

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2596

Introduced by Assembly Member Feuer

February 24, 2012

An act to amend ~~Section 6031 of the Business and Professions Code, relating to attorneys~~ *Sections 1202.45 and 2085.5 of the Penal Code, relating to restitution, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2596, as amended, Feuer. ~~The State Bar of California.~~ *Restitution: collection of fines.*

Under existing law, in every case where a person is convicted of a crime and whose sentence includes parole, the court is required to assess a parole revocation fine, as specified, for deposit into the Restitution Fund in the State Treasury.

This bill would require a person who is subject to postrelease community supervision or mandatory supervision, who violates the terms of his or her postrelease community supervision or mandatory supervision, and who is incarcerated in a county jail for that violation, to pay a fine, for deposit into the Restitution Fund in the State Treasury, a continuously appropriated fund. Because the bill creates a new source of revenue for deposit into the restitution fund, the bill would make an appropriation.

Existing law requires the Department of Corrections and Rehabilitation to deduct and retain certain funds from the wages, trust account deposits, or settlement or trial awards of a prisoner for the payment of certain fees and fines, including restitution orders, restitution fines, and specified administrative fees, and also authorizes the

department to collect funds from a parolee for the payment of restitution orders and fines, unless prohibited by federal law. Under existing law, these funds are required to be deposited in the Restitution Fund in the State Treasury.

This bill would specify that, when a prisoner is punished by imprisonment in a county jail, an agency designated by the county board of supervisors is required to deduct and retain those funds, and would also authorize that agency to collect funds from a parolee. The bill would require these agencies to transfer these funds for deposit in the Restitution Fund.

By imposing additional requirements on counties, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California. The State Bar is governed by a board of trustees of the State Bar. Existing law authorizes the board of trustees to aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not limited to, all matters that may advance the professional interests of the members of the State Bar such matters that concern the relations of the State Bar with the public.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~-yes.

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

- 1 SECTION 1. Section 1202.45 of the Penal Code is amended
- 2 to read:
- 3 1202.45. (a) In every case where a person is convicted of a
- 4 crime and whose sentence includes a period of parole, the court
- 5 shall at the time of imposing the restitution fine pursuant to

1 subdivision (b) of Section 1202.4, assess an additional parole
2 revocation restitution fine in the same amount as that imposed
3 pursuant to subdivision (b) of Section 1202.4. ~~This additional~~
4 ~~parole revocation restitution fine~~

5 (b) *In every case where a person is convicted of a crime and is*
6 *subject to either postrelease community supervision under Section*
7 *3415 or mandatory supervision under paragraph (5) of subdivision*
8 *(h) of Section 1170, and violates the terms of the postrelease*
9 *community supervision or mandatory supervision and is*
10 *incarcerated in a county jail for that violation, the person shall*
11 *pay a fine that shall be collected by the agency designated by the*
12 *board of supervisors of the county in which the prisoner is*
13 *incarcerated.*

14 (c) *The fines imposed pursuant to subdivisions (a) and (b) shall*
15 *not be subject to penalty assessments authorized by Section 1464*
16 *or Chapter 12 (commencing with Section 76000) of Title 8 of the*
17 *Government Code, or the state surcharge authorized by Section*
18 *1465.7, and shall be suspended unless the person's parole,*
19 *postrelease community supervision, or mandatory supervision is*
20 *revoked. ~~Parole revocation restitution fine~~ Fine moneys shall be*
21 *deposited in the Restitution Fund in the State Treasury.*

22 *SEC. 2. Section 2085.5 of the Penal Code is amended to read:*

23 2085.5. (a) *In any case in which a prisoner owes a restitution*
24 *fine imposed pursuant to subdivision (a) of Section 13967 of the*
25 *Government Code, as operative prior to September 28, 1994,*
26 *subdivision (b) of Section 730.6 of the Welfare and Institutions*
27 *Code, or subdivision (b) of Section 1202.4, the Secretary of the*
28 *Department of Corrections and Rehabilitation, or, when a prisoner*
29 *is punished by imprisonment in a county jail, the agency designated*
30 *by the board of supervisors in the county where the prisoner is*
31 *incarcerated, shall deduct a minimum of 20 percent or the balance*
32 *owing on the fine amount, whichever is less, up to a maximum of*
33 *50 percent from the wages and trust account deposits of a prisoner,*
34 *or the county jail equivalent of wages and trust account deposits*
35 *of a prisoner, unless prohibited by federal law, and shall transfer*
36 *that amount to the California Victim Compensation and*
37 *Government Claims Board for deposit in the Restitution Fund in*
38 *the State Treasury. Any amount so deducted shall be credited*
39 *against the amount owing on the fine. The sentencing court shall*
40 *be provided a record of the payments.*

1 (b) In any case in which a prisoner owes a restitution order
2 imposed pursuant to subdivision (c) of Section 13967 of the
3 Government Code, as operative prior to September 28, 1994,
4 subdivision (h) of Section 730.6 of the Welfare and Institutions
5 Code, or subdivision (f) of Section 1202.4, the Secretary of the
6 Department of Corrections and Rehabilitation, *or, when a prisoner*
7 *is punished by imprisonment in a county jail, the agency designated*
8 *by the board of supervisors in the county where the prisoner is*
9 *incarcerated,* shall deduct a minimum of 20 percent or the balance
10 owing on the order amount, whichever is less, up to a maximum
11 of 50 percent from the wages and trust account deposits of a
12 prisoner, *or the county jail equivalent of wages and trust account*
13 *deposits of a prisoner,* unless prohibited by federal law. The
14 secretary *or the agency* shall transfer that amount to the California
15 Victim Compensation and Government Claims Board for direct
16 payment to the victim, or payment shall be made to the Restitution
17 Fund to the extent that the victim has received assistance pursuant
18 to that program. The sentencing court shall be provided a record
19 of the payments made to victims and of the payments deposited
20 to the Restitution Fund pursuant to this subdivision.

21 (c) The secretary, *or, when a prisoner is punished by*
22 *imprisonment in a county jail, the agency designated by the board*
23 *of supervisors in the county where the prisoner is incarcerated,*
24 shall deduct and retain from the wages and trust account deposits
25 of a prisoner, *or the county jail equivalent of wages and trust*
26 *account deposits of a prisoner,* unless prohibited by federal law,
27 an administrative fee that totals 10 percent of any amount
28 transferred to the California Victim Compensation and Government
29 Claims Board pursuant to subdivision (a) or (b). The secretary *or*
30 *the agency* shall deduct and retain from any prisoner settlement
31 or trial award, an administrative fee that totals 5 percent of any
32 amount paid from the settlement or award to satisfy an outstanding
33 restitution order or fine pursuant to subdivision (j), unless
34 prohibited by federal law. The secretary *or the agency* shall deposit
35 the administrative fee moneys in a special deposit account for
36 reimbursing administrative and support costs of the restitution
37 program of the Department of Corrections and Rehabilitation. The
38 secretary, at his or her discretion, *or the agency* may retain any
39 excess funds in the special deposit account for future
40 reimbursement of the department's administrative and support

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

3 (d) In any case in which a parolee owes a restitution fine
4 imposed pursuant to subdivision (a) of Section 13967 of the
5 Government Code, as operative prior to September 28, 1994,
6 subdivision (b) of Section 730.6 of the Welfare and Institutions
7 Code, or subdivision (b) of Section 1202.4, the secretary, *or, when*
8 *a prisoner is punished by imprisonment in a county jail, the agency*
9 *designated by the board of supervisors in the county where the*
10 *prisoner is incarcerated,* may collect from the parolee any moneys
11 owing on the restitution fine amount, unless prohibited by federal
12 law. The secretary *or the agency* shall transfer that amount to the
13 California Victim Compensation and Government Claims Board
14 for deposit in the Restitution Fund in the State Treasury. Any
15 amount so deducted shall be credited against the amount owing
16 on the fine. The sentencing court shall be provided a record of the
17 payments.

18 (e) In any case in which a parolee owes a direct order of
19 restitution, imposed pursuant to subdivision (c) of Section 13967
20 of the Government Code, as operative prior to September 28, 1994,
21 subdivision (h) of Section 730.6 of the Welfare and Institutions
22 Code, or paragraph (3) of subdivision (a) of Section 1202.4, the
23 secretary, *or, when a prisoner is punished by imprisonment in a*
24 *county jail, the agency designated by the board of supervisors in*
25 *the county where the prisoner is incarcerated,* may collect from
26 the parolee any moneys owing, unless prohibited by federal law.
27 The secretary *or the agency* shall transfer that amount to the
28 California Victim Compensation and Government Claims Board
29 for direct payment to the victim, or payment shall be made to the
30 Restitution Fund to the extent that the victim has received
31 assistance pursuant to that program. The sentencing court shall be
32 provided a record of the payments made by the offender pursuant
33 to this subdivision.

34 (f) The secretary, *or, when a prisoner is punished by*
35 *imprisonment in a county jail, the agency designated by the board*
36 *of supervisors in the county where the prisoner is incarcerated,*
37 may deduct and retain from any moneys collected from parolees
38 an administrative fee that totals 10 percent of any amount
39 transferred to the California Victim Compensation and Government
40 Claims Board pursuant to subdivision (d) or (e), unless prohibited

1 by federal law. The secretary *or the agency* shall deduct and retain
2 from any settlement or trial award of a parolee an administrative
3 fee that totals 5 percent of any amount paid from the settlement
4 or award to satisfy an outstanding restitution order or fine pursuant
5 to subdivision (j), unless prohibited by federal law. The secretary
6 *or the agency* shall deposit the administrative fee moneys in a
7 special deposit account for reimbursing administrative and support
8 costs of the restitution program of the Department of Corrections
9 and Rehabilitation. The secretary, at his or her discretion, *or the*
10 *agency* may retain any excess funds in the special deposit account
11 for future reimbursement of the department's administrative and
12 support costs for the restitution program or may transfer all or part
13 of the excess funds for deposit in the Restitution Fund.

14 (g) When a prisoner has both a restitution fine and a restitution
15 order from the sentencing court, the Department of Corrections
16 and Rehabilitation, *or, when a prisoner is punished by*
17 *imprisonment in a county jail, the agency designated by the board*
18 *of supervisors in the county where the prisoner is incarcerated,*
19 shall collect the restitution order first pursuant to subdivision (b).

20 (h) When a parolee has both a restitution fine and a restitution
21 order from the sentencing court, the Department of Corrections
22 and Rehabilitation, *or, when the prisoner is punished by*
23 *imprisonment in a county jail, the agency designated by the board*
24 *of supervisors in the county where the prisoner is incarcerated,*
25 may collect the restitution order first, pursuant to subdivision (e).

26 (i) If an inmate is housed at an institution that requires food to
27 be purchased from the institution canteen for unsupervised
28 overnight visits, and if the money for the purchase of this food is
29 received from funds other than the inmate's wages, that money
30 shall be exempt from restitution deductions. This exemption shall
31 apply to the actual amount spent on food for the visit up to a
32 maximum of fifty dollars (\$50) for visits that include the inmate
33 and one visitor, seventy dollars (\$70) for visits that include the
34 inmate and two or three visitors, and eighty dollars (\$80) for visits
35 that include the inmate and four or more visitors.

36 (j) Any compensatory or punitive damages awarded by trial or
37 settlement to any inmate or parolee in connection with a civil action
38 brought against any federal, state, or local jail, prison, or
39 correctional facility, or any official or agent thereof, shall be paid
40 directly, after payment of reasonable attorney's fees and litigation

1 costs approved by the court, to satisfy any outstanding restitution
2 orders or restitution fines against that person. The balance of any
3 award shall be forwarded to the payee after full payment of all
4 outstanding restitution orders and restitution fines, subject to
5 subdivisions (c) and (f). The Department of Corrections and
6 Rehabilitation, *or, when a prisoner is punished by imprisonment*
7 *in a county jail, the agency designated by the board of supervisors*
8 *in the county where the prisoner is incarcerated*, shall make all
9 reasonable efforts to notify the victims of the crime for which that
10 person was convicted concerning the pending payment of any
11 compensatory or punitive damages.

12 (k) (1) Amounts transferred to the California Victim
13 Compensation and Government Claims Board for payment of
14 direct orders of restitution shall be paid to the victim within 60
15 days from the date the restitution revenues are received by the
16 California Victim Compensation and Government Claims Board.
17 If the restitution payment to a victim is less than fifty dollars (\$50),
18 then payment need not be forwarded to that victim until the
19 payment reaches fifty dollars (\$50) or until 180 days from the date
20 the first payment is received, whichever occurs sooner.

21 (2) In any case in which a victim cannot be located, the
22 restitution revenues received by the California Victim
23 Compensation and Government Claims Board on behalf of the
24 victim shall be held in trust in the Restitution Fund until the end
25 of the state fiscal year subsequent to the state fiscal year in which
26 the funds were deposited or until the time that the victim has
27 provided current address information, whichever occurs sooner.
28 Amounts remaining in trust at the end of the specified period of
29 time shall revert to the Restitution Fund.

30 (3) Any victim failing to provide a current address within the
31 period of time specified in paragraph (2) may provide
32 documentation to the Department of Corrections and Rehabilitation
33 *or, when a prisoner is punished by imprisonment in a county jail,*
34 *to the agency designated by the board of supervisors in the county*
35 *where the prisoner is incarcerated*, which in turn shall verify that
36 moneys were in fact collected on behalf of the victim. Upon receipt
37 of that verified information from the Department of Corrections
38 and Rehabilitation *or the agency*, the California Victim
39 Compensation and Government Claims Board shall transmit the

1 restitution revenues to the victim in accordance with the provisions
2 of subdivision (b) or (e).

3 *SEC. 3. If the Commission on State Mandates determines that*
4 *this act contains costs mandated by the state, reimbursement to*
5 *local agencies and school districts for those costs shall be made*
6 *pursuant to Part 7 (commencing with Section 17500) of Division*
7 *4 of Title 2 of the Government Code.*

8 ~~SECTION 1. Section 6031 of the Business and Professions~~
9 ~~Code is amended to read:~~

10 ~~6031. (a) The board may aid in all matters pertaining to the~~
11 ~~advancement of the science of jurisprudence or to the improvement~~
12 ~~of the administration of justice, including, but not by way of~~
13 ~~limitation, all matters that may advance the professional interests~~
14 ~~of the members of the State Bar and such matters as concern the~~
15 ~~relations of the State Bar with the public.~~

16 ~~(b) Notwithstanding this section or any other provision of law,~~
17 ~~the board shall not conduct or participate in, or authorize any~~
18 ~~committee, agency, employee, or commission of the State Bar to~~
19 ~~conduct or participate in any evaluation, review, or report on the~~
20 ~~qualifications, integrity, diligence, or judicial ability of any specific~~
21 ~~justice of a court provided for in Section 2 or 3 of Article VI of~~
22 ~~the California Constitution without prior review and statutory~~
23 ~~authorization by the Legislature.~~

24 ~~The provisions of this subdivision shall not be construed to~~
25 ~~prohibit a member of the State Bar from conducting or participating~~
26 ~~in such an evaluation, review, or report in his or her individual~~
27 ~~capacity.~~

28 ~~The provisions of this subdivision shall not be construed to~~
29 ~~prohibit an evaluation of potential judicial appointees or nominees~~
30 ~~as authorized by Section 12011.5 of the Government Code.~~