
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2226 **Hearing Date:** June 26, 2018
Author: Patterson
Version: May 25, 2018
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Crime Victims: Restitution and Compensation*

HISTORY

Source: Author

Prior Legislation: SB 756 (Stern), Ch. 101, Stats. 2017

Support: California District Attorneys Association; Crime Victims United; Santa Clara County District Attorney's Office

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to expand the law that authorizes the court to order victim restitution to cover the costs of installing a residential security system to include domestic violence cases.

Existing law requires the sentencing court to order the defendant to pay victim restitution to fully reimburse the victim for economic losses resulting from the defendant's criminal conduct. (Pen. Code, § 1202.4, subd. (f)(3).)

Existing law states that economic losses include, in pertinent part, "expenses to install or increase residential security incurred related to a violent felony, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks." (Pen. Code, § 1202.4, subd. (f)(3)(J).)

This bill allows the court to order victim restitution to cover the costs of installing a residential security system in domestic violence cases.

COMMENTS

1. Need for this Bill

According to the author of this bill:

The problem is that restitution is not extended (in statute) to victims of non-violent crimes. However, there are many “non-violent” crimes in which restitution would be entirely appropriate, especially for the use of at-home security systems (as allowed by PC1202.4(f)(3)(J)). Such “non-violent” crimes currently include domestic violence, gang-related crimes, stalking, and more. AB 2226 proposes to make restitution benefits available to victims of the “nonviolent” crime of domestic violence.

2. Victim Restitution Generally

Under the California Constitution (Article 1, § 28), as implemented by Penal Code section 1202.4, a sentencing judge in a criminal case must order a defendant to pay full restitution to the victim for all his or her economic losses. As interpreted by the courts, the term "economic losses" in the restitution statute consistently has referred to actual economic losses.

"In a criminal case an award of restitution is committed to the sound discretion of the trial court." (*People v. Giordano* (2007) 42 Cal.4th 644, 665.) The trial court is given almost unlimited discretion as to the kind of information it can consider and the sources where it comes from. (*People v. Hove* (1999) 76 Cal.App.4th 1266, 1275.) Likewise, the trial court is entitled to use any rational method of fixing the amount of restitution. (*People v. Goulart* (1990) 224 Cal.App.3d 71, 83.)

While statutory provisions for victim restitution have been broadly and liberally construed, the amount of restitution must be limited to losses actually incurred as a result of the defendant's criminal conduct. (*People v. Lyon* (1996) 49 Cal.App.4th 1521, 1526.) Although full restitution in the amount of the losses resulting from appellant's criminal conduct is required (Penal Code Section 1202.4(f)(3)), the victim is not entitled to overcompensation. "A restitution order is intended to compensate the victim for its actual loss and is not intended to provide the victim with a windfall." (*People v. Chappelone* (2010) 183 Cal.App.4th 1159, 1172; *In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1017-1018; *People v. Fortune* (2005) 129 Cal.App.4th 790, 795; *People v. Thygesen* (1999) 69 Cal.App.4th 988, 995.) "A direct restitution award in excess of the victim's loss is unauthorized." (*People v. Nguyen* (1994) 23 Cal.App.4th 32, 45; *People v. Williams* (1989) 207 Cal. App. 3d 1520, 1524.)

3. Court's Authority to Order Restitution for Residential Security Expenses

Penal Code section 1202.4, subdivision (f)(3)(J) provides for restitution in the following circumstances: "Expenses to install or increase residential security incurred related to a violent felony, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks."

There is a split of authority as to whether the statute's language limits court authority to order restitution for residential security only in cases in which the defendant has been convicted of, or pleads guilty to, a violent felony.

In *People v. Salas* (2017) 9 Cal.App.5th 736, 744, the Court of Appeal held that “The statute’s plain language and legislative history, and . . . principles of statutory construction, support [the] conclusion that residential security expenses are recoverable under section 1202.4, subdivision (f)(3)(J) only when they are ‘incurred related to a violent felony as defined in section 667.5, subdivision (c).’” The language of the statute is clear and, if possible, significance should be given to every possible word. (*Id.* at pp. 742-743.) The legislative history also supports this interpretation because until 2012, restitution for home security was available for any crime. The legislature then revised the language to limit application only to violent crimes. (*Id.* at p. 742.) Since defendant’s domestic violence conviction is not an offense listed in Penal Code section 667.5, subdivision (c), it is not a violent felony for purposes of awarding restitution for a residential security system.¹ (*People v. Salas, supra*, 9 Cal.App.5th at p. 744.)

In contrast, two other Courts of Appeal have interpreted the statute more broadly. The court in *People v. Henderson* (2018) 20 Cal.App.5th 467, held that the fact that a defendant is not convicted of a violent felony does not preclude the court from ordering restitution for the costs of residential security under the general provisions of the restitution statute, which provides that “the restitution order . . . shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant’s criminal conduct, including, but not limited to” the enumerated losses. (*Id.* at p. 471, citing Pen. Code, § 1202.4, subd. (f)(3).) This language “expressly states that the enumerated list, including subparagraph (J), is a *non-exclusive* list of examples.” (*Ibid.*, emphasis in original.) Based on this, the *Henderson* court held that a trial court may include home security costs in a restitution order regardless of the crime of conviction. (*Id.* at p. 472; accord *People v. Brooks* 2018 Cal. App. LEXIS 486.)

Additionally, the question of whether the trial court abuses its discretion by ordering a defendant to pay restitution to cover the costs of residential security expenses when the defendant is not convicted of a violent felony is currently pending before the California Supreme Court in *People v. Calavano* review granted Aug. 9, 2017 (S242474), previously nonpub. opn. (H042950) May 4, 2017.

This bill would expand the court’s authority to order victim restitution for costs of residential security in domestic violence cases, which do not necessarily always qualify as violent felonies.

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¹ The charges initially alleged a great bodily injury enhancement, which would have qualified the domestic violence offense as a violent felony, but that allegation was eventually dismissed. (*Id.* at p. 739.)