the fine. It may be considered only in setting the amount above the statutory minimum. For discussion, see §83.16; for discussion of other factors the court should consider in setting the fine, see §83.15.
- *Hearing.* Defendant is not entitled to a separate hearing for determining the amount of the fine. See §83.14.
- *Community service.* When the court does not impose a restitution fine, defendant must be ordered to perform community service except for compelling and extraordinary reasons stated on the record. See. §83.21.
- *Probation.* Grants of probation must include payment of the restitution fine as a condition.

b. [§83.6] Probation Revocation Restitution Fine (Pen C §1202.44)

When a defendant receives a conditional sentence or a sentence that includes a period of probation, the court must impose an additional probation revocation restitution fine. Pen C §1202.44. In felony cases, the fine applies to both defendants who are placed on probation after the court has suspended imposition of sentence and to defendants who are placed on probation after the court has suspended execution of sentence. *People v Taylor* (2007) 157 CA4th 433, 436–439, 68 CR3d 682.

The probation revocation restitution fine has the following features (Pen C §1202.44):

- The fine must be imposed in addition to, not instead of, the restitution fine required by Pen C §1202.4;

- The amount of the fine is the same as the amount imposed for the restitution fine under Pen C §1202.4;
- The fine does not become effective unless and until the probation or conditional sentence is revoked; and
- The court may not waive or reduce the fine, absent compelling and extraordinary reasons stated on the record.

c. [§83.7] Parole Revocation Restitution Fine (Pen C §1202.45(a))

When a defendant is convicted of a felony and the sentence includes a period of parole, the court must impose an additional parole revocation restitution fine. Pen C §1202.45(a). The fine must be imposed if defendant is sentenced to state prison, or a state prison sentence is imposed but execution of the sentence is suspended. *People v Calabrese* (2002) 101 CA4th 79, 86–87, 123 CR2d 570; *People v Tye* (2000) 83 CA4th 1398, 1400–1401, 100 CR2d 507. The court is not required to impose the fine if the court suspends the imposition of sentence. 83 CA4th at 1401.

The parole revocation restitution fine has the following features (Pen C §1202.45(a), (c)):

- The fine must be imposed in addition to, not instead of, the restitution fine required by Pen C §1202.4.
- The amount of the fine is the same as the amount imposed for the restitution fine under Pen C §1202.4.
- The fine must be suspended unless and until parole is revoked.

The court may not impose the parole revocation restitution fine if the defendant is sentenced to life in prison without the possibility of parole. *People v Oganesyan* (1999) 70 CA4th 1178, 1183, 83 CR2d 157. However, if the defendant receives a determinate term and a parole ineligible term, the fine may be imposed. *People v Brasure* (2008) 42 C4th 1037, 1074, 71 CR3d 675 (defendant sentenced to death for capital murder and to determinate prison term under Pen C §1170 for several other offenses).

If the court sentences a felony defendant to county jail under Pen C §1170(h), whether or not the court suspends the execution of a concluding portion of the term (*i.e.*, "split" sentence), a parole revocation restitution fine may not be imposed because there is no formal state parole period following release from a county jail commitment. See *People v Cruz* (2012) 207 CA4th 664, 671–672, 143 CR3d 742. However, the court must impose a mandatory supervision revocation restitution fine in such cases. See §83.8.

d. [§83.8] Postrelease Community Supervision Revocation and Mandatory Supervision Revocation Restitution Fines (Pen C §1202.45(b))

When a defendant is convicted of a crime and is subject to either postrelease community supervision under Pen C §3451 or mandatory supervision under Pen C §1170(h)(5)(B), the court must impose an additional postrelease community supervision revocation restitution fine or mandatory supervision revocation restitution fine. Pen C §1202.45(b).

The postrelease community supervision revocation restitution fine and mandatory supervision revocation restitution fine have the following features (Pen C §1202.45(b), (c)):

- The fine must be imposed in addition to, not instead of, the restitution fine required by Pen C §1202.4.
- The amount of the fine is the same as the amount imposed for the restitution fine under Pen C §1202.4.
- The fine must be suspended unless and until postrelease community supervision or mandatory supervision is revoked.

e. [§83.9] Juvenile Offenders (Welf & I C §730.6)

Juvenile offenders are also subject to mandatory restitution fines. Welf & I C §730.6. The principal features of the provisions governing juveniles are:

- The felony fine range is $100 to $1000; the misdemeanor fine cannot exceed $100. There is no prescribed minimum misdemeanor fine. Welf & I C §730.6(b)(1).
- The factors that the court should consider in setting the fine are essentially the same as for adult offenders. See Welf & I C §730.6(d)(1). See also chart in §83.10. Express findings are unnecessary and usually not made. See Welf & I C §730.6(e).
- Imposition of the fine is mandatory, except for compelling and extraordinary reasons in felony cases. The reasons must be stated on the record. Welf & I C §730.6(g). The restitution fine cannot be waived for misdemeanors, probably because there is no statutory minimum fine with respect to them.
- When the fine is waived, the minor must be required to perform community service except for compelling and extraordinary reasons stated on the record. Welf & I C §730.6(n), (o).
- Inability to pay does not justify failure to impose a restitution fine. Welf & I C §730.6(c). It is a factor in setting the amount of the

fine. The offender has the burden of showing inability, but is not entitled to a separate hearing. Welf & I C §730.6(b), (d)(2). In determining a juvenile offender's ability to pay, the court may consider the juvenile's future earning capacity. Welf & I C §730.6(d)(2).

- Payment of the fine must be a condition of probation. Welf & I C §730.6(*l*).
- Parents and guardians may be jointly and severally liable. Welf & I C §730.7.

f. [§83.10] Chart: Comparison of Restitution Fine Provisions for Adult and Juvenile Offenders (Pen C §§1202.4, 1202.44, 1202.45; Welf & I C §730.6)

	Adult	*Juvenile*
Amount of fine Misdemeanor Felony	 $140–$1000 $280–$10,000	 Not more than $100 $100–$1000
Factors to consider when setting fine above statutory minimum	All relevant factors including but not limited to: • Inability to pay • Seriousness of offense • Circumstances of commission • Economic gain by offender • Losses to others from offense	
	Number of victims Optional formula for multiple felonies	
Burden of showing inability to pay when court sets fine above statutory minimum	Offender	
Waiver of fine	Only for compelling and extraordinary reasons stated on record; inability to pay not adequate reason	
		No waiver when offense is a misdemeanor
Community service	Mandatory when fine waived except for compelling and extraordinary reasons stated on record	
Effect of restitution to victim	Cannot be offset against fine	

	Adult	*Juvenile*
Relation to probation	Payment must be condition of probation	
Probation revocation fine	Must be imposed separately in same amount as restitution fine and suspended unless and until probation or conditional sentence is revoked	Inapplicable
Parole revocation fine	Must be imposed separately in same amount as restitution fine and suspended unless and until parole is revoked	Inapplicable
Postrelease community supervision revocation restitution fine; mandatory supervision revocation restitution fine	Must be imposed separately in same amount as restitution fine and suspended unless and until postrelease community supervision or mandatory supervision is revoked	Inapplicable

3. Procedure at Time of Guilty Plea

a. [§83.11] Advisement When Taking Plea

A restitution fine is a direct consequence of a guilty or no contest plea. Accordingly, the court must advise defendant of the imposition of a restitution fine, with specific mention to the statutory minimum and maximum amounts. *People v Villalobos* (2012) 54 C4th 177, 185, 141 CR3d 491.

b. [§83.12] Fine Amount Negotiable

Defendants are free to negotiate the amount of restitution fines as part of their plea bargains. The parties to a criminal proceeding may choose to agree on a specific amount between the statutory minimum and maximum, or they may leave it up to the sentencing court's discretion. *People v Villalobos* (2012) 54 C4th 177, 181–182, 141 CR3d 491.

c. [§83.13] Silent Plea Bargain

When the parties have not mentioned the amount of the restitution fine during the plea negotiation, and when the trial court has not threatened or promised any particular amount of fine during the plea colloquy, the amount of the fine is not part of the plea agreement, and the trial court is free to impose a fine within the statutory range. Absent an expressly negotiated term in the plea bargain concerning the fine, there is no basis to conclude that imposition of a fine within the statutory range constitutes more punishment than what the defendant bargained for. *People v Villalobos* (2012) 54 C4th 177, 181–186, 141 CR3d 491. The court overruled *People v Walker* (1991) 54 C3d 1013, 1028–1029, 1 CR2d 902, to the extent it suggests that silence by the parties and trial court concerning a statutorily mandated punishment makes exclusion of the punishment a negotiated term of a plea bargain. 54 C4th at 183.

☛ JUDICIAL TIPS:

- Counsel should be asked to state any agreement with respect to the fine when putting the proposed terms of negotiated plea on the record.
- When the negotiations leave the fine open, the court should explain to the defendant the statutory minimum and maximum fine amount or have counsel do so and obtain defendant’s oral assent.
- The court should give the Pen C §1192.5 admonition (relating to the defendant’s right to withdraw the plea) whenever required by that statute. See 54 C4th at 186.

4. Determination of Fine

a. [§83.14] No Separate Hearing

The defendant is not entitled to a hearing apart from the sentencing hearing with respect to the restitution fine. Pen C §1202.4(d).

☛ JUDICIAL TIP: Both sides should be given an opportunity to address the matter at the sentencing hearing, because, inter alia, defendant has the burden of demonstrating inability to pay. Pen C §1202.4(d).

b. [§83.15] Factors

Statutory factors. In determining the amount of the fine, the court should consider any relevant factor (Pen C §1202.4(d)), including:

- Inability to pay (for discussion, see §83.16);
- Seriousness of the offense;
- Circumstances of the offense;
- Defendant's economic gain, if any, from the crime;
- Pecuniary and intangible losses of victims or dependents of victims;
- Number of victims.

Criminal record. Defendant's criminal record is a relevant factor. *People v Griffin* (1987) 193 CA3d 739, 741–742, 238 CR 371; Cal Rules of Ct 4.411.5, 4.414.

Optional formula. In multicount felony cases the court may set the fine by using the formula stated in Pen C §1202.4(b)(2). See §83.17.

Juveniles. Factors to consider in juvenile cases are virtually the same as in cases involving adult offenders. See chart in §83.10.

c. [§83.16] Ability To Pay

Defendant is presumed to be able to pay the restitution fine and has the burden of demonstrating inability. Pen C §1202.4(d); *People v Romero* (1996) 43 CA4th 440, 448–449, 51 CR2d 26.

The court may consider future earning capacity. Pen C §1202.4(d); *People v Gentry* (1994) 28 CA4th 1374, 1376–1377, 34 CR2d 37 (court may consider defendant's future prison wages as well as possibility of employment when defendant is released from prison).

The court must impose the minimum fine even when defendant is unable to pay it. Pen C §1202.4(c); Welf & I C §730.6(b); *People v Draut* (1999) 73 CA4th 577, 582, 86 CR2d 469. The court may consider inability to pay only when increasing the amount of the restitution fine in excess of the $280 or $140 minimum. Pen C §1202.4(c). Such a mandate is not constitutionally infirm; however, imprisonment of an indigent defendant for nonpayment violates equal protection. *People v Long* (1985) 164 CA3d 820, 826–827, 210 CR 745.

d. [§83.17] Multiple Counts

Discretionary formula. For defendants convicted of several felony counts the court may calculate the fine by the following formula (Pen C §1202.4(b)(2)):

$280 x number of years of sentence x number of counts of which defendant was convicted.

☛ JUDICIAL TIP: Some judges simplify the formula to $280 x number of counts. In the view of some judges, a life sentence calls for the maximum fine.

Limitation of maximum. The total fine may not exceed the statutory maximum, regardless of the number of victims and counts. *People v Blackburn* (1999) 72 CA4th 1520, 1534, 86 CR2d 134. See also *People v Ivans* (1992) 2 CA4th 1654, 1667, 4 CR2d 66 (decided under former Govt C §13967).

Resolution of multiple cases under negotiated plea bargain. When a defendant enters separate pleas to separately filed cases under a single plea bargain, and is sentenced on all the cases at the same time, the court may impose a separate restitution fine in each case. *People v Soria* (2010) 48 C4th 58, 62–66, 104 CR3d 780.

Resolution of multiple cases in joint trial. When a defendant is convicted of crimes in two cases that are consolidated for trial, the court may not impose restitution fines in both cases, even if the cases involve charges in separately filed informations. *People v Ferris* (2000) 82 CA4th 1272, 1275–1278, 99 CR2d 180.

Conviction of felony and misdemeanor in same proceeding. When a defendant is convicted of both a felony and misdemeanor in the same proceeding, the court must impose a separate restitution fine for each so long as the total of the restitution fines does not exceed the statutory maximum. *People v Holmes* (2007) 153 CA4th 539, 546–548, 63 CR3d 150.

Counts stayed under Pen C §654. The trial court may not consider a felony conviction for which the sentence is stayed under Pen C §654 as part of the court's calculation of the restitution fine under the formula provided in Pen C §1202.4(b)(2). *People v Le* (2006) 136 CA4th 925, 932–934, 39 CR3d 146.

e. [§83.18] No Joint and Several Liability for Restitution Fines

Restitution fines (Pen C §1202.4(b)), probation revocation restitution fines (Pen C §1202.44), parole revocation restitution fines (Pen C §1202.45(a)), postrelease community supervision revocation restitution fines (Pen C §1202.45(b)), and mandatory supervision revocation restitution fines (Pen C §1202.45(b)) may not be imposed as payable jointly and severally by multiple defendants. *People v Kunitz* (2004) 122 CA4th 652, 655–658, 18 CR3d 843 (although court addressed only Pen C

§§1202.4(b) and 1202.45(a) fines, reasoning applicable to Pen C §1202.44 and 1202.45(b) fines).

Direct victim restitution is not punishment, and it may be imposed jointly and severally. 122 CA4th at 657. For discussion, see §83.84.

f. [§83.19] Findings

The court need not specify reasons for setting the fine in any particular amount; only when the court waives the fine must reasons be stated. Pen C §1202.4(b), (d); *People v Urbano* (2005) 128 CA4th 396, 405, 26 CR3d 871; *People v Romero* (1996) 43 CA4th 440, 448, 51 CR2d 26 (court not required to make findings on ability to pay); for discussion of fine waiver, see §83.21.

☛ JUDICIAL TIP: Some judges state reasons when they set the fine at a level that departs from their usual practice.

The amount of the fine is reviewed only for abuse of discretion and upheld when supported by the record. *People v McGhee* (1988) 197 CA3d 710, 716–717, 243 CR 46 (maximum restitution fine justified when court properly imposed upper prison term); *People v Griffin* (1987) 193 CA3d 739, 740–742, 238 CR 371 (record of recidivist thief convicted of petty theft with prior supports $2000 restitution fine).

The exercise of the court's discretion to impose a restitution fine, taking into consideration various factors relating both to the offense and the offender (see §83.15), within the range prescribed by statute, does not run afoul of *Apprendi v New Jersey* (2000) 530 US 466, 120 S Ct 2348, 147 L Ed 2d 435 (jury verdict required for every fact that increases penalty beyond statutory maximum for offense). *People v Kramis* (2012) 209 CA4th 346, 147 CR3d 84.

g. [§83.20] Retrial or Remand for Resentencing

The court may not increase the restitution fine after a retrial that followed defendant's successful appeal (*People v Thompson* (1998) 61 CA4th 1269, 1276, 76 CR2d 267; *People v Jones* (1994) 24 CA4th 1780, 1785, 30 CR2d 238), or after remand for resentencing following the defendant's partially successful appeal (*People v Hanson* (2000) 23 C4th 355, 366–367, 97 CR2d 58). Such an increase in the restitution fine is precluded by the state constitutional prohibition against double jeopardy (Cal Const art I, §15). 23 C4th at 366–367. The court has discretion, however, to reduce the amount of a previously imposed restitution fine at resentencing following remand. *People v Rosas* (2010) 191 CA4th 107, 117–120, 119 CR3d 74.

The Second District Court of Appeal held that an increase in one component of a monetary sentence will not render punishment more severe if another component is reduced by an equal amount. The protection against double jeopardy requires only that the aggregate monetary sentence, not each component thereof, be equal to or less than that originally imposed. So long as it is, a defendant has no interest in the particular amount of each separate fine. *People v Daniels* (2012) 208 CA4th 29, 32–33, 145 CR3d 33. In *Daniels*, a defendant's increased restitution fine and parole revocation restitution fine, after he successfully appealed his first conviction and he was retried and reconvicted, violated the state constitutional protection against double jeopardy only to the extent that the sum of those two fines plus the direct victim restitution exceeded the sum of the three restitution amounts in the defendant's first trial. 208 CA4th 32–33.

5. [§83.21] Waiver of Fine

The court must impose a restitution fine unless it finds "compelling and extraordinary reasons" for not doing so and states them on the record. Pen C §1202.4(b), (c); *People v Tillman* (2000) 22 C4th 300, 302, 92 CR2d 741.

Inability to pay is not an adequate reason for waiving the fine. Pen C §1202.4(c). There is no judicial guidance on what constitutes compelling and extraordinary reasons. Sentencing a defendant to prison is not a sufficient reason because the fine can be collected from prison wages and trust account deposits. See §83.25.

☛ JUDICIAL TIP: Some judges waive the fine in the case of street people who suffer from mental or other disabilities. Others excuse payment when the defendant is on SSI or receives General Assistance. Most judges do not regard being jobless or homeless standing alone a sufficient reason.

When the court waives the fine, it must order the defendant to perform community service instead, unless it finds additional compelling and extraordinary reasons stated on the record. Pen C §1202.4(n).

☛ JUDICIAL TIP: This statement should be in addition to the statement of reasons for not imposing a restitution fine. Pen C §1202.4(n).

The prosecution waives any objection to the trial court's failure to impose a restitution fine under Pen C §1202.4 by failing to object to the omission at the time of sentencing; in such event, the appellate court may not modify the judgment to add a restitution fine. *People v Tillman, supra,* 22 C4th at 302–303. However, when the trial court imposes a restitution

fine under Pen C §1202.4, but omits or imposes an erroneous parole revocation restitution fine under Pen C §1202.45 (see §83.7) and the prosecution does not object to this omission, an appellate court has the authority to modify the judgment to impose or correct the fine. *People v Smith* (2001) 24 C4th 849, 102 CR2d 731 (trial court imposed $5000 restitution fine but only a $200 parole revocation fine); *People v Rodriguez* (2000) 80 CA4th 372, 375–379, 95 CR2d 299 (trial court imposed $200 restitution fine and no parole revocation fine).

6. [§83.22] No Crediting Amount of Restitution Against Restitution Fine

The court may not offset the amount of direct victim restitution against a Pen C §1202.4 restitution fine. *People v Vazquez* (2009) 178 CA4th 347, 355, 100 CR3d 351; *People v Blackburn* (1999) 72 CA4th 1520, 1534, 86 CR2d 134.

7. [§83.23] Penalty Assessments

Restitution fines, probation revocation restitution fines, parole revocation restitution fines, postrelease community supervision revocation restitution fines, and mandatory supervision revocation fines are exempt from the penalty assessments of Pen C §1464 and Govt C §76000, the state surcharge of Pen C §1465.7, the state court construction penalty of Govt C §70372(a), and the DNA penalty assessments of Govt C §76104.6 and Govt C §76104.7. Pen C §§1202.4(e), 1202.45(c), 1464(a)(3)(A), 1465.7(a); Govt C §§70372(a)(3)(A), 76000(a)(3)(A), 76104.6(a)(3)(A), 76104.7(c)(1).

8. [§83.24] Administrative Fees

Counties may impose a fee to cover the administrative costs of collecting the restitution fine. The fee may not exceed 10 percent of the amount of the fine. Pen C §1202.4(*l*); *People v Robertson* (2009) 174 CA4th 206, 210–211, 94 CR3d 179.

☛ JUDICIAL TIP: In counties that charge this fee the sentence should include an order to pay it.

9. [§83.25] Collection of Fine by CDCR and DJJ

The California Department of Corrections and Rehabilitation (CDCR) deducts restitution fines from prisoners wages and trust account deposits and transmits the moneys to the California Victim Compensation and Government Claims Board. Pen C §2085.5(a); see, *e.g.*, *People v Gentry* (1994) 28 CA4th 1374, 1377–1378, 34 CR2d 37.

☛ JUDICIAL TIPS:

- Penal Code §2085.5 is self-executing and it is *not* necessary to refer to it when imposing sentence. If the judge chooses to make a reference, the judge should make it clear that the fine is *imposed* under Pen C §1202.4(b) and must be *collected* under Pen C §2085.5. Court documents should not state that the fine is imposed under Pen C §2085.5. See *People v Rowland* (1988) 206 CA3d 119, 124, 253 CR 190.
- Courts should make sure that the abstract of judgment reflects the restitution fine because the CDCR relies on the abstract. See *People v Hong* (1998) 64 CA4th 1071, 1080, 76 CR2d 23.

The CDCR's Division of Juvenile Justice (DJJ) also collects restitution fines from wards' wages and trust account deposits and transfers the moneys to the California Victim Compensation and Government Claims Board. The DJJ must provide the sentencing court with a record of payments. Welf & I C §§1752.81–1752.82.

10. [§83.26] Collection of Fines from County Jail Prisoners

When a prisoner is punished by imprisonment in a county jail under Pen C §1170(h), the agency designated by the board of supervisors in the county where the prisoner is incarcerated may deduct restitution fines from the prisoner's wages and trust account deposits, and transmit the moneys to the California Victim Compensation and Government Claims Board. Pen C §2085.5(b)(1). If the board of supervisors designates the county sheriff as the collecting agency, the board of supervisors must first obtain the concurrence of the county sheriff. Pen C §2085.5(b)(2).

11. [§83.27] No Imprisonment To Satisfy Fine

Restitution fines cannot be converted to additional time spent in custody under the provisions of Pen C §1205. Pen C §1205(f).

12. [§83.28] Applying Seized Funds to Restitution Fine

The court may apply funds confiscated from the defendant at the time of the defendant's arrest, except for funds confiscated under Health & S C §11469 (illegal drug funds), to the restitution fine if the funds are not exempt for spousal or child support or subject to any other legal exemption. Pen C §1202.4(c).

The common law rule that money belonging to an arrestee and held for safekeeping is exempt from execution does not apply to funds sought for payment of a restitution fine, a debt that was created after the defendant's conviction. *People v Willie* (2005) 133 CA4th 43, 49–50, 34

CR3d 532. Further, this exemption has been superseded by CCP §704.090, which effectively limits the exemption to $300 for a restitution fine. 133 CA4th at 50–52.

13. [§83.29] Fine Enforceable as Civil Judgment

An order to pay a Pen C §1202.4, §1202.44, or §1202.45 restitution fine is enforceable as if it were a civil judgment. Pen C §1214(a). Restitution fines derived from misdemeanor cases, cases involving a violation of a city or town ordinance, and noncapital cases with a plea of guilty or no contest, are enforceable in the same manner as a money judgment in a *limited* civil case. Pen C §1214(c); CCP §582.5.

A restitution fine is enforceable immediately and continues to be enforceable by the California Victim Compensation and Government Claims Board after termination of probation, postrelease community supervision, mandatory supervision, or parole. Pen C §§1214(a), 1202.4(m); *People v Chambers* (1998) 65 CA4th 819, 821–823, 76 CR2d 732 (restitution fine survives revocation of probation).

☛ JUDICIAL TIP: The court should *not* enter a separate money judgment. Execution can issue on the order to pay the fine. *People v Hart* (1998) 65 CA4th 902, 906, 76 CR2d 837. See also *People v Willie* (2005) 133 CA4th 43, 47–49, 34 CR3d 532 (district attorney's motion for release of funds taken from defendant on his arrest for payment of restitution fine, and court's nunc pro tunc order for their release, were not appropriate methods for enforcing the restitution fine).

B. Restitution Fee in Diversion Matters

1. [§83.30] Mandatory Fee; Amount

In diversion and deferred entry of judgment cases the counterpart to the restitution *fine* is the restitution *fee* required by Pen C §1001.90. Imposition is mandatory (Pen C §1001.90(a), (c)), subject to exceptions discussed in §83.31.

The minimum fee is $100; the maximum, $1000. Pen C §1001.90(b). The factors that should guide the court in setting the amount of the fee are essentially the same as apply to restitution fines. Pen C §1001.90(d); for discussion, see §83.15. The court may not modify the amount of the fee except to correct an error in setting the amount. Pen C §1001.90(e).

☛ JUDICIAL TIP: Modification is probably warranted only when the fee was erroneously omitted, set below the statutory minimum or above the maximum, and to correct ministerial errors. Forgive-

ness of the fee upon successful completion of diversion is probably precluded.

Counties may add a collection fee not to exceed 10 percent of the restitution fee. Pen C §1001.90(g).

Like restitution fines, the fee goes to the state Restitution Fund. Pen C §1001.90(f).

2. [§83.31] Exceptions

As with restitution fines, the court may waive the fee when it finds that there are compelling and extraordinary reasons and states them on the record. Pen C §1001.90(c). The fee must be imposed regardless of defendant's ability to pay it; ability to pay is, however, a factor to be considered in setting the amount. Pen C §1001.90(c), (d).

Additionally, Pen C §1001.90 does not apply to diversion of defendants with cognitive developmental disabilities. Pen C §1001.90(a).

3. [§83.32] Fee Enforceable as Civil Judgment

An order to pay a diversion restitution fee is enforceable as if it were a civil judgment. Pen C §1214(a). A diversion restitution fee is enforceable immediately and continues to be enforceable by the California Victim Compensation and Government Claims Board after the defendant has completed diversion. Pen C §1214(a).

☛ JUDICIAL TIP: The court should *not* enter a separate money judgment. Execution can issue on the order to pay the fee. *People v Hart* (1998) 65 CA4th 902, 906, 76 CR2d 837.

C. [§83.33] Victim Restitution

The court must order payment of restitution when the crime of which defendant was convicted resulted in economic loss to the victim. Pen C §1202.4; Welf & I C §730.6; see Cal Const art I, §28(b)(13)(A). A sentence without a restitution award to a victim, as mandated by Cal Const art I, §28(b) and Pen C §1202.4 is invalid; the only discretion retained by the court is that of fixing the amount of the award. *People v Rowland* (1997) 51 CA4th 1745, 1751–1752, 60 CR2d 351. For discussion, see §§83.44–83.97.

Under some circumstances California courts may order restitution when the losses are not the result of the crime underlying the defendant's conviction. For example, in probation cases, the courts have broad discretion to order restitution that is reasonably related to the defendant's crime. See §§83.98–83.100. And courts often order a defendant to make

restitution to a victim of offenses that underlie dismissed counts. For discussion, see §§83.101–83.104.

1. Principles Applicable to Restitution Generally

a. Procedure at Time of Guilty Plea

(1) [§83.34] Advisement When Taking Plea

Restitution is a direct consequence of a guilty or no contest plea of which defendant must be advised. *People v Rowland* (1997) 51 CA4th 1745, 1752–1753, 60 CR2d 351; *People v Valdez* (1994) 24 CA4th 1194, 1203, 30 CR2d 4.

Failure to so advise is fatal only if it prejudices the defendant. *People v Rowland, supra* 51 CA4th at 1753 (no prejudice because, inter alia, amount of restitution ordered matched defendant's civil liability).

(2) [§83.35] Silent Plea Bargain

A silent plea bargain does not circumscribe the mandatory duty of the trial court to order the payment of restitution. *People v Valdez* (1994) 24 CA4th 1194, 1203, 30 CR2d 4; see *People v Campbell* (1994) 21 CA4th 825, 829, 26 CR2d 433 (silent plea agreement did not nullify restitution order as condition of probation).

When a defendant enters into a plea bargain in which the defendant reasonably believes he or she will be ordered to pay a small amount of restitution, and thereafter at sentencing is ordered to pay a much larger amount, the defendant is entitled to withdraw his or her plea. *People v Brown* (2007) 147 CA4th 1213, 1221–1228, 54 CR3d 887. The court in *Brown* stated that an award of victim restitution constitutes punishment for purposes of determining whether there is a violation of a plea agreement when the sentencing court imposes a larger restitution amount than that specified in the plea agreement. 147 CA4th 1221–1223. In this case the victim restitution order imposed was a significant deviation from the terms of the plea agreement. Specific performance was not an available remedy because full victim restitution is mandated by Cal Const art 1, §28.5 and Pen C §1202.4(f), and the court has no discretion or authority to impose a negotiated sentence that provides for an award of less than full restitution. 147 CA4th at 1224–1228.

In *People v Rowland* (1997) 51 CA4th 1745, 60 CR2d 351, the plea agreement made no mention of victim restitution, and the trial court resentenced the defendant to include a substantial award of victim restitution. The First District Court of Appeal upheld the trial court's conclusion that absent a showing of prejudice, the defendant was not entitled to withdraw his plea. 51 CA4th at 1750–1754. The court in *People v*

Brown, *supra*, distinguished *Rowland*, by pointing out that because restitution was not mentioned in the plea agreement in that case, the trial court's restitution order did not violate an express term of the agreement. 147 CA4th at 1223 n6.

b. [§83.36] Right to Notice and Hearing

Victims and defendants have a right to a hearing and to notice. For discussion, see §§83.46–83.51.

c. [§83.37] Restitution Not Affected by Bankruptcy

Defendant's bankruptcy. The Bankruptcy Code does not apply to restitution orders. *People v Washburn* (1979) 97 CA3d 621, 158 CR 822. A restitution obligation imposed as a condition of probation is not dischargeable in a liquidation or "straight bankruptcy" proceeding under Chapter 7 (11 USC §§701 et seq). *Kelly v Robinson* (1986) 479 US 36, 50–53, 107 S Ct 353, 93 L Ed 2d 216; 11 USC §523(a)(7). See also *Warfel v City of Saratoga* (In re Warfel) (9th Cir BAP 2001) 268 BR 205, 209–213 (civil restitution judgment originally imposed as a condition of debtor's probation not dischargeable under Chapter 7). Nor is a restitution obligation dischargeable under Chapter 13 (11 USC §§1301 et seq). 11 USC §1328(a)(3).

Bankruptcy does not block restitution even when defendant's civil obligations to the victim were discharged by bankruptcy *before* criminal charges were filed. *People v Moser* (1996) 50 CA4th 130, 136, 57 CR2d 647.

Because collection of restitution is a continuation of a criminal action, the automatic stay provisions of bankruptcy law do not apply. See *In re Gruntz* (9th Cir 2000) 202 F3d 1074, 1084–1087 (automatic stay did not enjoin state court criminal proceedings against debtor for failure to pay child support); 11 USC §362(b)(1).

Victim's bankruptcy. When the victim incurred an obligation to a third party as a result of defendant's conduct, the bankruptcy discharge of the victim's obligation does not preclude a restitution order. *People v Dalvito* (1997) 56 CA4th 557, 560–562, 65 CR2d 679 (bankruptcy is economic loss despite discharge; no explanation why loss is equal to amount of obligation).

d. [§83.38] Order Enforceable as Civil Judgment

An order to pay restitution is deemed a money judgment and enforceable as if it were a civil judgment. Pen C §§1202.4(i), 1214(b); Welf & I C §730.6(r). Restitution orders derived from misdemeanor cases, cases involving a violation of a city or town ordinance, and noncapital

cases with a plea of guilty or no contest, are enforceable in the same manner as a money judgment in a *limited* civil case. Pen C §1214(c); CCP §582.5.

The following conditions must be met before a restitution order may be enforced as if it were a civil judgment (Pen C §1214(b)):

(1) The defendant was informed of the right to have a judicial determination of the amount, and

(2) the defendant was

- Provided with a hearing,
- Waived a hearing, or
- Stipulated to the amount of restitution.

In addition, Pen C §1214(b) gives victims and the California Victim Compensation and Government Claims Board the right to receive on request a certified copy of the restitution order and the defendant's financial disclosure (see §83.94). See also Welf & I C §730.7(c) (victims of juvenile offenses entitled to certified copy of restitution order). If requested, the court must provide the financial disclosure to the district attorney in connection with an investigation or prosecution involving perjury or the veracity of the information contained in the disclosure. Pen C §1214(b).

Penal Code §1214(b) also gives victims "access to all resources available under the law to enforce the restitution order," including, inter alia, wage garnishment and lien procedures.

A restitution order is enforceable immediately and continues to be enforceable by the victim after termination of defendant's probation, postrelease community supervision, mandatory supervision, or parole. Pen C §§1214(b), 1202.4(m); Welf & I C §730.6(*l*); *People v Kleinman* (2004) 123 CA4th 1476, 1479–1481, 20 CR3d 885 (probation summarily revoked).

☛ JUDICIAL TIP: Enforcement, like a judgment, should *not* be confused with the actual entry of a civil judgment based on the order to pay restitution. Judges should not at any time order the entry of such a judgment. However, it is entirely proper for the judge to order the appropriate civil clerk to issue enforcement of judgment orders, such as writs of execution, to victims with a restitution order. See *People v Hart* (1998) 65 CA4th 902, 906, 76 CR2d 837. But see *People v Farael* (1999) 70 CA4th 864, 866–867, 83 CR2d 16 (on conviction of insurance fraud, court properly required defendant as condition of probation to sign confession of judgment in insurer's favor in amount of its investigation costs;

appellate court found "no practical or legal difference between a restitution order and a confession of judgment for the purpose of restitution").

e. [§83.39] Penalty Assessments

Restitution orders are not subject to the penalty assessments of Pen C §1464 or Govt C §76000. Unlike penalty assessments, restitution is not collected by the courts, but is ordered payable directly to the victim. *People v Dorsey* (1999) 75 CA4th 729, 734–737, 89 CR2d 498; *People v Martinez* (1999) 73 CA4th 265, 267–268, 86 CR2d 346.

Statutory penalties may not be included in a victim restitution order. *People v Boudames* (2006) 146 CA4th 45, 49–53, 52 CR3d 629.

f. [§83.40] Administrative Fees

When a defendant is ordered to pay restitution as a condition of probation to the victim or to the Restitution Fund under Pen C §1203.1(b), the entity collecting the fee (*i.e.*, county or trial court) may impose a fee to cover the administrative costs of collecting restitution payments made to the victim, but not those made to the fund. The fee may not exceed 15 percent of the total amount of restitution ordered to be paid. Pen C §1203.1(*l*); *People v Eddards* (2008) 162 CA4th 712, 716–717, 75 CR3d 924.

g. [§83.41] Persons Found Not Guilty by Reason of Insanity

Article I, §28(b)(13), of the California Constitution, and Pen C §1202.4(a) refer to restitution from the persons *convicted* of crimes. A person found not guilty by reason of insanity (NGI) is not a convicted person. *People v Morrison* (1984) 162 CA3d 995, 998, 208 CR 800; *Newman v Newman* (1987) 196 CA3d 255, 259, 241 CR 712 (defendant found NGI is not "convicted" within meaning of CCP §340.3). Although there is no California case on point dealing with restitution in NGI cases, other states have ruled on the issue and concluded that there is no authority to order restitution in these cases. See *State v Heartfield* (Ariz 2000) 998 P2d 1080; *State v Gile* (Or App 1999) 985 P2d 199 (defendant found NGI not subject to assessment similar to Pen C §1202.4 restitution fine).

h. [§83.42] Effect of Acquittal

In a nonprobation context, a restitution order may not be imposed for a crime of which the defendant has been acquitted. *People v Percelle* (2005) 126 CA4th 164, 178–180, 23 CR3d 731. However, the court may impose a restitution order as a condition of probation, regardless of

whether the defendant has been convicted of the underlying crime. 126 CA4th at 169. See also §83.98.

i. [§83.43] Abatement of Restitution Order

If a defendant dies while an appeal is pending from his or her conviction, the death permanently abates all further proceedings, including any restitution order. A victim restitution order requires a conviction for the crime that caused the victim's loss, and the defendant's death pending appeal unquestionably abates the defendant's underlying convictions. *People v Schaefer* (2012) 208 CA4th 1283, 1287–1288, 146 CR3d 497. The *Schaefer* court agreed with the Attorney General that there are strong policy arguments in favor of excepting a restitution order from an abatement order, and invited the Legislature to consider the issue. 208 CA4th at 1288 n3.

2. [§83.44] Restitution Under Pen C §1202.4 and Welf & I C §730.6

Penal Code §1202.4 or its counterpart for juvenile offenders, Welf & I C §730.6, apply when all four of the following conditions are present:

(1) a claim by a victim (see §§83.53–83.56.)

(2) who suffered an economic loss (see §§83.57–83.68) (victim of felony violation of Pen C §288 entitled to restitution for noneconomic losses (Pen C §1202.4(f)(3)(F); see §83.70).

(3) as a result of the commission of a crime

(4) of which the defendant was convicted (Pen C §1202.4(a)(1); see *People v Carbajal* (1995) 10 C4th 1114, 43 CR2d 681; *People v Woods* (2008) 161 CA4th 1045, 1049–1053, 74 CR3d 786; *People v Lai* (2006) 138 CA4th 1227, 1246–1249, 42 CR3d 444).

When some of these conditions are not met, the court may have discretion to order restitution. For discussion, see §§83.98–83.104.

The causal connection embodied in the words "as the result of" in Pen C §1202.4(f)(3) is indicative of direct causation. But just as in tort law, the law must impose limitations on liability for victim restitution other than simple direct causality, or else a defendant will face infinite liability for his or her criminal acts, no matter how remote the consequence. *People v Jones* (2010) 187 CA4th 418, 425–427, 114 CR3d 8. Therefore, the principles of proximate causation should apply to an award of victim restitution. *People v Jones, supra*. See also *People v Holmberg* (2011) 195 CA4th 1310, 1320–1324, 125 CR3d 878 (proximate cause analyzed by substantial factor test).

The court must find that the defendant's conduct was a substantial factor in causing the injury. It need not, however, be the sole cause. *In re*

A. M. (2009) 173 CA4th 668, 672–674, 93 CR3d 168 (CALCRIM 240 provides test for determining whether a victim's economic loss is "a result of the minor's conduct" under Welf & I C §730.6).

a. [§83.45] Presentence Investigation Report

A probation officer's presentence investigation report must include information and recommendations pertaining to restitution fines and victim restitution. Pen C §1203(b)(2)(D), (d), (g). Specifically, the report must include:

- Information concerning the victim of the crime, including the victim's statement, the amount of the victim's loss, and whether that loss is covered by the victim's or defendant's insurance (Cal Rules of Ct 4.411.5(a)(5); for discussion of the effect of insurance on restitution awards, see §§83.71–83.72);
- A statement of mandatory and recommended restitution, restitution fines, and other fines and costs to be assessed against the defendant (Cal Rules of Ct 4.411.5(a)(11)); and
- Findings concerning a defendant's ability to make restitution and pay any fine (Cal Rules of Ct 4.411.5(a)(8), (11)).

If, as is typical in misdemeanor cases, no probation report is prepared for sentencing, the court may consider any information that could have been included in a probation report. Pen C §1203(d).

Financial evaluation. The court may order the defendant to appear before a county financial evaluation officer, if available, for an evaluation of the defendant's ability to make restitution. Pen C §1203(j). The county officer must report findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs. Pen C §1203(j).

b. Hearing

(1) [§83.46] Right to Hearing

Defendant. The defendant has the right to a court hearing to dispute the amount of restitution or the manner in which it is to be made. Pen C §§1202.4(f)(1), 1203(d), 1203.1k; *People v Carbajal* (1995) 10 C4th 1114, 1125, 43 CR2d 681. Juvenile offenders have the same right. Welf & I C §730.6(h)(1). Advisement of this right is a precondition to enforcement of the restitution order by a victim. Pen C §1214(b); for more on notice, see §83.47.

Victim. A victim has a right to appear at sentencing personally or by private counsel to express his or her views regarding restitution. Cal Const art I, §28(b)(8), (c)(1); Pen C §1191.1. This right also extends to:

- The victim's spouse, parents, children, or guardian (Cal Const art I, §28(e); Pen C §1191.1);
- The lawful representative of the victim who is deceased, a minor, or physically or psychologically incapacitated (Cal Const art I, §28(e));
- The next of kin of a deceased victim (Pen C §1191.1);
- An insurer or employer victimized by workers' compensation fraud (Pen C §1191.10);
- The California Victim Compensation and Government Claims Board when enforcing its subrogation rights (Pen C §1202.4(f)(2); see §83.84).

(2) [§83.47] Notice

Defendant. The court should inform the defendant of the right to a hearing to contest restitution. See Pen C §§1202.4(f)(1) (right to hearing), 1214(b); *People v Carbajal* (1995) 10 C4th 1114, 1125, 43 CR2d 681. The consequences of failing to provide this information differ depending on whether the court follows the recommendations of the probation report:

- If the court does not order more restitution than the report recommends, failure to request a hearing waives any error. *People v Foster* (1993) 14 CA4th 939, 949, 18 CR2d 1; *People v Blankenship* (1989) 213 CA3d 992, 997, 262 CR 141.

☛ JUDICIAL TIP: Some judges obtain an express waiver of hearing when the defendant does not contest restitution. This forestalls later objections to civil enforcement of the restitution order based on a lack of hearing.

- However, when the court exceeds the recommendations without first bringing that prospect to the defendant's attention and affording the defendant an opportunity to contest it, the defendant has been deprived of any meaningful opportunity to be heard. See *People v Sandoval* (1989) 206 CA3d 1544, 1550, 254 CR 674. See also *People v Thygesen* (1999) 69 CA4th 988, 993, 81 CR2d 886.

☛ JUDICIAL TIP: When the judge contemplates ordering more restitution than the probation officer recommended, the judge should indicate this before making an order and should inquire whether the defendant desires a hearing.

Victim. The probation officer has the duty to notify the victim of

- All sentencing proceedings or juvenile disposition hearings,
- The right to appear, and
- The right to express his or her views. Pen C §§679.02(a)(3), 1191.1.

The probation officer must also provide the victim with timely written information concerning the court's duty to order restitution and the victim's

- Right to civil recovery against the defendant;
- Right to a copy of the restitution order from the court;
- Right to enforce the restitution order as a civil judgment;
- Responsibility to provide information about losses to the probation department, district attorney, and court; and
- Opportunity to be compensated from the Restitution Fund. Pen C §§679.02(a)(8), 1191.2.

☛ JUDICIAL TIP: When there is no probation referral, as is often the case with misdemeanors, the prosecutor should notify the victim unless the county has another agency in charge of victim restitution that notifies victims.

In cases of juvenile offenders the obligation to notify is limited to offenses that would have been felonies if committed by an adult. Pen C §679.02(a)(4).

The California Emergency Management Agency is required to develop and make available a "notification of eligibility" card for victims and derivative victims that includes specified information about eligibility to receive payment from the Restitution Fund for losses resulting from the crime. Pen C §1191.21(a). The law enforcement officer with primary responsibility for investigating the crime and the district attorney may provide this card to the victim and any derivative victims. Pen C §1191.21(b).

☛ JUDICIAL TIP: To spare victims court appearances that are unnecessary because defendant does not contest restitution, some judges initially make only uncontested orders. They continue the case when the defendant plans to challenge restitution; the victim is invited to attend the continued hearing.

(3) [§83.48] Attendance of Prosecutor

The prosecutor must be present at the restitution hearing to advocate on the People's behalf and be heard on issues that affect a fair and just

result on the question of victim restitution. *People v Dehle* (2008) 166 CA4 th 1380, 1386–1389, 83 CR3d 461 (trial court erred in allowing hearing to go forward without the prosecutor; victim's private attorney did not appear on behalf of the People, but solely on behalf of the victim). Although private counsel may assist a prosecutor (see §83.49), the prosecutor may not delegate a restitution hearing entirely to a private attorney. 166 CA4th at 1389–1390.

(4) [§83.49] Participation Victim's Attorney

The victim has a right to have his or her attorney appear at the restitution hearing and to be heard through counsel on the issue of restitution. Cal Const art I, §28(b)(8), (c)(1). The victim's attorney may present evidence and argument at the hearing so long as the prosecutor is present and has the opportunity to speak if the victim's or his or her attorney's position diverges from the People's interests. See *People v Smith* (2011) 198 CA4th 415, 439–440, 129 C3d 910.

(5) [§83.50] Nature of Restitution Hearing

A restitution hearing does not require the formalities of a trial. *People v Hartley* (1984) 163 CA3d 126, 130, 209 CR 131. Thus

- Defendant has no Sixth Amendment right to a jury trial on restitution issues. *People v Chappelone* (2010) 183 CA4th 1159, 1183–1184, 107 CR3d 895; *People v Millard* (2009) 175 CA4th 7, 35–36, 95 CR3d 751.
- Defendant has no right to confront and cross-examine witnesses, including the probation officer who prepared the probation report. *People v Cain* (2000) 82 CA4th 81, 86–88, 97 CR2d 836 (no right to cross-examine psychotherapist whose fees defendant was ordered to reimburse under Pen C §273.5(h)(2); trial courts, however, retain discretion to permit cross-examination on a case-by-case basis).
- The court may consider the recommendations in the presentence report despite their hearsay character (*People v Cain, supra,* 82 CA4th at 87–88; Pen C §§1203(b)(2)(D)(ii), 1203.1k), as long as the court independently determines the amount of restitution (*People v Hartley, supra).*
- The evidentiary requirements for establishing a victim's economic losses are minimal. The court must base its determination on the "amount of loss claimed by the victim or victims or any other showing to the court." Pen C §1202.4(f). A victim may submit estimates of losses. *People v Goulart* (1990) 224 CA3d 71, 82–83,

273 CR 477. An owner of property is always entitled to give an opinion of its value. Evid C §813. See *People v Prosser* (2007) 157 CA4th 682, 690–692, 68 CR3d 808 (in determining value of stolen property, court may consider testimony of victim as to its value, even though testimony was unsupported by receipts or appraisals, or a detailed description of each individual stolen piece); *People v Gemelli* (2008) 161 CA4th 1539, 1542–1544, 74 CR3d 901 (court may rely on victim's unverified statement of losses that is detailed and facially credible, and explains how the claimed losses relate to the crime).

- Documentary evidence such as bills, receipts, repair estimates, insurance payment statements, payroll stubs, business records, and similar documents relevant to the value of stolen or damaged property, medical expenses, and wages and profits lost may not be excluded as hearsay evidence. Pen C §1203.1d(d).

☛ JUDICIAL TIP: Restitution hearings should not further victimize victims by long courtroom waits or multiple hearings. This problem often arises in misdemeanor cases that involve long calendars and that lack probation reports. To minimize delays for victims some judges

— Instruct courtroom clerks to ascertain cases in which victims are present and call these cases first; and

— Permit victims to present restitution information without delay when an out-of-custody defendant is absent, on a determination and finding that defendant's absence is voluntary and with knowledge of the hearing. See Pen C §1043 for a similar procedure at trial. Merely asking the victim to hand papers to the clerk and deferring the restitution determination may create confusion and an inadequate record.

(6) [§83.51] Burden of Proof

The victim must present evidence showing that there were losses and that the losses were caused by the crime committed by the defendant. *People v Fulton* (2003) 109 CA4th 876, 885–886, 135 CR2d 466.

The amount of restitution must be proved by a preponderance of the evidence. *People v Gemelli* (2008) 161 CA4th 1539, 1542–1543, 74 CR3d 901. Once the victim makes a prima facie showing of economic losses, the burden shifts to the defendant to disprove the amount of the claimed losses. 161 CA4th at 1543. The defendant has the burden of showing that the restitution recommendation in the probation report or the victims'

estimates are inaccurate. *People v Foster* (1993) 14 CA4th 939, 946, 18 CR2d 1; *People v Hartley* (1984) 163 CA3d 126, 130, 209 CR 131.

c. [§83.52] Ability To Pay

Defendant's inability to pay cannot be considered in determining the amount of restitution. Pen C §1202.4(g).

However, ability to pay is vital in two other respects:

(1) At the time of making the restitution order the court needs to make an ability-to-pay determination in order to decide whether to make an income deduction order. Pen C §1202.42(a); for discussion, see §83.88.

(2) Ability to pay becomes important if the defendant fails to pay restitution; it is a precondition to revoking probation or imprisoning defendant for failure to pay. See, *e.g.*, *People v Whisenand* (1995) 37 CA4th 1383, 1393, 44 CR2d 501. See §83.83.

d. Persons Entitled to Restitution

(1) Victims

(a) [§83.53] Constitutional Definition of Victim

The California Constitution provides a definition of a victim, including for purposes of restitution. Under the constitutional definition, a "victim" is (Cal Const art I, §28(e)):

- A person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act.
- The person's spouse, parents, children, siblings, or guardian.
- A lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. For discussion of executor's right to collect restitution on behalf of deceased victim, see §83.69.

The term "victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim. Cal Const art I, §28(e).

(b) [§83.54] Statutory Definition Under Pen C §1202.4

A "victim" under Pen C §1202.4 is any individual who has suffered economic loss as a result of the commission of a crime of which the defendant was convicted. Pen C §1202.4(a)(1). Other individuals entitled to restitution under Pen C §1202.4 include:

- The immediate surviving family of the actual victim. Pen C §1202.4(k)(1).
- Parents and guardians of a victim who is a minor. Pen C §1202.4(f)(3)(D) and (E); for discussion, see §83.61.
- A person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions (Pen C §1202.4(k)(3)):
  - At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.
  - At the time of the crime was living in the victim's household.
  - At the time of the crime was a person who had previously lived in the victim's household for at least two years in a relationship substantially similar to that of a parent, grandparent, sibling, spouse, child, or grandchild.
  - Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.
  - Is the primary caretaker of a minor victim.
- A person who is eligible to receive assistance from the Restitution Fund under the California Victim Compensation Program (Govt C §§13950–13969.7). Pen C §1202.4(k)(4).

For discussion of restitution payments to the state Restitution Fund, see §83.84.

A victim of crime does not have to be an individual. A corporation, business trust, estate, trust, partnership, association, joint venture, government and governmental agency, or any other legal or commercial entity may be entitled to restitution under Pen C §1202.4 if it is a "direct victim" of a crime, *i.e.*, it is the immediate object of the offense or it is an entity against which the crime has been committed. Pen C §1202.4(k)(2); *People v Martinez* (2005) 36 C4th 384, 393, 30 CR3d 779. For example:

- A water company was entitled to restitution in the amount of money embezzled by defendant plus penalties and interest assessed by the IRS resulting from defendant's failure to pay company's payroll taxes. *People v Williams* (2010) 184 CA4th 142, 147–149, 108 CR3d 772.
- A bank was direct victim, entitled to restitution, when defendant forged checks drawn on the bank. *People v Bartell* (2009) 170 CA4th 1258, 1261–1262, 88 CR3d 844.

- A utility company was entitled to restitution for value of illegally diverted electrical power used in marijuana growing operation. *People v Phu* (2009) 179 CA4th 280, 283–285, 101 CR3d 601.
- A bank was entitled to restitution for its losses from a defendant whose fraudulent transactions affected a deposit holder's account; the bank was a direct victim because the bank did not act as an indemnitor, the bank was the object of the crime, and the defendant pleaded guilty to "commercial" burglary. *People v Saint-Amans* (2005) 131 CA4th 1076, 1084–1087, 32 CR3d 518.

Compare *People v Slattery* (2008) 167 CA4th 1091, 1096–1097, 84 CR3d 672 (hospital that treated victim injured by criminal conduct is not a direct victim).

☛ JUDICIAL TIP: Caution is advisable when counsel refers to statutes other than Pen C §1202.4 for the purpose of defining who is a victim. See, *e.g.*, a narrower definition in Govt C §§13951(c), (g), 13955, dealing with persons entitled to compensation from the Restitution Fund, and Pen C §1191.10. These definitions do not limit who qualifies as a victim under Pen C §1202.4. See, *e.g.*, *People v Broussard* (1993) 5 C4th 1067, 1077, 22 CR2d 1078 (persons entitled to restitution not limited to those who qualify for assistance from Restitution Fund); *People v Valdez* (1994) 24 CA4th 1194, 1199, 30 CR2d 4.

(2) [§83.55] Governmental Agencies

A governmental agency may be a direct victim of the defendant's crime under Pen C §1202.4(k)(2). For example, a defrauded governmental agency is a direct victim entitled to restitution for its losses. See *People v Crow* (1993) 6 C4th 952, 957, 26 CR2d 1 (welfare fraud); *People v Akins* (2005) 128 CA4th 1376, 1385–1389, 27 CR3d 815 (welfare fraud); *People v Hudson* (2003) 113 CA4th 924, 927–930, 7 CR3d 114 (discussion of how to calculate restitution to defrauded government agency). See also *In re Johnny M.* (2002) 100 CA4th 1128, 123 CR2d 316 (school district is direct victim entitled to restitution from minor who vandalized school property in amount that included reimbursement for property damage and labor costs of salaried employees who repaired the damage).

A governmental agency that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material, as defined in Pen C §594(e), is entitled to restitution for economic losses sustained as the result of a violation of Pen C §594, §594.3, §594.4, §640.5, §640.6, or §640.7. Pen C §1202.4(k)(5). These losses include the cost of materials used in the

cleanup and repair and the labor cost for public works personnel who clean up the graffiti. General costs for maintaining vehicles and equipment used in graffiti abatement and contract services for tracking graffiti, however, are not economic losses incurred as a result of the vandalism offense. *Luis M. v Superior Court* (2012) 210 CA4th 982, 148 CR3d 795.

Governmental units are often indirect victims, not entitled to restitution. For example:

- A law enforcement agency that bought illicit drugs from the defendant does not qualify for restitution for the funds expended. *People v Torres* (1997) 59 CA4th 1, 5, 68 CR2d 644 (overhead expenses costs incurred in the course of regular investigatory duties not recoverable).
- A public agency may not be awarded restitution for cleanup costs incurred in removing hazardous waste from a defendant's illegal drug lab. *People v Martinez* (2005) 36 C4th 384, 391–394, 30 CR3d 779 (Health & S C §§11470.1 and 11470.2 provide exclusive means by which Department of Toxic Substances Control can recover costs).
- A city may not be awarded restitution for workers' compensation payments to a police officer who was injured by defendant's criminal act. *People v Franco* (1993) 19 CA4th 175, 183–186, 23 CR2d 475 (city may pursue civil action under Lab C §3852 to collect restitution).
- A county animal welfare agency is not entitled to restitution under Pen C §1202.4 for the costs of caring for neglected and abused animals. *People v Brunette* (2011) 194 CA4th 268, 280, 124 CR3d 521 (agency may recover costs under Pen C §597).
- A public agency may not be awarded restitution under Pen C §1202.4 for costs to investigate crimes or apprehend criminals. *People v Ozkan* (2004) 124 CA4th 1072, 1076–1077, 21 CR3d 854 (Board of Equalization entitled to recover costs under Bus & P C §12015.5).

As illustrated in some of the above cases, statutes often give governmental agencies other remedies to obtain reimbursement for expenditures attributable to defendant's conduct. Other examples include:

- *Emergency response to DUI auto accident*. The court may, as a condition of probation, order restitution to a public agency for expenses incurred in its emergency response to a DUI auto accident. Govt C §53150; Pen C §§1203.1(e), 1203.1*l*. See *California Highway Patrol v Superior Court* (2006) 135 CA4th

488, 38 CR3d 16 (discussion of recoverable emergency response costs under Govt C §53150).

- *Fire suppression*. Fire departments can receive restitution expenses incurred in putting out a fire that was negligently or unlawfully set. Related rescue and emergency medical costs are also recoverable. Health & S C §13009.
- *Medical examination*. The court may order restitution to a law enforcement agency for the cost of a medical examination conducted in child abuse or neglect cases and in sexual assault cases. Pen C §1203.1h.
- *Emergency response*. The court may, as a condition of probation, order restitution to a public agency for costs incurred due to their response to an emergency. Pen C §1203.1*l*
- *Child stealing cases*. The court must order the payment of restitution to the district attorney for any costs incurred in locating and returning a child to the custodial parent. Pen C §278.6(c); Fam C §3134.
- *Criminal threat cases*. The court must order payment to a public or private entity for costs incurred stemming from an emergency response to a false bomb threat or to a false threat to use a weapon of mass destruction. Pen C §422.1.
- *Damage to public property*. The court must order payment of restitution to a public entity for costs of cleanup, repair, replacement, or restoration of public property damaged by parties who refused to comply with an order to disperse. Pen C §416(b).

A governmental agency may be the beneficiary of restitution under Pen C §1203.1 (restitution imposed as condition of probation) for losses resulting from unusual expenses directly incurred because of defendant's criminal conduct. *People v Rugamas* (2001) 93 CA4th 518, 521–523, 113 CR2d 271 (court upheld restitution order requiring defendant to reimburse police department for medical expenses incurred to treat defendant after police shot him with rubber bullets). See §83.98.

(3) [§83.56] Insurance Companies

An insurance company that has paid the crime losses of its insured under the terms of an insurance policy is not a direct victim of crime and has no right to restitution. *People v Birkett* (1999) 21 C4th 226, 231, 245, 87 CR2d 205 (court also lacks discretion to divide restitution between victim and insurer). However, when the defendant is convicted of submitting false claims to an insurance company, the insurance company

is considered to be a direct victim of the defendant's crime and thus entitled to restitution. *People v O'Casey* (2001) 88 CA4th 967, 106 CR2d 263 (workers compensation fraud); *People v Moloy* (2000) 84 CA4th 257, 100 CR2d 676. Compare *People v Busser* (2010) 186 CA4th 1503, 1509–1511, 113 CR3d 536 (auto insurer was not entitled to restitution for repair costs from a hit-and-run accident involving defendant convicted of presenting a materially false statement to the insurer about the facts of the accident; insurer was contractually obligated to pay the repair costs even if the defendant had not lied).

e. Losses Subject to Restitution; Amount

(1) [§83.57] Full Restitution for Economic Losses

Penal Code §1202.4 requires

(a) *full* restitution

(b) for *economic* losses determined by the court. Pen C §1202.4(a)(1), (f)(3).

Two kinds of losses not covered by Pen C §1202.4 are:

- Noneconomic losses (*e.g.*, psychological harm) except those suffered by victims of felony violations of Pen C §288 (see §83.70); and
- Losses that did not result from the crime of which defendant was convicted. Pen C §1202.4(a)(1), (f)(3)(F); for basis of restitution other than Pen C §1202.4, see §§83.98–83.104.

(2) [§83.58] Components of Economic Loss

Penal Code §1202.4(f)(3) lists a number of losses and expenditures that qualify as recoverable economic losses. The list is not inclusive; the statute provides broad discretion with respect to the type of losses subject to a restitution order. Pen C §1202.4(f)(3) ("losses . . . including, but not limited to . . ."); *In re Johnny M.* (2002) 100 CA4th 1128, 1135–1136, 123 CR2d 316; *In re M. W.* (2008) 169 CA4th 1, 5–6, 86 CR3d 545 (list of losses enumerated in Welf & I C §730.6(h) is not inclusive). See, *e.g.*, *People v Keichler* (2005) 129 CA4th 1039, 1046–1047, 29 CR3d 120 (trial court properly ordered restitution for the cost of a traditional Hmong healing ceremony and herbal medicines to victims of a fight). See also §83.64 (support to victims' children).

(a) [§83.59] Property Damages or Loss

Damaged property. Victims have a right to restitution "for the value of stolen or damaged property," defined as the replacement cost of like

property or the cost of repairing it when repair is possible. Pen C §1202.4(f)(3)(A).

Penal Code §1202.4(f)(3)(A) does not require that the restitution for damaged property should be the lesser of the replacement cost or the actual repair cost of the property. The choice is left to the sound discretion of the court. *People v Stanley* (2012) 54 C4th 734, 143 CR3d 260.

Stolen property. For most types of stolen property, original cost is a fair approximation of replacement cost. *People v Foster* (1993) 14 CA4th 939, 946, 18 CR2d 1. Accordingly, the court may consider a victim's statement of what the property cost, as set out in the probation report. It is up to the defendant to contest the valuation. *People v Foster, supra*. If stolen property is recovered and returned to the victim, the victim is only entitled to the diminution in the value of the property. *People v Chappelone* (2010) 183 CA4th 1159, 1180–1182, 107 CR3d 895 (calculation of victim restitution awarded to department store for the loss of damaged retail merchandise that was stolen by employee).

Appreciated property. When the value of stolen property appreciates after the theft, as may happen with securities, the court may order restitution in the amount of the appreciated value. See *People v Tucker* (1995) 37 CA4th 1, 4–6, 44 CR2d 1 (embezzled mutual fund shares; decision based on former Pen C §1203.04).

☛ JUDICIAL TIP: The converse is not true in the view of most judges. When shares decline in value after defendant embezzled them, defendant should not get a windfall; defendant's crime deprived the victim of the opportunity to sell the shares before their value dropped.

Application of other statute to determine loss. In *People v Baker* (2005) 126 CA4th 463, 468–470, 23 CR3d 871, a defendant was convicted of cattle theft and was ordered to make restitution for the stolen cows and for the calves that were born while the cows were misappropriated. In calculating the restitution owed, the trial court properly applied Food & A C §21855 in quadrupling the restitution amount. 126 CA4th at 469–470.

(b) [§83.60] Medical and Counseling Expenses

Medical expenses are a proper item of restitution (Pen C §1202.4(f)(3)(B)) and include future expenses. *People v Phelps* (1996) 41 CA4th 946, 949–951, 48 CR2d 855. Victims also have a right to restitution for mental health counseling expenses. Pen C §1202.4(f)(3)(C). See *People v O'Neal* (2004) 122 CA4th 817, 820–821, 19 CR3d 202 (defendant convicted of sexual molestation ordered to pay restitution for psychological counseling expenses incurred by victim's brother); *In re M. W.* (2008) 169 CA4th 1, 4–7, 86 CR3d 545 (cost of mental health services

incurred by victim of crime committed by a juvenile is a recoverable loss under Welf & I C §730.6(h)).

Other statutes provide for restitution of medical and counseling expenses in specific situations. For example:

- Defendants convicted of the following offenses may be ordered to reimburse a victim for reasonable costs of counseling and other reasonable expenses as condition of probation:
  - — Domestic battery (see Pen C §243(e)(2)(B)),
  - — Spousal rape (see Pen C §262(d)(2)),
  - — Spousal abuse (see Pen C §273.5(h)(2)), and
  - — Violation of protective order (see Pen C §273.6(h)(2)).
- Defendants convicted of the sexual assault on a minor are required to make restitution for the victim's medical or psychological treatment expenses. Pen C §1203.1g.
- Defendants convicted of the sexual assault on an elderly person are required to make restitution for the victim's medical or psychological treatment expenses. Pen C §1203.1j.

A crime victim seeking restitution for the cost of therapy, unlike a civil plaintiff, does not waive his or her psychotherapist-patient privilege. *People v Garcia* (2010) 185 CA4th 1203, 1210–1213, 111 CR3d 435.

A crime victim may not order the district attorney's office to negotiate with a victim's medical provider concerning the victim's medical bills. Nothing in the Hospital Fair Pricing Act (Health & S C §§127400 et seq) requires a patient to seek a discount for his or her medical bills or suggests that the court has the authority to order the patient or district attorney to do so. *People v Superior Court* (Lauren M.) (2011) 196 CA4th 1221, 127 CR3d 154.

For a discussion of restitution for medical expenses when the victim is covered by private medical insurance or Medi-Cal, see §83.73.

(c) [§83.61] Lost Wages and Profits; Out-of-Pocket Expenses

Wages or profits lost by the victim as a result of the crime are a proper item of restitution. Pen C §1202.4(f)(3)(D)–(E).

Restitution should include:

- Future lost wages. See *People v Millard* (2009) 175 CA4th 7, 29–30, 95 CR3d 751 (future earnings based on the number of years the victim otherwise would have continued to work and the amount of annual income the victim would have expected to receive); *People*

v Fulton (2003) 109 CA4th 876, 880 n2, 887, 135 CR2d 466 (lost wages associated with future postsurgery recovery).

- Profits or wages lost because of time spent as a witness. Pen C §1202.4(f)(3)(E); *People v Nguyen* (1994) 23 CA4th 32, 42, 28 CR2d 140; see *People v Ryan* (1988) 203 CA3d 189, 192, 249 CR 750.
- Out-of-pocket expenses assisting the authorities in the investigation and prosecution of the case. Pen C §1202.4(f)(3)(E); *People v Rowland* (1997) 51 CA4th 1745, 1749–1750, 60 CR2d 351.
- Wages or profits lost by the parents or guardian of a victim who is a minor. Pen C §§1202.4(f)(3)(D) (loss while caring for injured minor), 1202.4(f)(3)(E) (loss because of time spent as witness or assisting prosecution).
- Wages lost because of psychological injury. *People v Brasure* (2008) 42 C4th 1037, 1074–1075, 71 CR3d 675 (Pen C §1202.4(f)(3) applied to compensate a murder victim's mother for two years' lost wages due to the trauma of her son's death; the statute does not distinguish between economic losses covered by physical injuries and those caused by psychological trauma).
- Lost wages incurred by victim or victim's family for time spent attending trial proceedings. *People v Moore* (2009) 177 CA4th 1229, 1231–1233, 99 CR3d 555 (victim entitled to restitution even if the victim is just a spectator and does not testify); *People v Crisler* (2008) 165 CA4th 1503, 1507–1509, 81 CR3d 887 (trial court ordered restitution for time spent by mother, father, and stepfather of a minor murder victim to attend the defendant's murder trial).
- Incidental expenses incurred by victim's family to attend trial. *People v Crisler*, *supra* (parking and mileage).
- Sick leave if victim is unable to go to work because of injuries inflicted by the defendant. *In re K. F.* (2009) 173 CA4th 655, 665–666, 92 CR3d 784.

Lost wages include commission income as well as base wages. Commission income must be established by evidence of this income during the 12-month period before the date of the crime for which the court is ordering restitution, unless good cause for a shorter time period is shown. Pen C §1202.4(f)(3)(D)–(E).

(d) [§83.62] Lost Work Product

A restitution award may include the reasonable value of employee work product lost as a result of the crime. *In re Johnny M.* (2002) 100 CA4th 1128, 1134, 123 CR2d 316. In *In re Johnny M.*, a minor admitted to vandalizing school property. Several salaried school employees were required to spend time repairing the damage to the classrooms. The juvenile court held that the school district incurred an economic loss because the district was deprived of the work product the salaried employees would have generated if they had not been obliged to repair school property. The court reasonably valued the lost work product at the salary rate of the district employees, including benefits, for the lost time. *In re Johnny M.*, *supra*.

(e) [§83.63] Future Economic Losses of Spouse of Deceased Victim

The court may order the defendant to pay restitution to compensate the spouse of a deceased victim for the spouse's future economic losses attributable to the deceased victim's death. *People v Giordano* (2007) 42 C4th 644, 68 CR3d 51. In support of its decision, the Supreme Court looked to the state's wrongful death statutes that allow a spouse of a person wrongfully killed to seek compensation for the loss of financial benefits the decedent was contributing to support his or her family at the time of the decedent's death and the loss of that that support that was reasonably expected in the future. The Court stated that when the Legislature enacted Pen C §1202.4, "it did so with the presumed knowledge that courts have long understood that a surviving spouse incur an economic loss upon the death of his or her spouse." 42 C4th at 659.

In calculating the loss of support, the trial court should consider the earning history of the deceased spouse, the age of the survivor and decedent, and the degree to which the decedent's income provided support to the survivor's household. These factors are not an exhaustive list; the trial court has discretion to be guided by the particular factors in each individual claim. 42 C4th at 665.

(f) [§83.64] Child Support to Victims' Children

The children of a homicide victim are entitled to restitution for the loss of support. *People v Harvest* (2000) 84 CA4th 641, 652–653, 101 CR2d 135 (defendant ordered to pay child support for murder victim's children). See also *People v Clark* (1982) 130 CA3d 371, 384, 181 CR 682 (court ordered defendant to make monthly support payments to the children of a manslaughter victim as condition or probation). The court

may also order restitution to the Restitution Fund for support to widows and children paid by the Fund. See Govt C §13957.5(a)(4).

(g) [§83.65] Interest

The court must award interest on a restitution order under Pen C §1202.4 at the rate of 10 percent per year. Pen C §§1202.4(f)(3)(G), 1214.5. The court has the option of awarding interest from the date of sentencing or loss. Pen C §1202.4(f)(3)(G).

☛ JUDICIAL TIPS: The latter is most workable when there was a single loss. Many judges leave it to the probation officer or other county agency to factor interest into a payment schedule.

(h) [§83.66] Attorneys' Fees

Penal Code §1202.4(f)(3)(H) mandates restitution for actual and reasonable attorneys' fees "and other costs of collection accrued by a private entity on behalf of the victim." See *People v Maheshwari* (2003) 107 CA4th 1406, 1409–1411, 132 CR2d 903 (defendant convicted of embezzlement ordered to pay victim's attorneys' fees and private investigator fees incurred in civil action to determine the amount of and recover embezzled funds). Only those attorneys' fees attributable to the victim's recovery of economic damages are allowed under Pen C §1202.4(f)(3)(H). The victim, however, is entitled to full reimbursement for attorneys' fees incurred to recover both economic and noneconomic losses when the fees cannot be reasonably divided. *People v Fulton* (2003) 109 CA4th 876, 882–885, 135 CR2d 466.

The Courts of Appeal are in disagreement as to whether a court may order restitution for a contingency fee paid by the victim without first determining whether the fee was reasonable under the lodestar method for calculating attorney fees. Compare *People v Taylor* (2011) 197 CA4th 757, 760–764, 128 CR3d 399 (yes); *People v Millard* (2009) 175 CA4th 7, 30–33, 95 CR3d 751 (no). The lodestar method calculation involves multiplying the reasonable number of hours worked on the case by the reasonable hourly rate for that work, and then adjusting the amount upward or downward based on specified factors to arrive at a fee at the fair market value for the particular action. 175 CA4th at 32.

A contingent fee paid by the victim to an attorney to pursue civil liability is recoverable under Pen C §1202.4(f)(3)(H). *People v Pinedo* (1998) 60 CA4th 1403, 1405–1406, 71 CR2d 151. Restitution is also proper for attorneys' fees incurred to prevent a dispersal of assets by defendant. *People v Lyon* (1996) 49 CA4th 1521, 57 CR2d 415. However,

legal expenses related to opposing discovery in the criminal case are not allowable. *People v Lyon, supra.*

Restitution may be awarded for legal fees incurred by a defendant's employer to resolve a medical claim for a fraudulent work injury filed by the defendant. *People v Beaver* (2010) 186 CA4th 107, 128–129, 111 CR3d 726 (legal expenses to determine which type of insurance applied to loss caused by the defendant).

Although Welf & I C §730.6 does not include legal fees and costs in its list of compensable economic losses, the Second District Court of Appeal has held that a juvenile offender can be ordered to pay restitution for the legal fees and costs that the victim incurred to collect restitution. *In re Imran Q.* (2008) 158 CA4th 1316, 1319–1321, 71 CR3d 121 (Welf & I C §730.6's silence on attorney's fees and costs is a mere legislative oversight; trial court should utilize procedure discussed in *People v Fulton, supra*, for allocating fees).

(i) [§83.67] Losses From Audio and Video Piracy

A defendant convicted of audio or video piracy under Pen C §§350, 653h, 653s, 653u, 653w, or 653aa that involves a recording or audiovisual work must make restitution to an owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of a phonograph record, disc, wire, tape, film, or other device or article from which sounds or visual images are derived that suffered economic loss resulting from the violation. Pen C §1202.4(r). The order of restitution must be based on the aggregate wholesale value of lawfully manufactured and authorized devices or articles from which sounds or visual images are devised corresponding to the number of nonconforming devices or articles involved in the offense, unless a higher value can be proved in the case of (A) an unreleased audio work, or (B) an audiovisual work that, at the time of unauthorized distribution, has not been made available in copies for sale to the general public in the United States on a digital versatile disc. For purposes of this subdivision, possession of nonconforming devices or articles intended for sale constitutes actual economic loss to an owner or lawful producer in the form of displaced legitimate wholesale purchases.. Pen C §1202.4(r).

The order of restitution must also include reasonable costs incurred as a result of an investigation of the violation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner or lawful producer. "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized sound or audiovisual recordings. Proof of the specific wholesale value of each nonconforming device or article is not required. Pen C §1202.4(r).

(j) [§83.68] Other Expenses

Relocation expenses. Adult victims have a right to restitution for expenses in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, and expenses for clothing and personal items. Pen C §1202.4(f)(3)(I). These expenses must be verified by law enforcement to be necessary for the victim's personal safety or by a mental health treatment provider to be necessary for the victim's emotional well-being. Pen C §1202.4(f)(3)(I). See *People v Mearns* (2002) 97 CA4th 493, 501–502, 118 CR2d 511 (court properly ordered relocation expenses to rape victim in the amount of difference between the sale price of the victim's original mobilehome where the rape occurred and the purchase price of a new one).

Residential security expenses. Penal Code §1202.4(f)(3)(J) mandates restitution for expenses to install or increase residential security related to any violent felony (as defined in Pen C §667.5(c)), including, but not limited to, a home security device or system, or replacing or increasing the number of locks.

Residence and/or vehicle retrofitting expenses. Penal Code §1202.4(f)(3)(K) requires restitution for expenses to retrofit a residence or vehicle, or both, to make the residence accessible to, or the vehicle operational by, the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime.

Identity theft expenses. Penal Code §1202.4(f)(3)(L) requires restitution for expenses to monitor an identity theft victim's credit report and to repair the victim's credit for a period of time reasonably necessary to make the victim whole.

(3) [§83.69] Payment to Estate of Deceased Victim

The estate of a victim who died as a result of a crime is not a direct victim entitled to restitution on its own behalf. Nonetheless, a deceased victim's estate may, in appropriate cases, receive restitution in a different capacity, and for a different reason. When the actual victim of a crime has died, the estate, acting in the decedent's stead, steps into the decedent's shoes to collect restitution owed to the decedent, but which the decedent cannot personally receive because of his or her death. Thus, a decedent's estate or, more precisely, its executor or administrator as the decedent's personal representative, is a proper recipient, on the decedent's behalf, of restitution owed to the decedent, as an actual and immediate crime victim, for economic losses the decedent personally incurred. *People v Runyan* (2012) 54 C4th 849, 856–859, 143 CR3d 674.

Restitution may only be awarded for those economic losses sustained by the decedent before his or her death. After the actual victim has died, the victim does not incur or continue to incur personal economic loss subject to mandatory restitution. 54 C4th at 859–866. In Runyan, for example, a trial court improperly ordered the defendant to pay restitution for the death-related loss in value of decedent's business and property, and probate, estate administration, and probate expenses. The Runyan court stated that the Legislature is not precluded from providing for post-death economic losses, and invited it to decide whether restitutionary recovery should include injury and loss resulting from the defendant's criminal conduct, even when the crime victim dies quickly and leaves no survivors to seek restitution on their own behalf. 54 C4th at 867.

(4) [§83.70] Noneconomic Losses in Molestation Cases

Penal Code §1202.4(f)(3)(F) provides for the recovery of noneconomic losses, including, but not limited to, psychological harm, caused by a violation of Pen C §288 (lewd act on child or dependent adult). Noneconomic damages are subjective, nonmonetary losses, including, but not limited to, pain, suffering mental suffering, and emotional distress. CC §1431.2(b)(2). See *People v Smith* (2011) 198 CA4th 415, 430–436, 129 CR3d 910 (Pen C §1202.4(f)(3)(F) exception to general rule that restitution orders are limited to victim's economic damages does not violate child molester's equal protection rights). As a sentencing order, a restitution order for noneconomic damages does not give rise to a jury trial right. 198 CA4th at 433–434.

(5) [§83.71] Matters That Do Not Affect Amount of Restitution

Inability to pay. See §83.52.

Victim's insurance. A victim is entitled to restitution regardless of whether the victim has submitted an insurance claim or has been partially or fully reimbursed by his or her insurer. *People v Birkett* (1999) 21 C4th 226, 245–247, 87 CR2d 205. The amount that a victim paid as a deductible under his or her insurance contract is not the measure of restitution. Rather, it is the full amount of loss, including the total amount that the victim's insurance company paid out plus the victim's deductible payments, and any other amounts not covered by the victim's insurance. See *In re Brittany L.* (2002) 99 CA4th 1381, 1386–1390, 122 CR2d 376.

Bankruptcy. See §83.37.

Third party rights. Third party indemnification or subrogation rights do not affect the amount of restitution that is to be ordered. Pen C

§1202.4(f)(2); *People v Hove* (1999) 76 CA4th 1266, 1272–1273, 91 CR2d 128 (court properly ordered restitution in full amount of medical expenses even though victim had not incurred any actual economic losses because of coverage by Medicare and/or Medi-Cal benefits).

Victim's release of liability. A victim's release of liability to the defendant's insurance company as part of a settlement does not release the defendant from his or her restitution obligation. A release cannot waive the People's right to have a defendant pay restitution ordered as part of the sentence. The victim would be in an untenable position if he or she had to reject a settlement offer from the defendant's insurance company that covers only a portion of the victim's losses in order to preserve the uncertain possibility that the full amount might be recovered. *People v Bernal*, *supra*, 101 CA4th at 160–161. See also *In re Tommy A.* (2005) 131 CA4th 1580, 1592, 33 CR3d 103 (minor defendant's restitution order based on a plea agreement created an implied agreement between the minor and the state obligating the minor to satisfy a "rehabilitative and deterrent debt to society" by paying restitution; the victim, not being a party to the implied agreement, could not release the minor from court-ordered restitution under Welf & I C §730.6(a)(1)). However, a victim's release of claims against the parent or guardian of a minor for damages inflicted during the minor's commission of a crime releases the parent or guardian. *In re Michael S.* (2007) 147 CA4th 1443, 1451–1455, 54 CR3d 920.

Prison sentence. See §83.90.

(6) [§83.72] Payment by Defendant's Insurer

If the defendant's insurer has made payments to the victim for losses subject to a Pen C §1202.4 restitution order, those payments must be offset against the defendant's restitution obligation. *People v Bernal* (2002) 101 CA4th 155, 165–168, 123 CR2d 622.

An insurer's payment to the victim must be made on behalf of the defendant as a result of the defendant's status as an insured under the policy. *People v Short* (2008) 160 CA4th 899, 903–905, 73 CR3d 154 (defendant was entitled to an offset for a settlement payment made by defendant's employer's liability insurer to victim of defendant's DUI accident involving company vehicle; even though defendant did not procure policy or make premium payments, he was member of class of insureds covered under the policy); *People v Jennings* (2005) 128 CA4th 42, 53–58, 26 CR3d 709 (defendant was entitled to an offset for an insurance settlement payment when both defendant and a parent were named on policy; irrelevant whether defendant or parent paid the premiums). Compare *People v Hamilton* (2004) 114 CA4th 932, 941–943, 8 CR3d 190 (payments made by insurer of defendant's parent to settle

victim's civil action against both the defendant and parent may not offset defendant's restitution obligation when payments are made on parent's behalf and not directly on behalf of defendant); *In re Tommy A.* (2005) 131 CA4th 1580, 1590–1592, 33 CR3d 103 (juvenile committed hit-and-run accident while driving another person's car without permission; settlement payment by owner's insurer was "completely distinct and independent from the minor" and therefore could not be offset against minor's restitution obligation).

When offsetting a defendant's restitution obligations by the amount of a civil settlement, the court must determine what portion of the settlement payment is directed to cover economic losses outlined in the restitution order. Only that portion of settlement may be used to reduce the defendant's obligations. *People v Short*, *supra*, 160 CA4th at 905; *People v Jennings*, *supra*, 128 CA4th at 58–59.

(7) [§83.73] Payment of Medical Expenses by Private Insurer or Medi-Cal

Restitution for medical expenses is the amount that the victim's medical provider accepts from the victim's insurer as full payment for their services, plus the deductible paid by victim, rather than the amount billed by the medical provider. *People v Duong* (2010) 180 CA4th 1533, 1536–1540, 103 CR3d 678; *People v Millard* (2009) 175 CA4th 7, 27–29, 95 CR3d 751; *In re Eric S.* (2010) 183 CA4th 1560, 1563–1566, 108 CR3d 450 (reasoning of *Duong* applied to victim restitution ordered in wardship case under Welf & I C §730.6). Compare *People v Garcia* (2010) 185 CA4th 1203, 1214–1217, 111 CR3d 435 (victim entitled to restitution for full amount billed for psychotherapy, even though a portion of the amount was paid by Pacificare); *In re K. F.* (2009) 173 CA4th 655, 662–664, 92 CR3d 784 (victim entitled to restitution for amount billed when record was silent as to the amount that Kaiser would accept as full payment for services rendered).

Similarly, when the victim is covered by Medi-Cal, victim restitution for medical expenses is based on the amount actually paid by Medi-Cal and not the amount charged by the medical provider. *In re Anthony M.* (2007) 156 CA4th 1010, 1015–1019, 67 CR3d 734 (juvenile court erred in imposing restitution based on the amount charged by the medical provider). If the medical provider accepts payment from Medi-Cal for medical services rendered, that payment constitutes payment in full, and it is barred from seeking any unpaid balance from the patient. 42 CFR §447.15; Welf & I C §§14019.3(d), 14019.4(a). Under certain circumstances, Medi-Cal, on the other hand, may seek reimbursement from the patient or other responsible party for the amount it paid to the provider. 42

USC §§1396a(a)(25)(B), (a)(45), 1396k(a)(1)(A), (b). The court in *In re Anthony M.* distinguished *People v Hove* (1999) 76 CA4th 1266, 91 CR2d 128, in which the trial court ordered restitution in an amount in excess of that paid by Med-Cal to cover continuing care costs beyond the date of the award. No finding of ongoing medical care was made in *In re Anthony M.*, *supra*, 156 CA4th at 1019.

(8) [§83.74] Payment by California State Bar's Client Security Fund

A defendant is not entitled to an offset against a victim restitution order for the amount the victim has been compensated by the California State Bar's Client Security Fund (CSF). *People v Hume* (2011) 196 CA4th 990, 126 CR3d 824. The defendant has no contractual right to compel reimbursement from the CSF, the decision to reimburse the victim is solely within the State Bar's discretion, and the State Bar has statutory subrogation rights against the defendant. 196 CA4th at 998–1000. However, if the CSF makes a payment to the victim and receives an assignment from the victim, and the CSF thereafter exercises its assignment and subrogation rights and obtains a judgment against the defendant, the judgment will credit any amounts actually collected under the restitution order. 196 CA4th at 1000–1002.

(9) [§83.75] Payment by Workers' Compensation Insurance Carrier

In cases where an employer is convicted of a crime against an employee, a payment to the employee or the employee's dependent that is made by the employer's workers' compensation insurance carrier must not be used to offset the amount of the restitution order unless the court finds that the defendant substantially met the obligation to pay premiums for that insurance coverage. Pen C §1202.4(f)(12).

(10) [§83.76] No Waiver of Full Restitution

On November 4, 2008, California voters adopted Proposition 9 (Victims' Bill of Rights Act of 2008: Marsy's Law), which amended Cal Const art I, §28(b), removing language allowing the waiver of a portion or all victim restitution if there are compelling and extraordinary reasons for not ordering full restitution. Proposition 9 effectively negates provisions in Pen C §§1203.3(b)(4), 1202.4(f), (g) and (n) authorizing the reduction of restitution for compelling and extraordinary reasons.

(11) [§83.77] Audio-Video Hearing To Impose or Amend Restitution Order

Where such technology exists, the court may conduct a hearing to impose or amend a restitution order by two-way electronic audio-video communication between a defendant incarcerated in state prison and the courtroom in place of defendant's appearance in the courtroom. Pen C §1202.41(a)(1). The hearing is allowed only in those cases when the victim has received assistance from the Restitution Fund. Pen C §1202.41(a)(1). The hearing must be initiated through a request of the California Victim Compensation and Government Claims Board to the California Department of Corrections and Rehabilitation (CDCR), to collaborate with the court to arrange the hearing. Pen C §1202.41(a)(1).

If the defendant is represented by counsel, the attorney may be present with the defendant during the hearing, or may be present in the courtroom if the CDCR establishes a confidential telephone and facsimile transmission link between the defendant and the attorney. Pen C §1202.41(a)(3).

The determination to hold a two-way audio-video hearing lies within the discretion of the court. The court has the authority to issue an order requiring the defendant to be physically present in those cases where circumstances warrant. Pen C §1202.41(a)(2).

If a defendant is incarcerated in a prison without two-way audio-video communication capability, and does not waive his or her right to be present at a hearing to amend a restitution order, the California Victim Compensation and Government Claims Board must determine whether the cost of holding the hearing is justified. If the Board determines that the cost of holding the hearing is not justified, the Board may not pursue the amendment of the restitution order. Pen C §1202.41(b).

(12) [§83.78] Restitution and Civil Actions

An order of restitution in favor of the crime victim does not preclude the victim (or the victim's assignee) from pursuing a separate civil action based on the same facts from which the criminal conviction arose. However, in order to avoid a double recovery, the civil judgment must credit any amounts paid under the restitution order for the same losses. Pen C §1202.4(j); *Vigilant Ins. Co. v Chiu* (2009) 175 CA4th 438, 442–446, 96 CR3d 54 (embezzlement victim's insurer pursued a civil action against defendant for reimbursement for the insured's claim resulting from defendant's theft, even though defendant already paid restitution).

Similarly, if a civil judgment precedes an order of restitution in the criminal court, the court must offset payment made on the civil judgment against the restitution order to the extent the payment covers economic

losses for which restitution is being awarded. 175 CA4th at 446; *People v Short* (2008) 160 CA4th 899, 905, 73 CR3d 154; *People v Bernal* (2002) 101 CA4th 155, 165–166, 123 CR2d 622. This offset, however, does not occur if the victim receives a settlement payment from a third party's insurer. See discussion of *People v Hamilton* (2004) 114 CA4th 932, 941–943, 8 CR3d 190, and *In re Tommy A.* (2005) 131 CA4th 1580, 1590–1592, 33 CR3d 103, in §83.72.

f. Order

(1) [§83.79] Specificity and Form

Specificity. The court's restitution order must be specific and detailed, identifying each victim and each loss to the extent possible. Pen C §1202.4(f)(3). The court must clearly state the calculation method used and how that method justifies the amount of restitution ordered. *People v Giordano* (2007) 42 C4th 644, 664, 68 CR3d 51; *People v Jones* (2010) 187 CA4th 418, 423–424, 114 CR3d 8 (trial court did not specify which losses were included in the restitution amount when ordering restitution for less than all losses claimed by victim). An order for restitution is unenforceable if it does not specify the amount of the losses to which it pertains. *People v Guardado* (1995) 40 CA4th 757, 762–763, 47 CR2d 81. Because a restitution order is enforceable by the victim as if it were a civil judgment (see §83.38), it must have the same degree of specificity as a civil judgment. 40 CA4th at 762. For discussion of procedure when the amount of restitution is uncertain at the time of sentencing, see §83.80.

☛ JUDICIAL TIP: Courts are encouraged to use Judicial Council form CR–110/JV–790 when making restitution orders. For form, see §83.107.

Separate form. Many judges issue a separate copy of the restitution order for each victim because victims often need a certified copy of the order for enforcement purposes and are entitled to one on request. Pen C §1214(b); see discussion in §83.38. The California Victim Compensation and Government Claims Board is also entitled to a copy on request. Pen C §1214(b). Penal Code §1202.4(f)(3) also seems to contemplate separate orders.

Notice to Board. The court clerk must notify the California Victim Compensation and Government Claims Board within 90 days of the court's imposition of a restitution order if the defendant is ordered to pay restitution to the Board because of the victim receiving compensation from the Restitution Fund. Pen C §1202.4(p).

(2) [§83.80] Amount Initially Uncertain

At the time of sentencing, the amount of restitution often cannot be fixed because necessary information is lacking or a subsequent hearing is needed to resolve a dispute about the amount. In these situations the court may order that it will determine the amount later. Pen C §1202.4(f); See *People v Amin* (2000) 85 CA4th 58, 62, 101 CR2d 756 (as part of plea bargain defendant agreed to pay restitution, and decision on amount reserved by court for later hearing). The court retains jurisdiction over the defendant for purposes of imposing or modifying restitution until the losses are determined. Pen C §1202.46. There is no limitation on when the court must set the restitution hearing. See *People v Bufford* (2007) 146 CA4th 966, 969–972, 53 CR3d 273 (trial court did not lose jurisdiction to order restitution, notwithstanding that defendant had fully served her prison sentence before the final restitution hearing was held).

☛ JUDICIAL TIPS:

- Judges often seek a waiver of defendant's presence at the future restitution hearing. For judicial economy, judges will often set the date for the restitution hearing at the time of sentencing.
- When the defendant is sentenced to prison, it is highly advisable to address restitution prior to the defendant being transported to the prison. If the defendant is transported to prison with a "to be determined" order, it is highly unlikely that the victim will ever be able to obtain a restitution order unless the defendant waives his or her personal appearance at any future hearing. Counties typically cannot afford to bring a prisoner back to the local area for a restitution hearing. If the total amount of losses cannot be determined prior to the defendant being transported, the court should (1) order the amount that can be determined so that the California Department of Corrections and Rehabilitation (CDCR) can start the collection, (2) include an order in the sentence for the defendant to pay any additional restitution in an amount to be determined by the court, and (3) seek a waiver of the defendant's presence at any future restitution hearings. The court may also seek a stipulation that if restitution falls within a certain range, the defendant will agree to restitution and waive a hearing.
- There is a prevailing misperception that when a "to be determined order" is issued, the CDCR will subsequently set the amount of restitution. CDCR can collect on restitution orders, but CDCR cannot set or order the amount.

(3) [§83.81] Comparative Negligence

The trial court may apply the doctrine of comparative negligence to reduce the award of victim restitution against a criminally negligent defendant when the court finds that the victim's contributory negligence was a substantial factor in causing the victim's injuries. *People v Millard* (2009) 175 CA4th 7, 36–43, 95 CR3d 751; but see *People v Brunette* (2011) 194 CA4th 268, 281–285, 124 CR3d 521 (court refused to extend *Millard* in animal cruelty case where animal welfare agency was seeking costs of caring for dogs it rescued under Pen C §597).

(4) [§83.82] Delegating Restitution Determination

General rule. The court may not delegate to the probation officer the duty to determine the amount of restitution. *People v Cervantes* (1984) 154 CA3d 353, 358, 201 CR 187; see Pen C §1202.4(f) (court must require restitution in amount to be established by court order). But see *People v Lunsford* (1998) 67 CA4th 901, 79 CR2d 363 (restitution order directing county agency to determine amount at later time enforceable). As to minors, see *In re Karen A.* (2004) 115 CA4th 504, 507–511, 9 CR3d 369, which holds that Welf & I C §730.6(h) allows the juvenile court to delegate to the probation officer the tasks of identifying losses and specifying the amount of restitution. Minors are entitled to a court hearing to dispute the probation officer's determination of the restitution amount. Welf & I C §730.6(h).

Delegation with consent. The court with the defendant's consent may order the probation officer to set the amount of restitution. Pen C §1203.1k; see *People v DiMora* (1992) 10 CA4th 1545, 1549, 13 CR2d 616. The defendant can contest the probation officer's determination in court. Pen C §1203.1k.

Delegation when amount uncertain at sentencing. When the extent of a victim's loss cannot be ascertained at the time of sentencing, *People v Lunsford, supra,* permits the court to order the defendant to pay restitution in an amount to be determined by the local agency that administers the victim restitution program; the defendant has a right to a court hearing in accordance with Pen C §1202.4(f)(1).

☛ JUDICIAL TIPS:

- Most judges seek defendant's consent or proceed as discussed in §83.80.
- The California Department of Corrections and Rehabilitation (CDCR) is not authorized to initiate collection of restitution based on determinations by probation officers or other county agencies.

CDCR must have a signed, sealed, and certified court order reflecting specific amounts and names of victims.

Setting payment schedule. Courts often delegate the task of setting up the defendant's payment schedule to the probation department or another county agency. See *People v Ryan* (1988) 203 CA3d 189, 198, 249 CR 750. Payment schedules are not necessary for adults committed to the CDCR or youthful offenders committed to the CDCR's Division of Juvenile Justice (DJJ). Under statute, a specified percentage will be deducted from prison wages and trust account deposits. Pen C §2085.5(c); Welf & I C §§1752.81–1752.82.

☛ JUDICIAL TIP: The defendant should be given an opportunity to challenge the determination.

Relying on probation report. The court may rely on the probation report in setting the amount of restitution. *People v Campbell* (1994) 21 CA4th 825, 830–832, 26 CR2d 433; *People v Foster* (1993) 14 CA4th 939, 946, 18 CR2d 1; see §83.50.

(5) [§83.83] Relation of Restitution Order to Probation

Penal Code §1202.4 applies whether or not the court grants probation. Pen C §1202.4(a)(1), (f).

☛ JUDICIAL TIP: When defendant is sentenced to prison, an order for full restitution is as mandatory as in cases of probation.

When the court grants probation, payment of restitution must be made a condition of probation. Pen C §1202.4(m)–(n). Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation remains enforceable by the victim as if it were a civil judgment. Pen C §§1202.4(m), 1214(b).

☛ JUDICIAL TIP: When probation is revoked or terminated, and the defendant is sentenced to CDCR, the initial order reflecting the restitution must be included in the legal documents accompanying the inmate to CDCR. In order for the restitution to continue to be collected, the victim must submit a request to CDCR.

The court may revoke a defendant's probation based on the defendant's willful failure to pay restitution when the defendant has the ability to do so. Pen C §1203.2(a); *People v Lawson* (1999) 69 CA4th 29, 81 CR2d 283.

If the defendant is unable to pay full restitution within the initial term of probation, the court may modify and extend the period of probation to allow the defendant to pay off all restitution within the probation term. Pen

C §1203.3(b)(4); *People v Cookson* (1991) 54 C3d 1091, 1097, 2 CR2d 176. 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 CA4th 1260, 1267–1268, 31 CR2d 83. However, Pen C §1203.2(e) provides an exception, allowing probation to be extended past the maximum period if probation is revoked based on a violation of probation and the revocation has been set aside. *In re Hamm* (1982) 133 CA3d 60, 67, 183 CR 626; *People v Carter* (1965) 233 CA2d 260, 268, 43 CR 440.

A defendant is not entitled to have his or her conviction expunged under Pen C §1203.4 following termination of the defendant's probation when the defendant has not paid the full amount of the restitution. For purposes of Pen C §1203.4, a defendant has not fulfilled a restitution condition of probation unless the defendant has made all court-ordered payments for the entire period of probation and has paid the obligation in full. *People v Covington* (2000) 82 CA4th 1263, 1271, 98 CR2d 852.

For a discussion of the court's broad discretion under Pen C §1203.1 to order restitution as a condition of probation, see §83.98.

(6) [§83.84] Relation of Restitution Order to Restitution Fund

Victims of criminal acts may recover compensation from the state Restitution Fund under specified circumstances; the Fund is administered by the California Victim Compensation and Government Claims Board. Govt C §§13950–13969.7.

A restitution order does not preclude a victim's right to financial assistance from the Fund, but the amount of such assistance is reduced by the amount the victim actually receives for the same loss under the restitution order. Pen C §1202.4(j).

Restitution payments are ordered to be deposited to the Fund to the extent that it provided compensation to the victim. Pen C §1202.4(f)(2). More broadly, when the Fund pays a victim, it is subrogated to the victim's rights against persons liable for restitution. Pen C §1202.4(f)(2); Govt C §13963(a).

Assistance from the Fund as a result of the defendant's conduct is presumed to be a direct result of the defendant's crime and must be included in the amount of restitution ordered by the court. Pen C §1202.4(f)(4)(A). The amount of assistance provided by the Fund may be established by copies of bills submitted to the Board reflecting whether the services for which payment was made were for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Pen C §1202.4(f)(4)(B). Certain

categories of bills go through a bill review service (BRS) and what is paid may be less than what was billed. The Board will provide a statement of what was paid. Certified copies of bills provided by the Board and redacted to protect the victim's privacy and safety or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that the bills were submitted to and paid by the Board, are sufficient to meet this requirement. Pen C §1202.4(f)(4)(B); see *People v Cain* (2000) 82 CA4th 81, 87–88, 97 CR2d 836 (Board's statement of claims paid on victim's behalf is inherently reliable document). If the defendant offers evidence to rebut this presumption, the court may release additional information contained in the Board's records to the defendant *only after* (1) reviewing the information in camera, and (2) finding that the information is necessary for the defendant to dispute the amount of the restitution order. Pen C §1202.4(f)(4)(C).

(7) [§83.85] Order Imposing Joint and Several Liability

A restitution order under Pen C §1202.4 may require codefendants to pay restitution jointly and severally. *People v Blackburn* (1999) 72 CA4th 1520, 1535, 86 CR2d 134; *People v Madrana* (1997) 55 CA4th 1044, 1049, 64 CR2d 518. Courts frequently make such orders. Under such an order, each defendant is entitled to a credit for any actual payments made by the other. *People v Blackburn, supra,* 72 CA4th at 1535. But a defendant cannot be jointly and severally liable with a codefendant for restitution if the defendant did not participate in the crime causing the victim's loss. See *People v Leon* (2004) 124 CA4th 620, 21 CR3d 394 (defendant convicted of passing one forged check for $2450, and codefendant convicted of passing three forged checks totaling $11,000; trial court erred in ordering defendant to pay victim restitution of $13,450 jointly and severally with codefendant).

As to joint and several liability of the parents or guardians of a juvenile offender, see §83.96.

(8) [§83.86] Correction, Modification, and Amendment of Restitution Orders

Correcting failure to order full restitution. A sentence without a full restitution award to a victim within Pen C §1202.4 is invalid; the trial court may properly add or modify a restitution order later. Pen C §1202.46; *People v Rowland* (1997) 51 CA4th 1745, 1750–1752, 60 CR2d 351; *People v Brown* (2007) 147 CA4th 1213, 1225–1226, 54 CR3d 887. See also *People v Moreno* (2003) 108 CA4th 1, 132 CR2d 918 (correction of sentence under Pen C §1202.46 not limited to situations where restitution amount is not ascertainable at the time of sentencing). The trial

courts retains jurisdiction to add or modify a restitution order even when an appeal is pending. See *People v Chagolla* (1983) 144 CA3d 422, 434, 193 CR 711.

Modification. Penal Code §1202.4(f)(1) authorizes courts to modify restitution on motion of the prosecutor, victim, defendant, or court. See also Pen C §1203.2(b) (modification of probation). Penal Code §1203.3(b)(5) additionally provides that nothing in Pen C §1203.3 prohibits the court from modifying the dollar amount of a restitution order under Pen C §1202.4(f) at any time during the term of the probation. Both the prosecutor and the victim have a right to notice and a hearing before a restitution order may be modified or terminated. Pen C §§679.02(a)(3), 1191.1, 1202.4(f)(1); 1203.3(b)(1). See *Melissa J. v Superior Court* (1987) 190 CA3d 476, 237 CR 5 (court set aside termination of restitution order made without notice to the victim or an opportunity for the victim to object). For modification of probation generally, see 3 Witkin and Epstein, California Criminal Law, *Punishment* §§680–683 (4th ed 2012).

g. Enforcement

(1) [§83.87] Satisfaction of Victim Restitution Before Other Court-Ordered Debt

Any funds collected by a court or law enforcement agencies from a person ordered to pay restitution must go to pay the restitution before being used to pay any other fines, penalties, assessments, or obligations that an offender may legally owe. Cal Const art I, §28(b)(13)(C).

☛ JUDICIAL TIP: A fine or assessment ordered at the time of sentencing, but before a restitution order is imposed, may be paid, even though it is collected before restitution.

See also Pen C §1203.1d (allocation of restitution payments) and Pen C §2085.5(j)–(k) (collection of monies from prisoners first distributed to victims).

(2) [§83.88] Income Deduction Orders

On entry of a restitution order under Pen C §1202.4, the court must enter a separate order for income deduction on determination of the defendant's ability to pay, regardless of probation status, in accordance with Pen C §1203. Pen C §1202.42(a). The court may consider future earning capacity when determining the defendant's ability to pay. The defendant bears the burden of demonstrating an inability to pay. Pen C §1202.42(a). Express findings by the court as to the factors bearing on the amount of the deduction are not required. Pen C §1202.42(a).

The order is stayed as long as defendant pays restitution. Pen C §1202.42(b)(1). Penal Code §1202.42 includes detailed provisions for enforcing the order by service on defendant's employer if defendant fails to meet the restitution obligation. Defendant has a right to notice and a hearing before the income deduction order is enforced. Pen C §1202.42(b)(2), (f). If a defendant fails to meet his or her restitution obligations without a showing of good cause for the failure, the court may, on the request of the prosecutor, order that the prosecutor be given authority to use lien procedures applicable to the defendant, including, but not limited to, a writ of attachment of property. Pen C §1202.42(g). By its terms, Pen C §1202.42 applies only to restitution orders made under Pen C §1202.4 or its predecessors.

☛ JUDICIAL TIP: The court should *not* consider making an income deduction order in the following situations:

- A restitution order directed to a juvenile offender under Welf & I C §730.6.
- An order to pay restitution for losses from conduct other than the commission of a crime of which defendant was convicted. See §§83.98–83.104.

County retirement benefits exemption. The court may not order a county retirement system to deduct restitution payments from a disability allowance owed to a defendant who is a retired county employee. Government Code §31452 provides an exemption from execution or other court process for benefits under county retirement systems. *Board of Retirement v Superior Court* (2002) 101 CA4th 1062, 124 CR2d 850.

See the Judicial Council income deduction form and related forms in §§83.109–83.112.

(3) [§83.89] Order To Apply Specified Portion of Income to Restitution

In two situations the court must order probationers to seek and maintain employment and apply a portion of earnings specified by the court to make restitution for the victim's medical and psychological treatment expenses:

(1) Conviction of sexual assault on a minor. Pen C §1203.1g.

(2) Conviction of assault, battery, or assault with a deadly weapon on a senior. Pen C §1203.1j.

In all cases of probation, the court may require as a condition of probation that the probationer go to work and earn money to pay any

reparation condition and apply those earnings as directed by the court. Pen C §1203.1(d).

(4) [§83.90] Collection of Restitution by CDCR and DJJ

The California Department of Corrections and Rehabilitation (CDCR) and the CDCR's Division of Juvenile Justice (DJJ) collect restitution from the funds of inmates and wards in the same manner as restitution fines. Pen C §2085.5(c); Welf & I C §§730.6(p), 1752.81; for discussion, see §83.25. Victim restitution is collected before the restitution fine. Pen C §2085.5(j); Welf & I C §§730.6(p), 1752.81(f).

☛ JUDICIAL TIPS:

- Courts should make sure that the CDCR and the DJJ are given restitution information that includes *specific amounts and names, addresses, and phone numbers of victims.*
- Courts should not direct the correctional institutions to collect restitution; their obligation to do so rests on statute, not court order.

If the victim consents, the probation officer of the county from which the person is committed may send to the CDCR the victim's contact information and a copy of the restitution order for the sole purpose of distributing the restitution collected on behalf of the victim. Pen C §1203c(d)(1).

The district attorney of the county from which the person is committed may send to the CDCR the victim's contact information and a copy of the restitution order for the sole purpose of distributing the restitution collected on behalf of the victim if the district attorney finds it is in the best interest of the victim to send that information. If the victim affirmatively objects, the district attorney may not send the victim's contact information to the department. The district attorney is not required to inform the victim of the right to object. Pen C §1203c(d)(2).

The CDCR provides a form CDCR 1707 (Request for Victim Services) that a victim may complete and send to the CDCR to notify the CDCR of a restitution order. Completion of the form is not required for the CDCR to collect restitution on the victim's behalf, but it greatly assists the CDCR in disbursing funds to victims, because it requests the victim's address of where to send the money. Frequently, CDCR does not have this information, and therefore, disbursement of collections is thwarted. The victim may use form CDCR 1707 to request notification of the inmate's status in prison or to request special conditions of parole or postrelease community supervision on the inmate's release. The form can be obtained

at the CDCR Office of Victim and Survivor Rights and Services Web site: www.cdcr.ca.gov/victim_services/application.html.

(5) [§83.91] Collection of Restitution From County Jail Prisoners

When a prisoner is punished by imprisonment in a county jail under Pen C §1170(h), the agency designated by the board of supervisors in the county where the prisoner is incarcerated collects restitution from the funds of the prisoner in the same manner as restitution fines. Pen C §2085.5(d); for discussion, see §83.26. Victim restitution is collected before the restitution fine. Pen C §2085.5(k). The agency must transfer that restitution collected to the California Victim Compensation and Government Claims Board for distribution or they can distribute directly to the victim. Pen C §2085.5(d).

(6) [§83.92] No Imprisonment To Satisfy Restitution Order

Restitution orders cannot be converted to additional time spent in custody under the provisions of Pen C §1205. Pen C §1205(f).

(7) [§83.93] Restitution Centers

The Secretary of the California Department of Corrections and Rehabilitation (CDCR) may establish and operate restitution centers, which are facilities that house nonviolent defendants who are required to work outside the facilities during the day to pay off restitution owing to their victims. Pen C §§6220–6236. Of the wages earned by a defendant while housed at a restitution center, one-third is given to the victim, one-third to the Department of Corrections and Rehabilitation to pay for the operation costs of the center, and one-third to the defendant's savings account. Pen C §6231. To participate in the restitution center, defendants must be employable, provide no risk to the community, and have no prior convictions of crimes involving violence, sex, or the sale of narcotics. See Pen C §6228 for discussion of eligibility requirements.

At present, there are no restitution centers in operation in California.

(8) [§83.94] Financial Disclosure

A restitution order under Pen C §1202.4 subjects the defendant to detailed financial disclosure requirements in aid of enforcement. Pen C §1202.4(f)(5)–(11).

The defendant must disclose all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest. Pen C §1202.4(f)(5). See the Judicial

Council asset disclosure form CR–115 in §83.108. The disclosure must be filed with the clerk of the court no later than the defendant's sentencing date unless otherwise directed by the court under Pen C §1202.4(f)(8). Pen C §1202.4(f)(7).

The court may consider a defendant's unreasonable failure to make a complete disclosure as (1) a circumstance in aggravation of the crime in imposing a term under Pen C §1170(b), or (2) a factor indicating that the interests of justice would not be served by admitting the defendant to probation, by conditionally sentencing the defendant, or by imposing less than the maximum fine and sentence fixed by law for the case. Pen C §1202.4(f)(9). A defendant's failure or refusal to file a disclosure statement does not delay the entry of an order of restitution or pronouncement of sentence. Pen C §1202.4(f)(10). A defendant who willfully states as true on the disclosure any material matter that the defendant knows to be false is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty. Pen C §1202.4(f)(5), (11).

Financial information filed by the defendant under Pen C §987(c) to help the court determine the defendant's ability to employ counsel may be used instead of the required financial disclosure when the defendant fails to file the disclosure. Pen C §1202.4(f)(6). In such an event, the defendant must be deemed to have waived confidentiality of the information. Pen C §1202.4(f)(6).

Filing of updated financial disclosure. If a defendant has a remaining unpaid balance on a restitution order or fine 120 days before the defendant's scheduled release from probation or completion of a conditional sentence, the defendant must prepare and file a new and updated financial disclosure identifying all assets, income, and liabilities. Pen C §1202.4(f)(11). The defendant must file this updated financial disclosure with the court clerk no later than 90 days before the defendant's scheduled release from probation or completion of the defendant's conditional sentence. Pen C §1202.4(f)(11).

Use of interrogatories. A crime victim who has not received complete payment of restitution may serve Judicial Council Form CR–200 interrogatories on the defendant once a year to discover information about the defendant's assets, income, and liabilities. CCP §2033.720(b). For form, see §83.111.

For enforcement of restitution orders as civil judgments, see §83.38.

(9) [§83.95] Applying Seized Assets to Restitution

The court may apply funds confiscated from the defendant at the time of the defendant's arrest, except for funds confiscated under Health & S C

§11469 (illegal drug funds), to the restitution order if the funds are not exempt for spousal or child support or subject to any other legal exemption. Pen C §1202.4(f).

The common law rule that money belonging to an arrestee and held for safekeeping is exempt from execution does not apply to funds sought for payment of a restitution order, a debt that was created after the defendant's conviction. *People v Willie* (2005) 133 CA4th 43, 49–50, 34 CR3d 532. Further, this exemption has been superseded by CCP §704.090, which effectively limits the exemption to $300 for a restitution order. 133 CA4th at 50–52.

If a complaint alleges facts to support an aggravated white collar enhancement under Pen C §186.11, or a large-scale financial crime, the prosecution may act to preserve the defendant's assets for the payment of restitution. Pen C §186.11(d); see, *e.g.*, *People v Semaan* (2007) 42 C4th 79, 64 CR3d 1; *Q-Soft, Inc. v Superior Court* (2007) 157 CA4th 441, 68 CR3d 687. The assets of the defendant that may be frozen are not limited to assets involved in the crime with which the defendant is charged, because the obligation to pay restitution is a general obligation. *People v Semaan*, *supra*, 42 C4th at 86–87.

Before the court may release seized assets to a victim, it must afford the defendant notice and opportunity to be heard in opposition to the victim's claim. *People v Chabeear* (1984) 163 CA3d 153, 155, 209 CR 218 (due process violation to deny defendant the right to challenge robbery victim's claim of money seized during search of defendant's residence). However, in *People v Nystrom* (1992) 7 CA4th 1177, 1181–1182, 10 CR2d 94, the court held, in contrast to *Chabeear*, that a defendant was not entitled to notice and hearing before money seized at the time of arrest was released to the victim because the trial court had already entered a valid restitution order as part of a negotiated plea, and thus there was no question that the victim was entitled to the money. 7 CA4th at 1181–1182.

h. [§83.96] Juvenile Offenders

Juvenile restitution law under Welf & I C §730.6 parallels Pen C §1202.4. The more extensive case law on adult restitution can therefore be used by a juvenile court for guidance on most restitution issues. See *In re Johnny M.* (2002) 100 CA4th 1128, 1132–1133, 123 CR2d 316. Although there is a substantial similarity between juvenile and adult restitution law, there are the following exceptions:

- *Ability to pay.* For minors, as for adults, ability to pay is not a consideration in making restitution orders (Welf & I C §730.6(h)), subject to an exception in Welf & I C §742.16 (when minor is

unable to repair damage caused by vandalism or graffiti offense, order for monetary restitution depends on ability to pay).

- *Liability of parents.* Parents and guardians with joint or sole legal and physical custody and control of the minor are rebuttably presumed to be jointly and severally liable for a minor's restitution obligation. Welf & I C §730.7(a). The amount of their liability is limited by statute and is subject to the court's consideration of their inability to pay. Welf & I C §730.7(a); CC §§1714.1, 1714.3. The parents or guardians have the burden of showing inability to pay and the burden of showing by a preponderance of the evidence that they were either not given notice of potential liability for payment of restitution before the wardship petition was sustained or that they were not present during the proceedings when the petition was sustained and during any subsequent hearing addressing restitution. Welf & I C §730.7(a). A child's age at the time of the offense, and not his or her age on the date the restitution order is imposed, determines whether parents may be held jointly and severally liable. *In re Jeffrey M.* (2006) 141 CA4th 1017, 1022–1027, 46 CR3d 533 (defendant was age 17 when offense was committed but had reached majority at time of disposition order; trial court properly held parent liable for son's restitution obligation).
- *Economic losses.* Penal Code §1202.4(f)(3) includes interest, attorneys' fees, and collection costs in the definition of economic losses; Welf & I C §730.6 does not. However, the Second District Court of Appeal has held that a juvenile offender can be ordered to pay restitution for the victim's legal fees and costs that the victim incurred to collect restitution. *In re Imran Q.* (2008) 158 CA4th 1316, 1319–1321, 71 CR3d 121 (Welf & I C §730.6's silence on attorney's fees and costs is a mere legislative oversight). See also *In re M. W.* (2008) 169 CA4th 1, 4–7, 86 CR3d 545 (cost of mental health services incurred by victim of crime committed by a juvenile is a recoverable loss even though not specifically enumerated in Welf & I C §730.6(h)).
- *Financial disclosure.* Welfare and Institutions Code §730.6 does not impose financial disclosure requirements on juvenile offenders.
- *Wage deduction order.* Juvenile offenders are not subject to such orders. See Pen C §1202.42.
- *Identification of victims.* The restitution order, to the extent possible, must identify each victim, unless the court for good cause finds that the order should not identify the victim(s). Welf & I C §730.6(h).

- *Retention of jurisdiction to determine restitution amount*. If the amount of restitution cannot be ascertained at the time of sentencing, the court retains jurisdiction to determine restitution only during the minor's term of commitment or probation. Welf & I C §730.6(h). The restitution obligation of the minor may extend beyond expiration of wardship and into adulthood. *In re Michael S.* (2007) 147 CA4th 1443, 1456–1457, 54 CR3d 920.

i. [§83.97] Remand for Resentencing

A restitution order may be increased or imposed for the first time after a remand for resentencing following the defendant's partially successful appeal. *People v Harvest* (2000) 84 CA4th 641, 646–650, 101 CR2d 135 (no double jeopardy bar because victim restitution is civil remedy).

Restitution fines may *not* be increased after remand for resentencing following a successful appeal. See §83.20.

3. [§83.98] Restitution as Condition of Probation

The court has broad discretion to order restitution as a condition of probation consistent with the ends of fostering rehabilitation and protecting public safety. Pen C §1203.1(a)(3), (j); *People v Anderson* (2010) 50 C4th 19, 26–27, 112 CR3d 685. Under Pen C §1203.1(j), the court can order restitution as a condition of probation even when the losses are not necessarily caused by the criminal conduct underlying the defendant's conviction. 50 C4th at 26–27. However, the restitution condition must be reasonably related either to the crime of which the defendant was convicted or to the goal of deterring future criminality. *People v Carbajal* (1995) 10 C4th 1114, 1121–1124, 43 CR2d 681. In *People v Rugamas* (2001) 93 CA4th 518, 521, 113 CR2d 271, the court upheld, as a condition of probation, restitution for the cost of medical treatment received by the defendant and paid for by the police department, and administered as a result of injuries sustained by the defendant when the police shot him with rubber bullets. Even though the police department was not a victim entitled to restitution under the mandatory restitution provisions of Pen C §1202.4, the restitution order was proper under Pen C §1203.1. The restitution was reasonably related to both the crime of which the defendant was convicted (brandishing weapon to avoid arrest) and the goal of deterring future criminality. See also *In re I. M.* (2005) 125 CA4th 1195, 1208–1211, 23 CR3d 375 (restitution for funeral expenses of murder victim's family was properly imposed, as a condition of probation, against a juvenile offender who was found to have acted as an accessory after the fact in connection with the murder; order was reasonably related to the

crime of which defendant was convicted and was calculated to deter defendant's gang involvement). Compare *People v Woods* (2008) 161 CA4th 1045, 1049–1053, 74 CR3d 786 (defendant who is convicted of acting as accessory after the fact of murder and *sentenced to prison* could not be required to pay restitution for economic losses resulting from the murder).

When ordering restitution under Pen C §1203.1, the court is not restricted to directing payment to only those victims as defined in Pen C §1202.4(k). *People v Anderson* (2010) 50 C4th 19, 112 CR3d 685. In *Anderson*, the defendant was convicted of fleeing the scene of an accident resulting in death and was placed on probation under Pen C §1203.1. The trial court, as a condition of probation, ordered the defendant to pay restitution directly to the hospital that provided treatment to the deceased victim. The Supreme Court ruled that the trial court did not abuse its discretion and stated that defendant's contention that the hospital was not a direct victim entitled to restitution was without merit because the "victim" definitions of Pen C §1202.4 are not incorporated into Pen C §1203.1. 50 C4th at 29–30, 34. The court stated that under the particular circumstances of the case, an order of restitution payable directly to the hospital was not unreasonable. The court noted that there was nothing in the record to indicate that the hospital made an independent claim for restitution, and therefore, "this was not a circumstance in which a restitution was being diverted from the victim to satisfy a third party claim." 50 C4th at 33. Also, the victim's family would not be burdened by having to open probate of the victim's estate to accommodate payment of the restitution award. And the order "assured that amends be made to society for the criminal violation because the hospital would be paid for the care it was required by law to provide" and rendered the defendant "accountable for the financial harm he caused and contributes to his reformation and rehabilitation." 50 C4th at 33–34.

A similar provision to Pen C §1203.1j is found in Welf & I C §730(b). It states that when a ward is placed under the supervision of the probation officer or committed to the care, custody, and control of the probation officer, the court may make any and all reasonable orders for the conduct of the ward, including the imposition of any reasonable conditions that it may determine fitting and proper to the ends that justice may be done and the reformation and rehabilitation of the ward enhanced. See *In re G. V.* (2008) 167 CA4th 1244, 1248–1251, 84 CR3d 809.

a. [§83.99] Hit-and-Run and DUI Cases

Conviction of a hit-and-run or misdemeanor DUI offense does not establish responsibility for the accident in which defendant was involved.

See *People v Braz* (1998) 65 CA4th 425, 432, 76 CR2d 531 (in a hit-and-run case the crime is the running, not the hitting). However, even though the crime did not cause the loss, the court may order restitution as a condition of probation, at least when "there is no question as to defendant's responsibility for the loss." *People v Carbajal* (1995) 10 C4th 1114, 1124, 43 CR2d 681 (defendant conceded liability in hit-and-run accident); *People v Kleinman* (2004) 123 CA4th 1476, 1479–1481, 20 CR3d 885 (hit-and-run); *People v Phillips* (1985) 168 CA3d 642, 650, 214 CR 417 (DUI).

Restitution is appropriate in these cases because it is reasonably related to the crime of which defendant was convicted and to the goal of probation to deter future criminality. *People v Carbajal, supra,* 10 C4th at 1123. It is particularly important for the court to

- Notify defendant that the court may consider requiring restitution as a condition of probation; and
- Give defendant "a meaningful opportunity to controvert the information" that the court considers. 10 C4th at 1125.

The Fourth District of the Court of Appeal has applied the reasoning of *Carbajal* in a nonprobation case. See *People v Rubics* (2006) 136 CA4th 452, 456–461, 38 CR3d 886 (defendant was convicted of felony hit-and-run resulting in death, sentenced to prison, and ordered to pay funeral expenses as direct restitution to victim's family).

☛ JUDICIAL TIPS:

- In the absence of a plea agreement, restitution in a hit-and-run case (Veh C §§20001, 20002) or misdemeanor DUI case (Veh C §23152) should probably be ordered only when it is obvious or undisputed that defendant caused the accident.
- Convictions of *felony* DUI causing injury (Veh C §23153) pose no causation problems and should be handled as mandatory restitution cases. See *People v Pinedo* (1998) 60 CA4th 1403, 71 CR2d 151.

b. [§83.100] Concealing, Selling, or Withholding Stolen Property

A Pen C §496 conviction does not make a defendant responsible for the losses related to the underlying theft; the restitution order should be for losses proximately caused by concealing, selling or withholding the stolen property. *People v Holmberg* (2011) 195 CA4th 1310, 1320–1324, 125 CR3d 878.

4. Restitution Based on Dismissed and Uncharged Counts: *Harvey* Waivers

a. [§83.101] General Principles

The court may order restitution on dismissed counts when the negotiated disposition includes a *Harvey* waiver. Pen C §1192.3. See, *e.g.*, *People v Campbell* (1994) 21 CA4th 825, 26 CR2d 433; *People v Beck* (1993) 17 CA4th 209, 21 CR2d 250. *Harvey* waivers derive their name from *People v Harvey* (1979) 25 C3d 754, 758, 159 CR 696 (defendant to suffer no adverse sentencing consequences from dismissed count in absence of contrary agreement); see *People v Dalvito* (1997) 56 CA4th 557, 559 n2, 65 CR2d 679; *People v Moser* (1996) 50 CA4th 130, 132, 57 CR2d 647.

The waiver may also encompass unfiled charges; when it does, the court may base a restitution order on defendant's uncharged offenses. See, *e.g.*, *People v Goulart* (1990) 224 CA3d 71, 273 CR 477; *People v Baumann* (1985) 176 CA3d 67, 222 CR 32.

The *Harvey* waiver suffices; the plea agreement need not specifically refer to restitution on dismissed counts. *People v Campbell*, *supra.*

The Third Appellate District Court of Appeal has held that in a judicial wardship proceeding, a juvenile defendant may be ordered, as a condition of probation under Welf & I C §730, to pay restitution on dismissed counts without a *Harvey* waiver. *In re T. C.* (2009) 173 CA4th 837, 843–850, 93 CR3d 447.

b. [§83.102] Burden of Proof

The prosecution has the burden of proving defendant's culpability for uncharged or dismissed offenses by a preponderance of the evidence when the defendant denies having committed them. *People v Baumann* (1985) 176 CA3d 67, 80, 222 CR 32.

☛ JUDICIAL TIP: Disputes concerning this culpability can be avoided by having the plea agreement pinpoint the matters on which the court may order restitution. See, *e.g.*, *People v Moser* (1996) 50 CA4th 130, 133, 57 CR2d 647.

For the amount of restitution, the rule is the same as for orders under Pen C §1202.4: defendant has the task of showing that the recommendation of the probation officer or the figures of the victims are inaccurate. *People v Baumann*, *supra*; see §83.51.

c. [§83.103] Relation to Probation

The court may make a valid restitution order under a *Harvey* waiver even when it does not place defendant on probation. See *People v Beck* (1993) 17 CA4th 209, 21 CR2d 250 (defendant sentenced to prison); but see *People v Carbajal* (1995) 10 C4th 1114, 1120–1123, 43 CR2d 681 (dicta that authority to order restitution in situations not covered by Pen C §1202.4 derives from court's discretion to impose probation conditions); *People v Lai* (2006) 138 CA4th 1227, 1246–1249, 42 CR3d 444. See also *People v Percelle* (2005) 126 CA4th 164, 178–180, 23 CR3d 731, discussed in §83.42.

5. [§83.104] Restitution Based on Conduct Resulting in Acquittal

The court may impose a restitution order as a condition of probation, for a crime of which the defendant was acquitted. *People v Lent* (1975) 15 C3d 481, 483, 124 CR 905.

IV. FORMS

A. [§83.105] Judicial Council Form: Order for Restitution and Abstract of Judgment

CR-110/JV-790

ATTORNEY OR PERSON WITHOUT ATTORNEY *(Name, State Bar number, and address)*:

☐ Recording requested by and return to:

TELEPHONE NO.: FAX NO. *(Optional)*:

E-MAIL ADDRESS *(Optional)*:

☐ ATTORNEY FOR ☐ JUDGMENT CREDITOR ☐ ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

FOR RECORDER'S USE ONLY

CASE NUMBER:

CASE NAME:

FOR COURT USE ONLY

ORDER FOR RESTITUTION AND ABSTRACT OF JUDGMENT
(Penal Code, §§ 1202.4(f), 1203.1(*l*), 1214;
Welfare and Institutions Code, § 730.6(h) and (i))

ORDER FOR RESTITUTION

1. a. ☐ On *(date)*: defendant *(name)*:
was convicted of a crime that entitles the victim to restitution.
b. ☐ On *(date)*: child *(name)*:
was found to be a person described in Welfare and Institutions Code section 602, which entitles the victim to restitution. ☐ Wardship is terminated.
c. ☐ Parents or guardians jointly and severally liable *(name each)*:
d. ☐ Co-offenders found jointly and severally liable *(name each)*:

2. Evidence was presented that the victim named below suffered losses as a result of defendant's/child's conduct. Defendant/child was informed of his or her right to a judicial determination of the amount of restitution and
a. ☐ a hearing was conducted.
b. ☐ stipulated to the amount of restitution to be ordered.
c. ☐ waived a hearing.

3. **THE COURT ORDERS** defendant/child to pay restitution to
a. ☐ the victim *(name)*: in the amount of: $
b. ☐ the State Victim Compensation Board, to reimburse payments to the victim from the Restitution Fund, in the amount of: $
c. ☐ plus interest at 10 percent per year from the date of ☐ loss or ☐ sentencing
d. ☐ plus attorney fees and collection costs in the sum of $
e. ☐ plus an administrative fee not exceed 15% percent of the restitution owed (Pen. Code, § 1203.1(*l*))

4. The amount of restitution includes
a. ☐ value of property stolen or damaged
b. ☐ medical expenses
c. ☐ lost wages or profits
(1) ☐ incurred by victim due to injury
(2) ☐ of victim's parent(s) or guardian(s) (if victim is a child) incurred while caring for the injured child
(3) ☐ incurred by victim due to time spent as a witness or in assisting police or prosecution
(4) ☐ of victim's parent(s) or guardian(s) (if victim is a child) due to time spent as a witness or in assisting police or prosecution
d. ☐ noneconomic losses (felony violations of Pen. Code, § 288 only)
e. ☐ other *(specify)*:

Date:

JUDICIAL OFFICER

VICTIM TO RECEIVE CERTIFIED COPY FOR FILING WITH COUNTY RECORDER

Page 1 of 2

Form Approved for Optional Use
Judicial Council of California
CR-110/JV-790 [Rev. July 1, 2011]

ORDER FOR RESTITUTION AND ABSTRACT OF JUDGMENT

Penal Code, §§ 1202.4(f), 1203.1(*l*), 1214
Welfare and Institutions Code, § 730.6(h), (i), (q)
Civil Code, § 1714.1
Code of Civil Procedure, § 674(a)(7)
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

NOTICE TO VICTIMS

PENAL CODE SECTION 1214 PROVIDES THAT ONCE A DOLLAR AMOUNT OF RESTITUTION HAS BEEN ORDERED, THE ORDER IS THEN ENFORCEABLE AS IF IT WERE A CIVIL JUDGMENT. ALTHOUGH THE CLERK OF THE COURT IS NOT ALLOWED TO GIVE LEGAL ADVICE, YOU ARE ENTITLED TO ALL RESOURCES AVAILABLE UNDER THE LAW TO OBTAIN OTHER INFORMATION TO ASSIST IN ENFORCING THE ORDER.

THIS ORDER DOES NOT EXPIRE UNDER PENAL CODE SECTION 1214(d).

THE VICTIM SHALL FILE A SATISFACTION OF JUDGMENT WITH THE COURT WHENEVER AN ORDER TO PAY RESTITUTION IS SATISFIED, PURSUANT TO PENAL CODE SECTION 1214(b).

APPLICATION FOR ABSTRACT OF JUDGMENT

5. The ☐ judgment creditor ☐ assignee of record ☐ other *(specify)*:
applies for an abstract of judgment and represents the following:
a. Judgment debtor's

Name and last known address

b. ☐ Driver's license no. [last 4 digits] and state: ☐ Unknown
c. ☐ Social security no. [last 4 digits]: ☐ Unknown
d. ☐ Date of birth: ☐ Unknown

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF APPLICANT OR ATTORNEY)
☐ ON INFORMATION AND BELIEF

ABSTRACT OF JUDGMENT

[SEAL]

6. I certify that the following is a true and correct judgment entered in this action.

7. Judgment creditor *(name)*:
☐ whose address or whose attorney's address appears on this form above the court's name.

8. Judgment debtor *(full name as it appears in judgment)*:

9. Judgment entered on *(date)*:

10. Total amount of judgment as entered or last renewed: $

11. ☐ A stay of enforcement was ordered on _____ and is effective until_____.
☐ A stay of enforcement was not ordered.

This abstract of judgment issued on *(date)*:

Clerk, by _____, Deputy

NOTICE TO COUNTY RECORDER

THIS ORDER IS ENFORCEABLE AS IF IT WERE A CIVIL JUDGMENT, PURSUANT TO PENAL CODE SECTION 1202.4(i) AND (m), PENAL CODE SECTION 1214, AND WELFARE AND INSTITUTIONS CODE SECTION 730.6(i) AND (r), AND FUNCTIONS AS AN ABSTRACT OF JUDGMENT.

B. [§83.106] Judicial Council Form: Defendant's Statement of Assets

NAME OF VICTIM ON WHOSE BEHALF RESTITUTION IS ORDERED:	*FOR COURT USE ONLY*
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT:	
DEFENDANT'S STATEMENT OF ASSETS	CASE NUMBER:

It is a misdemeanor to make any willful misstatement of material fact in completing this form (Pen. Code, § 1202.4(f)(4)).

(*Attach additional sheets if the space provided below for any item is not sufficient*.)

PERSONAL INFORMATION

1. a. Name:
   b. AKA:
   c. Date of birth:
   d. Social security number:
   e. Marital status:
   f. Driver license number:
   State of issuance:
   g. Home address:
   h. Home telephone no.:
   i. Employer's telephone no.:

EMPLOYMENT

2. What are your sources of income and occupation? (*Provide job title and name of division or office in which you work.*)

3. a. Name and address of your business or employer (*include address of your payroll or human resources department, if different*):

   b. If not employed, names and addresses of all sources of income (*specify*):

4. How often are you paid (for example, daily, weekly, biweekly, monthly)? (*specify*):

5. What is your gross pay each pay period? $

6. What is your take-home pay each pay period? $

7. If your spouse earns any income, give the name of your spouse, the name and address of the business or employer, job title, and division or office (*specify*):

8. Other sources of income (*specify*):

CASH, BANK DEPOSITS

9. How much money do you have in cash? $

10. How much other money do you have in banks, savings and loans, credit unions, and other financial institutions either in your own name or jointly *(list)*:

	Name and address of financial institution	Account number	Individual or joint	Balance
a.				$
b.				$
c.				$

PROPERTY

11. List all automobiles, other vehicles, and boats owned in your name or jointly:

	Make and year	Value	Legal owner if different from registered owner	Amount owed
a.		$		$
b		$		$
c.		$		$

(Continued on reverse**)**

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT:	CASE NUMBER:

12. List all real estate owned in your name or jointly:

	Address of real estate	Fair market value	Amount owed
a.		$	$
b.		$	$

OTHER PERSONAL PROPERTY ***(Do not list household furniture and furnishings, appliances, or clothing.)***

13. List anything of value not listed above owned in your name or jointly *(continue on attached sheet if necessary)*:

	Description	Value	Address where property is located
a.		$	
b.		$	
c.		$	

ASSETS

14. List all other assets, including stocks, bonds, mutual funds, and other securities *(specify)*:

15. Is anyone holding assets for you? ☐ Yes. ☐ No. If yes, describe the assets and give the name and address of the person or entity holding each asset *(specify)*:

16. Except for attorney fees in this matter and ordinary and routine household expenses, have you disposed of or transferred any assets since your arrest on this matter? ☐ Yes. ☐ No.
If yes, give the name and address of each person or entity who received any asset and describe each asset *(specify)*:

DEBTS

17. Loans *(give details)*:

18. Taxes *(give details)*:

19. Support arrearages *(attach copies of orders and statements)*:

20. Credit cards *(give creditor's name and address and the account number)*:

21. Other debts *(specify)*:

Date:

(TYPE OR PRINT NAME) (SIGNATURE)

I, *(name)*: , a certified interpreter, having been duly sworn, truly translated this form to the defendant in the *(specify language)*: language. The defendant indicated that he/she understood the contents of the form and he/she completed the form.
Date:

(TYPE OR PRINT NAME) (SIGNATURE)

C. [§83.107] Judicial Council Form: Information Regarding Income Deduction Order

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
INFORMATION REGARDING INCOME DEDUCTION ORDER (Pen. Code, § 1202.42)	CASE NUMBER:

1. The court has found that you have the ability to pay restitution and has ordered you to pay restitution in the amount of

   a. $ plus percent interest from the date of the order and fees of $ to all victims

   b. ☐ as listed in the probation report, dated *(specify)*:

   c. ☐ listed in the sentencing minute order, dated *(specify)*:

   Payment must be made as ordered at the hearing.

2. The court has entered an income deduction order for your employer to deduct: $ from your pay each pay period.

   a. The order applies to current and subsequent employers and all periods of employment.

   b. A copy of the income deduction order will be served on each of your employers and payers.

   c. Enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount owed or a showing of good cause for nonpayment.

   d. You are required to notify the Clerk of the Court *within 7 days* of a change in your address, a change in any of your employers, or a change in the address in any of your employers.

   e. **This income deduction order will be enforced under Penal Code section 1202.42(b) only if you fail to pay the restitution as ordered at the hearing.**

   f. Upon receipt of notice that you have failed to pay the restitution ordered at the hearing:

      (1) The court or its agent will request that you provide evidence that timely payments have been made or provide information establishing good cause for the failure. *If you fail to provide the evidence or fail to establish good cause within 5 days of the request*, you will receive notice that the order will be enforced, and the court will serve the income deduction order on each of your employers.

      (2) *Within 15 days* of being informed that the stay will be lifted, you may apply for a hearing to contest enforcement of the income deduction order on the ground of mistake of fact regarding the amount of restitution owed or on the ground that you have good cause for the nonpayment. Upon the timely request for a hearing, the income deduction order will not be enforced until the hearing is held and a determination is made on whether the enforcement of the income deduction order is proper.

D. [§83.108] Judicial Council Form: Order for Income Deduction

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	***FOR COURT USE ONLY***
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
ORDER FOR INCOME DEDUCTION **(Pen. Code, § 1202.42)**	CASE NUMBER:

To: Employer:

Address:

Phone:

1. The court has found that the defendant has the ability to pay restitution under Penal Code section 1202.42 and has ordered that he or she pay restitution of $ plus 10% interest.
2. You are ordered to withhold a portion of the earnings of the defendant in this action *(name)*: (last 4 digits of social security number *(specify)*:), each pay period.
3. You are ordered to deduct: $ from the above named employee's pay each period and forward funds to the

   ☐ Clerk of the above entitled court ☐ Other *(specify)*:

4. This order will terminate upon payment in full or further order of this court.

Date:

CLERK'S CERTIFICATE

SEAL

The foregoing is a full, true, and correct copy of the original on file in this office.

CLERK OF THE SUPERIOR COURT

Date:

By _____, Deputy

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT	CASE NUMBER:

Notice to Employer re: Order for Income Deduction (Pen. Code, § 1202.42)

1. You are required to deduct the amount specified in the *Order for Income Deduction* from the employee's income and to pay that amount to the clerk of the above entitled court or its agent.

2. The order is to be implemented no later than the first payment date that occurs more than 14 days after the date of service of the order.

3. *Within two days after each payment date,* forward the amount deducted and a statement about whether the amount totally or partially satisfies the periodic amount specified in the income deduction order.

4. If you fail to deduct the proper amount from the employee's income, you are liable for the amount you should have deducted, plus costs, interest, and reasonable attorney fees.

5. You may collect up to five dollars ($5) against the employee's income to reimburse you for administrative costs for the first deduction and up to one dollar ($1) for each deduction thereafter.

6. This order and notice are binding until further notice by the court or until you no longer provide income to the employee.

7. When you no longer provide income to the employee, you must notify the clerk of the above entitled court and provide the employee's last known address and the name and address of the employee's new employer, if known. If you violate this provision, you are subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for any subsequent violation.

8. You must not discharge, refuse to employ, or take disciplinary action against the employee because of an income deduction order. If you violate this provision, you are subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for any subsequent violation.

9. If you receive income deduction orders for two or more employees sent by the same court, you may combine the amounts that are to be paid in a single payment, but you must identify the portion of the payment that is attributable to each employee.

10. If you receive two or more income deduction orders against the same employee, you must contact the above entitled court for further instructions.

E. [§83.109] Judicial Council Form: Form Interrogatories—Crime Victim Restitution

CR-200

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:	TELEPHONE NO.:
	FAX NO. *(Optional)*:
	E-MAIL ADDRESS *(Optional)*:
ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
SHORT TITLE OF CASE:	
FORM INTERROGATORIES—CRIME VICTIM RESTITUTION **Asking Party:** **Answering Party:** **Set No.:**	CASE NUMBER:

Sec. 1. Instructions to All Parties

(a) Interrogatories are written questions prepared by a party to the action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use by victims in criminal cases to assist them in recovering unpaid restitution.

(b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure section 2030.

(c) These form interrogatories do not change existing law relating to interrogatories, nor do they affect an answering party's right to assert any privilege or make any objection.

Sec. 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use by crime victims to assist them in recovering unpaid restitution as provided in Code of Civil Procedure section 2033.720.

(b) Check the box next to each interrogatory that you want the answering party to answer. Take care to choose those interrogatories that are applicable to the case.

(c) Additional interrogatories may be attached.

Sec. 3. Instructions to the Answering Party

(a) You must answer or provide an appropriate response to each interrogatory checked by the asking party.

(b) As a judgment debtor you must disclose assets up to an amount clearly sufficient to satisfy the judgment.

(c) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared in court. See Code of Civil Procedure sections 2030.260-2030.270 for details.

(d) Each answer must be as complete and straightforward as the information reasonably available to you, including the information possessed by your attorneys or agents, permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(e) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good-faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(f) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(g) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you need only provide them in the first interrogatory asking for that information.

(h) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.

(i) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

_____ *(DATE)* _____ *(SIGNATURE)*

Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

(b) **ADDRESS** means the street address, including city, state, and zip code.

(c) **ASSET** or **PROPERTY** includes any interest in real estate or personal property. It includes any interest in a pension, profit-sharing, or retirement plan.

(d) **SUPPORT** means any benefit or economic contribution to the living expenses of another person, including gifts.

Form Approved for Optional Use
Judicial Council of California
CR-200 [Rev. January 1, 2006]

Code of Civil Procedure,
§§ 2030.010-2030.410, 2033.710

American LegalNet, Inc.
www.USCourtForms.com

CR-200

Sec. 5. Interrogatories

The following interrogatories have been approved by the Judicial Council under Code of Civil Procedure section 2033.720:

CONTENTS

1.0 Identity of Persons Answering These Interrogatories
2.0 General Background Information—Individual
3.0 Current Income
4.0 Employment Information
5.0 Employment History
6.0 Support Received From Others
7.0 General Background Information—Business
8.0 Bank Accounts and Cash
9.0 Property
10.0 Other Assets
11.0 Other Income
12.0 Liabilities and Debts

1.0 Identity of Persons Answering These Interrogatories

☐ 1.1 State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the response to these interrogatories. *(Do not identify anyone who simply typed or simply reproduced the responses.)*

2.0 General Background Information—Individual

☐ 2.1 State:
(a) your full name;
(b) every name you have used in the past;
(c) the dates you used each name.

☐ 2.2 State the date and place of your birth.

☐ 2.3 State:
(a) your present residence **ADDRESS** and telephone number;
(b) whether you live in a private home, apartment, or other type of residence;
(c) if you live in a private home, who owns it;
(d) if you live in an apartment, the name and **ADDRESS** of your landlord, the monthly rent, and the name of the **PERSON** who pays the rent;
(e) your residence **ADDRESSES** for the past five years;
(f) the dates you lived at each **ADDRESS**.

☐ 2.4 State:
(a) the name, **ADDRESS**, and telephone number of each school or other academic or vocational institution you have attended, beginning with high school;
(b) the dates you attended;
(c) the highest grade level you have completed;
(d) the degrees you received;
(e) the dates the degrees were received.

☐ 2.5 Do you have a driver's license or identification card? If so, state:
(a) the state or other issuing entity;
(b) the license or identification card number, type of license, and expiration date.

☐ 2.6 State any and all social security numbers that you have.

☐ 2.7 Are you married? If so, state:
(a) your spouse's full name;
(b) any maiden name;
(c) the date of your marriage;
(d) your spouse's current **ADDRESS**.

☐ 2.8 Have you ever filed for bankruptcy? If so, state:
(a) the disposition;
(b) the court;
(c) the year.

☐ 2.9 Have you filed income tax returns during the last three years? If so, state:
(a) the dates filed;
(b) a date and place where the records can be inspected;
(c) whether you are attaching the income tax records to your answers to these interrogatories.

3.0 Current Income

☐ 3.1 List all income you received during the past 12 months, its source, the basis for its computation, and the total amount received from each source.

4.0 Employment Information

☐ 4.1 State:
(a) the name, **ADDRESS**, and telephone number of your present employer;
(b) your current title, the nature of your work, and dates of employment;
(c) whether you work part-time or full-time;
(d) the frequency of payment (weekly, biweekly, or monthly);
(e) gross pay;
(f) net pay;
(g) whether you receive additional compensation for overtime pay;
(h) the average amount of overtime you work per week;
(i) the form of payment of salary *(check, cash, or other; if other, please explain);*
(j) the name and **ADDRESS** of each bookkeeper, payroll clerk, or other person having records of salaries or other sums of money paid to you by your present employer.

☐ 4.2 Are you self-employed or an independent contractor? If so, state:
(a) the address and telephone numbers of the persons or businesses for whom you have performed work or services during the last 12 months;
(b) the nature of the work or services performed and the dates they were provided;
(c) whether you billed each service or the work performed at a flat rate, an hourly rate, or a job rate, and the amount of payment you received;
(d) the name and **ADDRESS** of each bookkeeper, payroll clerk, or other person having records of salaries or other sums of money paid to you during the last three years for your work.

5.0 Employment History

☐ 5.1 State the employer's name and **ADDRESS**, dates of employment, job title, and nature of the work for each job you have had in the last five years. If you were self-employed in the last five years, state your business **ADDRESS**, dates of self-employment, title, and nature of the work.

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6.0 Support Received From Others

☐ 6.1 Have you received any financial **SUPPORT** in the last three years? If so, state:
(a) the name, age, **ADDRESS**, and relationship to you of each **PERSON** from whom you have received **SUPPORT**;
(b) the dates you received the **SUPPORT** and the amount you received.

7.0 General Background Information—Business

☐ 7.1 Are you in any partnerships? If so, state for each:
(a) the current partnership name;
(b) all other names used by the partnership in the last five years and the dates each was used;
(c) whether you are a limited partnership and, if so, in what jurisdiction it operates;
(d) the name and **ADDRESS** of each general partner;
(e) the **ADDRESS** of the principal place of business.

☐ 7.2 Have you done any business under a fictitious name during the last five years? If so, state:
(a) the current and any former fictitious business names;
(b) the dates each was used;
(c) the **ADDRESS** of the principal place of business.

8.0 Bank Accounts and Cash

☐ 8.1 Do you have, in your own name or jointly with another **PERSON**, any bank accounts, commercial savings accounts, credit union accounts, or safe deposit boxes? If so, state for each:
(a) the institution's name and **ADDRESS** where the account or the safe deposit box is located;
(b) the amount of the balance of any account and the contents of any safe deposit box;
(c) the source of the money in any account or safe deposit box;
(d) the date you last made a deposit;
(e) the type and the amount of your last deposit;
(f) the amount of cash that you currently possess.

☐ 8.2 Does your spouse have, in his or her own name or jointly with another **PERSON**, any bank accounts, commercial savings accounts, credit union accounts, or safe deposit boxes? If so, state for each:
(a) the institution's name and **ADDRESS** where the account or the safe deposit box is located;
(b) the source of the money in your spouse's bank account or safe deposit box.

9.0 Property

☐ 9.1 Do you or your spouse own or have any interest in **PROPERTY** in California or elsewhere? If so, state:
(a) the **ADDRESS** of any real estate, land, buildings, apartments, or condominiums in which you hold an interest;
(b) the date acquired and the current value of any real estate, land, buildings, apartments, or condominiums in which you hold an interest.

☐ 9.2 Do you or your spouse own or have any interest in stocks, bonds, or other securities or IRA, Keogh, or deferred compensation accounts? If so, state the source, value, and location of each.

☐ 9.3 Are you or your spouse entitled to any money from any federal, state, city, county, or governmental department or agency? If so, state the agency, the date you received or will receive the money, and the amount.

☐ 9.4 Have you or your spouse inherited any money or property in the last two years? If so, state the nature and value of the money or property and the date you received it.

☐ 9.5 Do you or your spouse have vehicles? If so, state for each:
(a) the model, make, year, and owner's name;
(b) whether you own it;
(c) if it is encumbered, state to whom and to the amount.

☐ 9.6 Do you have any pending civil actions? If so, state for each:
(a) the parties' names, the court, and the case number;
(b) the nature of the claim.

☐ 9.7 During the last three years have you received any judgments or insurance settlements? If so, state for each:
(a) the source or the judgment or insurance settlement;
(b) the amount of the judgment or insurance settlement.

☐ 9.8 Have you or your spouse applied for loans from any banks, credit unions, financial companies, or other lending institutions in the last three years? If so, state for each:
(a) if the loan was approved;
(b) the amount of the loan;
(c) what you or your spouse did with the proceeds.

☐ 9.9 Do you own any of the following items? If so, describe each item, the item's location, its approximate value, and any joint owner:
(a) office equipment;
(b) farm equipment;
(c) gemstones or jewelry;
(d) camera or video equipment;
(e) antiques;
(f) precious metals (gold or silver);
(g) musical instruments;
(h) weapons;
(i) motorcycles;
(j) motor homes;
(k) boats;
(l) airplanes;
(m) furs;
(n) watches;
(o) stamp or coin collections;
(p) china;
(q) original works of art;
(r) crystal.

10.0 Other Assets

☐ 10.1 Does any **PERSON**, company, or institution owe you money? If so, state for each:
(a) the name, **ADDRESS**, and telephone number of the person or institution;
(b) the amount of the debt;
(c) the basis of the debt;
(d) the date the debt is due to be paid.

☐ 10.2 Do you have any pending court proceedings in a California court where you have posted cash bail to guarantee your appearance? If so, state:
(a) the name of the court and date of posting;
(b) the amount of cash bail posted;
(c) the date to appear.

☐ 10.3 Are you the beneficiary of any trusts, or do you have any ownership interest in any partnerships, corporations, or companies? If so, state:
(a) the name and **ADDRESS** of each trustee, partnership, corporation, or company;
(b) the date each entity or trust was established;
(c) the **ASSETS** of each trust or entity.

11.0 Other Income

☐ 11.1 During the last three years have you received cash or other property not identified in the above interrogatories? If so, state:
(a) the nature and value of the cash or property;
(b) the source of the cash or property;
(c) the current location of the cash or property.

12.0 Liabilities and Debts

☐ 12.1 Are there any other judgments of record against you? If so, state for each:
(a) the date entered;
(b) the location of the court and the names of the parties;
(c) the case number;
(d) the amount of the judgment;
(e) whether you have made any payments;
(f) the amount and source of the payments;
(g) the amount still due.

☐ 12.2 What are your average monthly expenses, and how are they met?

☐ 12.3 Are there any liens, levies, or garnishments against your assets or wages? If so, please explain each in detail.

☐ 12.4 Have you paid any fines or fees in the criminal case in which the asking party is the victim?

F. [§83.110] Sample Written Form: Order to Probation Department in Regard to Collection of Restitution

SUPERIOR COURT OF CALIFORNIA

COUNTY OF _____

THE PEOPLE OF THE STATE OF CALIFORNIA,	
	Case No. _____
Plaintiff	ORDER TO THE PROBATION DEPARTMENT IN REGARD TO COLLECTION OF RESTITUTION PAYMENTS
vs	
_____, Defendant	

TO: _____ County Probation Department
_____ Office

THE COURT ORDERS:

If the Probation Department receives information that Defendant _____ ("Defendant") has not made his or her monthly victim restitution payments as ordered, the Probation Department will request Defendant to provide evidence indicating that timely payments have been made or provide information establishing good cause for the failure. If Defendant fails to provide the Probation Department with the evidence or fails to establish good cause within five days of the request, the Probation Department will immediately inform Defendant in writing that the Stay of Income Deduction Order will be lifted. At the same time the Probation Department will inform the Clerk of the Court in writing that the Income Deduction Order must be served pursuant to Penal Code §1202.42(f), following a 15-day period, because the Defendant has failed to make restitution payments as ordered. The Defendant may apply for a hearing to contest the lifting of the stay.

Dated: _____

_____
Judge of the Superior Court

V. [§83.111] INFORMATION ABOUT THE CALIFORNIA VICTIM COMPENSATION PROGRAM (CalVCP)

Authority

Under California law (Govt C §§13950–13966), qualified victims of crime may receive financial assistance from the California Victim Compensation Program (CalVCP) for losses resulting from a crime when these losses cannot be reimbursed by other sources. The California Victim Compensation and Government Claims Board (Board) administers the CalVCP.

Losses That May Be Covered

- Medical/Dental
- Mental Health Counseling
- Wage/Income
- Financial Support
- Funeral/Burial
- Job Retraining
- Relocation
- Residential Security
- Retrofitting of Residence and/or Vehicle
- Crime Scene Cleanup

Losses That Are Not Covered

Personal property losses, including cash, are not eligible for reimbursement under the CalVCP. The CalVCP also cannot reimburse applicants for expenses related to the prosecution of an alleged perpetrator or compensate applicants for "pain and suffering."

Losses not covered by the CalVCP, however, may be recoverable either through court-ordered restitution as a part of a convicted perpetrator's criminal sentence or through the enforcement of a judgment obtained in a civil lawsuit against the alleged perpetrator.

Who Is Eligible?

- A victim who was injured or died as a result of a crime.
- A derivative victim who was not directly injured or killed as a result of a crime but who, at the time of the crime,

— was the parent, grandparent, sibling, spouse, domestic partner, child or grandchild of the victim; or

— was living in the household of the victim; or

— had lived with the victim for at least two years in a relationship similar to a parent, grandparent, sibling, spouse, child, or grandchild of the victim; or

— was another family member of the victim, including, but not limited to, the victim's fiancé or fiancée *and* witnessed the crime; or

— was not the primary caretaker of a minor victim, but is now the primary caretaker.

In addition, when a victim dies as a result of a crime, the CalVCP may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay medical and/or funeral/burial expenses. When a crime occurs in a residence, the CalVCP may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay the reasonable crime scene cleanup expenses.

Who Is Not Eligible?

- Persons who commit the crime.
- Persons who contribute to or take part in the events leading to the crime.
- Persons who failed to reasonably cooperate with law enforcement in the apprehension and conviction of the criminal committing the crime.
- Persons who do not cooperate with the staff of the Board and/or the Victim/Witness Assistance Center in the verification of the claim.

Additionally, no person who is convicted of a felony may be compensated for any losses incurred during probation, parole, or incarceration. Once that person has been discharged from probation or has been released from a correctional institution and has been discharged from parole, any crime-related losses that were not incurred during probation, parole, or incarceration may be considered for compensation. The CalVCP is required to award compensation to a person seeking reimbursement for the funeral/burial expenses of a victim who died as a result of the crime without respect to any felony status of the victim.

These Requirements Must Be Met

Except as provided in Govt C §13956, a person is eligible for compensation when all the following requirements are met:

- The person for whom compensation is being sought is a victim, derivative victim, or a person who is entitled to reimbursement for funeral, burial, or crime scene cleanup expenses.
- Either
  - — the crime occurred within the State of California, whether or not the victim was a resident of California during the time period that the Board determines that federal funds are available, or
  - — whether or not the crime occurred in California, the victim was a resident of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California.
- If compensation is being sought for a derivative victim regardless of whether they are a resident of California or not, they must meet the definition of derivative victim.
- The victim or derivative victim must reasonably cooperate with law enforcement in the apprehension and conviction of the criminal committing the crime.
- The victim or the applicant, if other than the victim, must cooperate with the staff of the Board and/or the Victim/Witness Assistance Center in the verification of the claim.
- All other sources of reimbursement must be used first.

Felony Convictions

The law prohibits CalVCP-reimbursable expenses incurred by a victim or derivative victim who was also convicted of a felony on or after January 1, 1989, if those expenses were incurred during probation, parole, or incarceration. However, the CalVCP is required to award compensation to a person seeking reimbursement for the funeral/burial expenses of a victim who died as a result of the crime without respect to any felony status of the victim.

Filing Deadlines

An application for compensation must be filed within three years of the date of the crime, three years after the victim attains 18 years of age, or three years of the time the victim or derivative victim knew or in the

exercise of ordinary diligence could have discovered that an injury or death had been sustained as a direct result of crime, whichever is later.

An application based on any crime eligible for prosecution under Pen C §801.1 (specified sex crimes involving minor) may be filed any time before the victim's 28th birthday.

The board may for good cause grant an extension of these time periods. The factors to be considered in finding good cause are set forth in Govt C §13953(b).

Filing Assistance

Victim/Witness Assistance Centers are located throughout the state. These centers have staff who are trained to help victims apply for compensation under the CalVCP.

Applicants may also be helped by a private attorney. Government Code §13957.7(g) provides that the Board must pay private attorneys' fees of 10 percent of the approved award up to a maximum of $500. The attorneys' fees are not deducted from the applicant's award and are paid separately from the approved award. The law also prohibits attorneys from charging, demanding, receiving, or collecting any amount for their services except as may be awarded by the Board.

Emergency Awards

If the victim has an urgent unreimbursed loss of wages or income, emergency medical treatment expenses, funeral/burial expenses, crime scene cleanup expenses, and/or relocation expenses as a direct result of a crime, he or she may be eligible for an emergency award. The amount of an emergency award depends on the immediate needs of the victim or derivative victim subject to the rates and limitations established by the Board.

Applications for emergency awards are processed within 30 calendar days after the application is accepted as complete.

If the victim receives an emergency award but is later found ineligible to receive any part of it, he or she must repay the amount received in error.

Verification and Hearing on the Application

Applications filed with the CalVCP are reviewed to determine eligibility. After completion of this review, the victim will be advised by mail of what recommendation the staff made to the Board on the application. If the victim disagrees with the staff recommendation, appeal rights will also be provided.

An applicant for an emergency award is not entitled to a hearing to contest the denial of the emergency award. Denial of an emergency award,

however, must not prevent further consideration of an application for a regular award and does not affect the applicant's right to a hearing if the staff recommends a denial of a regular award.

CalVCP Pays Last

The CalVCP is the "payer of last resort." If the victim has any other sources of reimbursement available for crime-related losses, he or she must use these available sources before becoming eligible for payments from the CalVCP. If the victim receives other reimbursements after obtaining benefits from the CalVCP, he or she must repay the CalVCP. Other reimbursement sources the victim may have available include, but are not limited to, medical, dental, or auto insurance, public program benefits, workers' compensation benefits, court-ordered restitution, or civil lawsuit recovery.

By using all other sources of reimbursement, the victim enables the CalVCP to help other deserving victims who have no other source of reimbursement for their losses.

If the victim fails to disclose available sources of reimbursement, the claim may be denied by the Board for lack of cooperation. If this happens, the victim may have to repay any amount the CalVCP has already paid to the victim or on his or her behalf.

General Payment Limitations

The total of all reimbursements to a victim cannot exceed the maximum CalVCP benefit of $63,000.

There are also several specific payment limitations governing particular benefits under the CalVCP for loss of wages or income, loss of support, medical expenses, outpatient mental health counseling expenses, residential security expenses, relocation expenses, residential and/or vehicle retrofitting expenses, and funeral/burial expenses.

An applicant who has incurred expenses that exceed the CalVCP's rates/limitations may not be eligible for reimbursement beyond the CalVCP's maximum benefit levels.

State law requires a provider who accepts the CalVCP's payment to consider it as payment in full and prohibits the provider from taking further payment from the person who received the services. This limitation does not apply to reimbursement of funeral/burial expenses.

An applicant's eligibility for CalVCP benefits does not guarantee payment for services rendered.

VI. [§83.112] INFORMATION ABOUT THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION RESTITUTION COLLECTION PROGRAM

The California Department of Corrections and Rehabilitation (CDCR) has authority to collect restitution fines and restitution orders from both adults and juveniles housed in an adult institution. Pen C §2085.5.

The CDCR is currently deducting 50 percent from prison wages and/or trust account deposits according to 15 Cal Code Regs §3097(f).

When a prisoner has both a restitution fine and a restitution order from the sentencing court, the CDCR must collect the restitution order first under Pen C §2085.5(c). Pen C §2085.5(j); 15 Cal Code Regs §3097(g).

No parolee or inmate may reside in another state unless all restitution orders have been paid in full. Pen C §11177.2.

Restitution obligations must be considered when recommending a parolee for early discharge or when conducting an annual discharge review. 15 Cal Code Regs §3730.

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