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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 651                      **Hearing Date:** April 21, 2015  
**Author:** Leyva  
**Version:** February 27, 2015  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** JM

**Subject:** *Juvenile Conduct: Victims*

## HISTORY

**Source:** Los Angeles County District Attorney; Crime Victims Action Alliance

**Prior Legislation:** None

**Support:** California District Attorneys Association; Association of Los Angeles Deputy Sheriffs; Los Angeles Police Protective League; Los Angeles County Probation Officers Union; American Federation of State, County and Municipal Employees, Local 685; Association of Deputy District Attorneys

**Opposition:** None known

## PURPOSE

*The purpose of this bill is to make the definition of a victim in the context of restitution orders in juvenile delinquency matters the same as the definition of a victim in adult criminal sentencing.*

*Existing provisions in the California Constitution* state that all crime victims have the right to seek and secure restitution from the perpetrators of these crimes. Restitution must be ordered in every case without exception. Where a defendant has been ordered to pay restitution, all money, or property collected from the defendant must be first applied to satisfy restitution orders. (Cal. Const. Art. 1 § 28, subd. (b)(13)(A)-(C).)

*Existing law* provides for restitution orders in criminal convictions – enforceable as a civil judgment – to ensure that a victim of a crime who incurs any economic loss shall receive restitution directly from any defendant convicted of that crime. If a restitution order is made, the defendant has the right to a hearing before the court to dispute the determination of the amount of the order. A restitution order may be modified upon motion of the district attorney, the victim or victims, or the defendant. (Pen. Code § 1202.4, subs. (f) and (i).)

*Existing law* provides that a restitution order shall be prepared by the court and identify each victim and each loss. (Pen. Code § 1202.4, subd. (f)(3).)

*Existing law* generally provides for victim restitution and a victim restitution fine from minors found to have committed a crime by the juvenile court. Juvenile court restitution is largely

parallel to or consistent with restitution law applicable to adult criminal cases. (Welf. and Inst. Code § 730.6.)

*Existing law* comprehensively defines a victim for purposes of adult criminal sentencing. The definition includes the following:

- The immediate surviving family of the actual victim.
- A corporation, other specified commercial or legal entity, a government or governmental subdivision, agency, or instrumentality, when such an entity is a direct victim of a crime.
- A person who has sustained economic loss from a crime and who, at the time of the crime, had the status or identity of one of the following:
  - The parent, grandparent, sibling, spouse, child, or grandchild of the victim One who living in the household of the victim;
  - One who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a familial relationship;
  - A more broadly defined family member of the victim who witnessed the crime, such as the victim’s fiancé or fiancée;
  - The primary caretaker of a minor victim;
  - A person eligible to receive assistance from the Restitution Fund;
  - A governmental entity that is responsible for repairing, replacing, or restoring public or private owned property that has been defaced with graffiti or other inscribed material, as specified. (Pen. Code § 1202.4, subd. (k).)

*Existing law* defines a victim for purposes of restitution in a juvenile case to include:

- The immediate surviving family of the actual victim;
- A governmental entity that is responsible for repairing, replacing, or restoring public or private owned property that has been defaced with graffiti or other inscribed material, as specified. (Welf. and Inst. Code § 730.6, subd. (j).)

*Existing decisional law* provides that a juvenile court has the authority to issue a broad restitution order, consistent with the rehabilitative purposes of the juvenile court. (*In re Alexander A.* (2011) 192 Cal.App.4<sup>th</sup> 847, 854-855.)

*Existing provisions of the California Constitution* define a victim as “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 term ‘victim’ also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated.” (Cal. Const., art. I, § 28, subd. (e), italics added.)

*Existing decisional law* provides that a juvenile court restitution orders must comply with the broad definition of a victim in the California Constitution. (*In re Scott H.* (2013) 221 Cal.App.4<sup>th</sup> 515, 522.)

*This bill* defines a victim for purposes of restitution in juvenile delinquency matters to be the same as the definition of a victim for purposes of restitution orders in adult criminal sentencing.

## RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author and sponsor:

Currently, [the juvenile court restitution statute does not include a direct victim's] immediate family members are not entitled to restitution for . . . crime-related expenses because they do not fall within the definition of a victim in Welfare and Institutions Code Section 730.6(j).) Because that section does not mirror the definition of a victim in Penal Code Section 1202.4 (f), the Los Angeles County District Attorney has had to rely on the appellate courts' interpretation of the statute to obtain restitution orders on behalf of victims in juvenile court cases.

The court in *In re Scott H.* (2013) 221 Cal.App.4<sup>th</sup> 515 considered whether the family members of the victim of a lewd conduct offense committed by a juvenile offender were entitled to restitution for mental health counseling fees. The juvenile court ordered restitution for the therapy, but the juvenile court order was reversed by the Court of Appeal because the family members were not specifically defined as victims in the juvenile court restitution statute. The California Supreme Court vacated the decision of the Court of Appeal and directed the court to reconsider its decision in light of [the expansive definition of a victim] in the California Constitution. Had the Welfare and Institutions Code mirrored the Penal Code restitution provisions, the juvenile court restitution order would have stood without the need for a Supreme Court decision.

### 2. The California Constitution and Appellate Decisions Expansively Define the term "Victim" in the Context of Restitution Orders in Juvenile Delinquency Cases

As noted in the author's statement, appellate decisions have held that juvenile delinquency restitution orders must comply with the provisions of the California Constitution that broadly define a crime victim. (*In re Scott H.* (2013) 221 Cal.App.4<sup>th</sup> 515, 522.) Further, as the major goal or purpose of the juvenile court is rehabilitation of a delinquent minor, restitution orders need not exactly match the economic losses caused by the minor's conduct. (*In re Alexander A.* (2011) 192 Cal.App.4<sup>th</sup> 847, 854-855.)

In considering other bills, committee members have expressed concern about the ability of minors to pay large restitution orders. The Constitution requires full restitution to victims of delinquent acts. The court can decline to order a juvenile to pay full restitution if it finds "compelling and extraordinary reasons" to do so. However, "a minor's inability to pay [is] not a compelling or extraordinary reason not to impose a restitution order."

Arguably, the Constitution requires a juvenile court to order a delinquent minor to pay restitution to essentially the same extent as required by criminal sentencing provisions. If that is correct, making the juvenile restitution statute consistent with adult the relevant adult statute will provide clarity for juvenile court judges and will avoid the expenditure of appellate court resources and time for challenges by prosecutors of juvenile court restitution orders.

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