

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2289

Introduced by Assembly Member Sharon Runner

February 21, 2008

An act to amend Sections 1752.81, 1752.82, 1764.2, 1765, 1767, 1767.1, and 1767.9 of the Welfare and Institutions Code, relating to victims' rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2289, as amended, Sharon Runner. Victims' rights.

Existing law provides that when an adult or a minor is committed to, or housed in, a facility of the Division of Juvenile Facilities and that person owes a restitution fine, or restitution to a victim, imposed as specified, the Chief Deputy Secretary for Juvenile Justice shall deduct the balance owing on the fine amount, or the order, as applicable, from the trust account deposits of the ward, up to a specified amount, and transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. If an adult or minor is committed to, or housed in, a juvenile justice facility, and he or she owes restitution to a victim or a restitution fine imposed as specified, existing law authorizes, but does not require, the chief deputy secretary, to deduct a reasonable amount not to exceed 50% from the wages of that person and transfer that amount for deposit in the Restitution Fund if that person owes a restitution fine or, in the case of a restitution order and upon the request of the victim, pay that amount directly to the victim. Existing law requires the sentencing court or the committing court, as applicable, to be provided with a record of the payments, as specified.

This bill would revise those provisions to require that the sentencing court or the committing court, as applicable, be provided with a record of any payments upon discharge or full payment of the victim restitution or restitution fine, or both, as specified. The bill would authorize the chief deputy secretary to deduct the balance owed, rather than a reasonable amount, on a restitution order or a restitution fine up to a maximum of 50% of the deposit. The bill would delete the requirement that the victim request payment of restitution in the case of a restitution order.

Existing law generally provides for the confidentiality of juvenile records and proceedings, except as specified. Existing law authorizes a crime victim, or his or her next of kin if the victim has died or is a minor, to receive written notice of any hearing to consider the release on parole of a person under the control of the Division of Juvenile Justice at least 30 days before the hearing, and to speak last before the board at the parole hearing. Existing law authorizes a victim to designate support persons to attend a proceeding if the victim is unable to attend in order to provide information about the impact of the crime on the victim, but requires that the representative be legal counsel for the victim or a family or household member of the victim. Existing law requires the board to consider the victim's statements, as specified. These provisions may not be amended except by statute passed by a $\frac{2}{3}$ vote.

This bill would revise, recast, and expand these provisions. The bill would require the Department of Corrections and Rehabilitation to release specified information to a victim or other persons, as specified. The bill would specify the information and the content of the notices that must be provided to a victim or other persons, as specified. The bill would also authorize the department to release other information to those persons upon request. The bill would delete the restrictions described above regarding persons who may be the victim's designee. The bill would allow the board to limit, for safety purposes, the number of persons who may be accommodated at the hearings and would define the term "proceeding" for purposes of these provisions *proceedings, as defined*. The bill would make other technical and conforming changes.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1752.81 of the Welfare and Institutions
2 Code is amended to read:

3 1752.81. (a) Whenever the Chief Deputy Secretary for Juvenile
4 Justice has in his or her possession in trust funds of a ward
5 committed to the division, the funds may be released for any
6 purpose when authorized by the ward. When the sum held in trust
7 for any ward by the Chief Deputy Secretary for Juvenile Justice
8 exceeds five hundred dollars (\$500), the amount in excess of five
9 hundred dollars (\$500) may be expended by the chief deputy
10 secretary pursuant to a lawful order of a court directing payment
11 of the funds, without the authorization of the ward thereto.

12 (b) Whenever an adult or minor is committed to or housed in a
13 Division of Juvenile Facilities facility and he or she owes a
14 restitution fine imposed pursuant to Section 13967 of the
15 Government Code, as operative on or before September 28, 1994,
16 or Section 1202.4 or 1203.04 of the Penal Code, as operative on
17 or before August 2, 1995, or pursuant to Section 729.6, 730.6 or
18 731.1, as operative on or before August 2, 1995, the Chief Deputy
19 Secretary for Juvenile Justice shall deduct the balance owing on
20 the fine amount from the trust account deposits of a ward, up to a
21 maximum of 50 percent of the total amount held in trust, unless
22 prohibited by federal law. The chief deputy secretary shall transfer
23 that amount to the California Victim Compensation and
24 Government Claims Board for deposit in the Restitution Fund in
25 the State Treasury. Any amount so deducted shall be credited
26 against the amount owing on the fine. The sentencing court shall
27 be provided a record of the payments upon discharge or full
28 payment of the restitution fine.

29 (c) Whenever an adult or minor is committed to, or housed in,
30 a Division of Juvenile Facilities facility and he or she owes
31 restitution to a victim imposed pursuant to Section 13967 of the
32 Government Code, as operative on or before September 28, 1994,
33 or Section 1202.4 or 1203.04 of the Penal Code, as operative on
34 or before August 2, 1995, or pursuant to Section 729.6, 730.6, or
35 731.1, as operative on or before August 2, 1995, the Chief Deputy
36 Secretary for Juvenile Justice shall deduct the balance owing on
37 the order amount from the trust account deposits of a ward, up to
38 a maximum of 50 percent of the total amount held in trust, unless

1 prohibited by federal law. The chief deputy secretary shall transfer
2 that amount directly to the victim. If the restitution is owed to a
3 person who has filed an application with the Victims of Crime
4 Program, the chief deputy secretary shall transfer that amount to
5 the California Victim Compensation and Government Claims
6 Board for direct payment to the victim or payment shall be made
7 to the Restitution Fund to the extent that the victim has received
8 assistance pursuant to that program. The sentencing court shall be
9 provided a record of the payments upon discharge or full payment
10 of victim restitution.

11 (d) Any compensatory or punitive damages awarded by trial or
12 settlement to a minor or adult committed to the Division of Juvenile
13 Facilities in connection with a civil action brought against any
14 federal, state, or local jail or correctional facility, or any official
15 or agent thereof, shall be paid directly, after payment of reasonable
16 attorney’s fees and litigation costs approved by the court, to satisfy
17 any outstanding restitution orders or restitution fines against the
18 minor or adult. The balance of any award shall be forwarded to
19 the minor or adult committed to the Division of Juvenile Facilities
20 after full payment of all outstanding restitution orders and
21 restitution fines subject to subdivision (e). The Division of Juvenile
22 Facilities shall make all reasonable efforts to notify the victims of
23 the crime for which the minor or adult was committed concerning
24 the pending payment of any compensatory or punitive damages.
25 This subdivision shall apply to cases settled or awarded on or after
26 April 26, 1996, pursuant to Sections 807 and 808 of Title VIII of
27 the federal Prison Litigation Reform Act of 1995 (P.L. 104-134;
28 18 U.S.C. Sec. 3626 (Historical and Statutory Notes)).

29 (e) The chief deputy secretary shall deduct and retain from the
30 trust account deposits of a ward, unless prohibited by federal law,
31 an administrative fee that totals 10 percent of any amount
32 transferred pursuant to subdivision (b) and (c), or 5 percent of any
33 amount transferred pursuant to subdivision (d). The chief deputy
34 secretary shall deposit the administrative fee moneys in a special
35 deposit account for reimbursing administrative and support costs
36 of the restitution and victims program of the Division of Juvenile
37 Facilities. The chief deputy secretary, at his or her discretion, may
38 retain any excess funds in the special deposit account for future
39 reimbursement of the division’s administrative and support costs

1 for the restitution and victims program or may transfer all or part
2 of the excess funds for deposit in the Restitution Fund.

3 (f) When a ward has both a restitution fine and a restitution
4 order from the sentencing court, the Division of Juvenile Facilities
5 shall collect the restitution order first pursuant to subdivision (c).

6 (g) Notwithstanding subdivisions (a), (b), and (c), whenever the
7 Chief Deputy Secretary for Juvenile Justice holds in trust a ward's
8 funds in excess of five dollars (\$5) and the ward cannot be located,
9 after one year from the date of discharge, absconding from the
10 Division of Juvenile Facilities supervision, or escape, the Division
11 of Juvenile Facilities shall apply the trust account balance to any
12 unsatisfied victim restitution order or fine owed by that ward. If
13 the victim restitution order or fine has been satisfied, the remainder
14 of the ward's trust account balance, if any, shall be transferred to
15 the Benefit Fund to be expended pursuant to Section 1752.5. If
16 the victim to whom a particular ward owes restitution cannot be
17 located, the moneys shall be transferred to the Benefit Fund to be
18 expended pursuant to Section 1752.5.

19 SEC. 2. Section 1752.82 of the Welfare and Institutions Code
20 is amended to read:

21 1752.82. (a) Whenever an adult or minor is committed to or
22 housed in a Department of Corrections and Rehabilitation, Division
23 of Juvenile Facilities, facility and he or she owes restitution to a
24 victim or a restitution fine imposed pursuant to Section 13967, as
25 operative on or before September 28, 1994, of the Government
26 Code, or Section 1202.4 of the Penal Code, or Section 1203.04,
27 as operative on or before August 2, 1994, of the Penal Code, or
28 pursuant to Section 729.6, as operative on or before August 2,
29 1995, Section 730.6 or 731.1, as operative on or before August 2,
30 1995, the chief deputy secretary shall deduct the balance owed on
31 a restitution order or fine from the wages of the offender up to a
32 maximum of 50 percent of the deposit and the amount so deducted,
33 exclusive of the costs of administering this section, which shall be
34 retained by the chief deputy secretary, shall be transferred to the
35 California Victim Compensation and Government Claims Board
36 for deposit in the Restitution Fund in the State Treasury in the case
37 of a restitution fine, or, in the case of a restitution order, shall be
38 paid directly to the victim. Any amount so deducted shall be
39 credited against the amount owing on the fine or to the victim. The
40 committing court shall be provided a record of any payments upon

1 discharge or full payment of any restitution order or fine, or both,
2 as applicable.

3 (b) A victim who has requested that restitution payments be
4 paid directly to him or her pursuant to subdivision (a) shall provide
5 a current address to the Department of Corrections and
6 Rehabilitation to enable the department to send restitution payments
7 collected on the victim’s behalf to the victim.

8 (c) In the case of a restitution order, whenever the victim has
9 died, cannot be located, or ~~has not requested~~ *chooses not to accept*
10 the restitution payment, the chief deputy secretary ~~may~~ *shall* deduct
11 a reasonable amount not to exceed 50 percent of the wages of that
12 adult or minor and the amount so deducted, exclusive of the costs
13 of administering this section, which shall be retained by the chief
14 deputy secretary, shall be transferred to the California Victim
15 Compensation and Government Claims Board, pursuant to
16 subdivision (d), after one year has elapsed from the time the ward
17 is discharged by the Board of Parole Hearings. Any amount so
18 deducted shall be credited against the amount owing to the victim.

19 The funds so transferred shall be deposited in the Restitution Fund.
20 (d) If the Department of Corrections and Rehabilitation has
21 collected restitution payments on behalf of a victim, the victim
22 shall request those payments no later than one year after the ward
23 has been discharged by the Board of Parole Hearings. Any victim
24 who fails to request those payments within that time period shall
25 have relinquished all rights to the payments, unless he or she can
26 show reasonable cause for failure to request those payments within
27 that time period.

28 (e) The chief deputy secretary shall transfer to the California
29 Victim Compensation and Government Claims Board all restitution
30 payments collected prior to the effective date of this section on
31 behalf of victims who have died, cannot be located, or have not
32 requested restitution payments. The California Victim
33 Compensation and Government Claims Board shall deposit these
34 amounts in the Restitution Fund.

35 (f) For purposes of this section, “victim” includes a victim’s
36 immediate surviving family member, on whose behalf restitution
37 has been ordered.

38 SEC. 3. Section 1764.2 of the Welfare and Institutions Code
39 is amended to read:

1 1764.2. (a) In recognition of the civil and moral duty of victims
2 ~~and witnesses~~ of crime to fully and voluntarily cooperate with law
3 enforcement and prosecutorial agencies, and in further recognition
4 of the continuing importance of this citizen cooperation to state
5 and local law enforcement efforts and the general effectiveness
6 and well-being of the criminal justice system of this state, the
7 Legislature declares its intent, in the enactment of this article, to
8 ensure that all victims ~~and witnesses~~ of crime are treated with
9 dignity, respect, courtesy, and sensitivity. It is the further intent
10 that the rights enumerated in this article relating to victims ~~and~~
11 ~~witnesses~~ of crime are honored and protected by law enforcement
12 agencies, prosecutors, and judges in a manner no less vigorous
13 than the protections afforded criminal defendants. It is the intent
14 of the Legislature to add to this article references to new rights
15 when, or as soon as possible after, those rights are created. The
16 failure to enumerate in this article a right which is enumerated
17 elsewhere in the law shall not be deemed to diminish the
18 importance or enforceability of that right.

19 (b) As used in this article, the following definitions shall apply:

20 (1) "Crime" means an act committed in this state which, if
21 committed by a competent person, would constitute a misdemeanor
22 or felony.

23 (2) "Victim" means a person against whom a crime has been
24 committed.

25 (3) "Proceeding" means an annual case review or a parole
26 consideration hearing.

27 ~~(4) "Witness" means any person who has testified or is expected~~
28 ~~to testify for the prosecution, or who, by reason of having relevant~~
29 ~~information, is subject to call or likely to be called as a witness~~
30 ~~for the prosecution, regardless of whether any action or proceeding~~
31 ~~has yet been commenced.~~

32 (c) Notwithstanding any other provision of law, unless the court
33 has ordered confidentiality under subdivision (c) of Section 676,
34 the Department of Corrections and Rehabilitation staff may release
35 any of the following information regarding an offender housed in
36 a facility of the Department of Corrections and Rehabilitation,
37 Division of Juvenile Facilities, to the victim, the victim's next of
38 kin, ~~a witness~~, or the victim's designee upon request.:

39 (1) Offender's name, aliases, and birth date.

40 (2) Court of commitment.

- 1 (3) County of commitment.
- 2 (4) Date of commitment.
- 3 (5) Available confinement time.
- 4 (6) Available jurisdiction time.
- 5 (7) Commitment offense and any other adjudicated offenses.
- 6 (8) Any location where the offender is or was confined.
- 7 (9) Transfer to and from any location where the offender is or
- 8 was confined.
- 9 (10) Earliest possible release date.
- 10 (11) Date the offender was released ~~to~~ on parole.
- 11 (12) Upcoming dates and changes in dates related to an annual
- 12 case review or progress review.
- 13 (13) Upcoming dates and changes in dates related to parole
- 14 hearings.
- 15 (14) Upcoming dates and changes in dates related to parole or
- 16 confinement time release.
- 17 (15) Upcoming changes in the offender’s release date.
- 18 (16) Out of custody furlough status.
- 19 (17) The date the person was discharged from the jurisdiction
- 20 of the Department of Corrections and Rehabilitation, Division of
- 21 Juvenile Facilities, and the basis for the discharge.
- 22 (18) Escape and apprehension from any facility of the
- 23 Department of Corrections and Rehabilitation, Division of Juvenile
- 24 Facilities assigned placement.
- 25 (19) Release, release status, and supervising agency, including
- 26 contact information.
- 27 (20) County of release.
- 28 (21) Special parole conditions for no contact with victim or
- 29 victims.
- 30 (22) Parole status.
- 31 (23) Date of parole revocation.
- 32 (24) Date of parole revocation Morrissey hearing.
- 33 (25) Parole revocation offense or violation behavior.
- 34 (26) Registration requirements.
- 35 (27) Immigration status.
- 36 (28) Appeals and outcomes.
- 37 (29) Offender death.
- 38 *(d) (1) Notwithstanding any other law, the Department of*
- 39 *Corrections and Rehabilitation staff may release any of the*
- 40 *following documents regarding an offender housed in a facility of*

1 *the Department of Corrections and Rehabilitation, Division of*
2 *Juvenile Facilities, to the victim, the victim's next of kin, or the*
3 *victim's designee upon request, if these documents are available*
4 *in the offender's Department of Corrections and Rehabilitation*
5 *file:*

6 (A) *Charging petition.*

7 (B) *Orders of adjudications and disposition of the court.*

8 (C) *Order for restitution and abstract of judgment.*

9 (D) *Defendant's statement of assets.*

10 (E) *Income deduction form.*

11 (F) *Order for income deduction.*

12 (2) *A victim shall not disclose or disseminate this information*
13 *beyond his or her immediate family, support persons as described*
14 *in Section 868.5 of the Penal Code, or legal representatives, unless*
15 *authorized by a judge of the juvenile court pursuant to Section*
16 *656.2.*

17 ~~(d)~~

18 (e) *The provisions of this section shall not be construed to*
19 *authorize the release of any of the following information:*

20 (1) *Information that may place any individual in personal peril.*

21 (2) *Information that may threaten Department of Corrections*
22 *and Rehabilitation security.*

23 (3) *Information that is exempt from disclosure pursuant to the*
24 *Public Records Act (Chapter 3.5 (commencing with Section 6250)*
25 *of Division 7 of Title 1 of the Government Code).*

26 SEC. 4. *Section 1765 of the Welfare and Institutions Code is*
27 *amended to read:*

28 1765. (a) *Except as otherwise provided in this chapter, the*
29 *Department of Corrections and Rehabilitation, Division of Juvenile*
30 *Facilities and the Board of Parole Hearings shall keep under*
31 *continued study a person in their control and shall retain him or*
32 *her, subject to the limitations of this chapter, under supervision*
33 *and control so long as in their judgment that control is necessary*
34 *for the protection of the public.*

35 (b) *The board shall discharge that person as soon as in its*
36 *opinion there is reasonable probability that he or she can be given*
37 *full liberty without danger to the public.*

38 SEC. 5. *Section 1767 of the Welfare and Institutions Code is*
39 *amended to read:*

1 1767. (a) Upon request, the Division of Juvenile Facilities
 2 shall send to the victim, or the victim’s next of kin or designee,
 3 written notice at least 30 days before the following events:

- 4 (1) Upcoming dates related to annual case reviews.
- 5 (2) Upcoming dates related to parole consideration hearings.
- 6 (3) Upcoming dates and changes related to the offender’s
 7 release.

8 (b) Upon request, the Division of Juvenile Facilities shall send
 9 to the victim, or the victim’s next of kin or designee, written notice
 10 within 30 days after the following events:

- 11 (1) Changes related to parole consideration dates.
- 12 (2) Changes related to offender’s release dates.
- 13 (3) Transfers between any facility of the Division of Juvenile
 14 Facilities, assigned placement, or parole office.
- 15 (4) Parole release granted.
- 16 (5) Out of custody furlough granted.
- 17 (6) Department of Corrections and Rehabilitation discharge
 18 granted.
- 19 (7) Escape and apprehension from any Department of
 20 Corrections and Rehabilitation institution or assigned placement.
- 21 (8) Release, release status, and supervising agency.
- 22 (9) *Parole revocation.*
- 23 ~~(9)~~
- 24 (10) Offender’s death.

25 (c) With respect to any person who has been convicted of
 26 committing an offense listed in Section 667.5 or subdivision (e)
 27 of Section 1202.1, the Department of Corrections and
 28 Rehabilitation, Division of Juvenile Facilities, shall, upon request,
 29 send to the victim, or the victim’s next of kin or designee, the
 30 following information 45 days before the proposed release date:

- 31 (1) Proposed release date and any changes.
- 32 (2) Notice of the community in which the offender is scheduled
 33 to reside upon release and any changes in the delegation of the
 34 community in which the offender is to reside upon release.

35 *(d) The Department of Corrections and Rehabilitation staff*
 36 *shall, with respect to an offender housed in a facility of the Division*
 37 *of Juvenile Facilities, including persons committed to the*
 38 *Department of Corrections and Rehabilitation who have been*
 39 *transferred to the Division of Juvenile Facilities, attempt to inform*
 40 *each known victim, the victim’s next of kin, or the victim’s designee,*

1 *of his or her right to request and receive information pursuant to*
2 *this section, Section 1767, Section 1767.1, and Section 1767.9.*

3 ~~(d)~~

4 (e) The provisions of this section shall not be amended by the
5 Legislature except by statute passed in each house by rollcall vote
6 entered in the journal, two-thirds of the membership concurring,
7 or by a statute that becomes effective only when approved by the
8 electors.

9 SEC. 6. Section 1767.1 of the Welfare and Institutions Code
10 is amended to read:

11 1767.1. At least 30 days before the Board of Parole Hearings
12 meets to review or consider the parole of any person who has been
13 committed to the control of the Department of Corrections and
14 Rehabilitation, Division of Juvenile Facilities, for the commission
15 of any offense described in subdivision (b), paragraph (2) of
16 subdivision (d), or subdivision (e) of Section 707, or for the
17 commission of an offense in violation of paragraph (2) of
18 subdivision (a) of Section 262 or paragraph (3) of subdivision (a)
19 of Section 261 of the Penal Code, the Division of Juvenile Facilities
20 shall send written notice of the hearing to each of the following
21 persons: the judge of the court that committed the person to the
22 department, the attorney for the person, the district attorney of the
23 county from which the person was committed, and the law
24 enforcement agency that investigated the case. The Division of
25 Juvenile Facilities shall also send a progress report regarding the
26 ward to the judge of the court that committed the person at the
27 same time it sends the written notice to the judge.

28 Each of the persons so notified shall have the right to submit a
29 written statement to the board at least 10 days prior to the decision
30 for the board's consideration. Nothing in this subdivision shall be
31 construed to permit any person so notified to attend the hearing.
32 With respect to the parole of any person over the age of 18 years,
33 the presiding officer of the board shall state findings and supporting
34 reasons for the decision of the board. The findings and reasons
35 shall be reduced to writing, and shall be made available for
36 inspection by members of the public no later than 30 days from
37 the date of the decision.

38 SEC. 7. Section 1767.9 of the Welfare and Institutions Code
39 is amended to read:

1 1767.9. (a) A victim, or his or her next of kin or designee, may
 2 do the following:

3 (1) Upon request, attend a Department of Corrections and
 4 Rehabilitation proceeding. *The victim, the victim’s next of kin, or*
 5 *the victim’s designee may be accompanied by a support person or*
 6 *persons. For safety purposes, the number of people accommodated*
 7 *in a proceeding may be limited by the Department of Corrections*
 8 *and Rehabilitation, Board of Parole Hearings.*

9 (2) Appear and present an impact statement at a Department of
 10 Corrections and Rehabilitation proceeding. The impact statement
 11 may only address the impact of the crime. ~~For safety purposes, the~~
 12 ~~number of people accommodated in a proceeding may be limited~~
 13 ~~by the Department of Corrections and Rehabilitation, Board of~~
 14 ~~Parole Hearings.~~ Support persons may only provide emotional
 15 support to the victim, ~~and the victim’s next of kin or,~~ *or the victim’s*
 16 *designee.*

17 (3) *During a proceeding, request the special condition of parole*
 18 *of “No contact” be imposed on the offender.*

19 ~~(3)~~

20 (4) Be the last person to speak before the board at a ~~parole~~
 21 ~~hearing proceeding.~~ Nothing in this section shall prohibit the person
 22 presiding at the hearing from taking any steps he or she deems
 23 appropriate to ensure that only accurate and relevant statements
 24 are considered in determining parole suitability as provided in law,
 25 including, but not limited to, the rebuttal of inaccurate statements
 26 made by any party.

27 ~~(4)~~

28 (5) At least 10 days prior to a proceeding, submit to the
 29 Department of Corrections and Rehabilitation written, audiotaped,
 30 videotaped, CD, or DVD statements providing information about
 31 the impact of the crime.

32 (b) The Board of Parole Hearings, in deciding whether to release
 33 the person on parole, shall consider the statements of the victim,
 34 ~~and the victim’s next of kin and,~~ *or the victim’s designee,* pursuant
 35 to this section, and shall include in its report a statement of whether
 36 the person would pose a threat to public safety if released on parole.

1 (c) Nothing in this section shall prevent the exclusion of a
2 victim, or his or her next of kin, designee, or support person, from
3 a proceeding.

O