



# Victims' Rights Manual

*2008 Update*

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# Victims' Rights Manual

*2008 Update*



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*Chief Executive Officer*

*Funded by*



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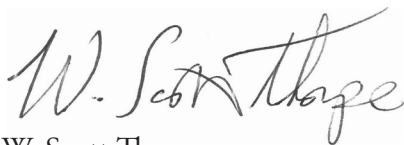
## Preface & Acknowledgments

One of the hallmarks of our criminal justice system is the panoply of rights enshrined in our Constitution that safeguard those accused of crime. Prosecutors, whose highest good is to seek justice, recognize and respect those rights. But we also recognize another constellation of rights equally important to the work of justice—those afforded to victims of crime. The law that gives voice to victims' rights is found in California's Constitution, across a host of statutes, and in the decisions of the appellate courts. Prosecutors and their law enforcement collaborators have a profound duty to ensure the effective realization of these rights. The purpose of this *Victims' Rights Manual*, an update of the manual first published in 1998 (and later revised in 1999) in partnership with the Institute for the Advancement of Justice and the then State Board of Control, is to assist them in that mission. The manual is a thorough and comprehensive compilation of victims' rights law combined with explanatory notes and practical recommendations. Our hope is that it will be used vigorously throughout the state on behalf of all crime victims.

We especially thank Catherine Stephenson (San Diego County Deputy District Attorney) who spearheaded this update. In addition, appreciation is extended to the following for their contributions: Deborah Bain (Director of the Attorney General's Office of Victims Services), Jerry Coleman (San Francisco County Assistant District Attorney), Joanne Evoy (San Diego County Deputy District Attorney), Bill Hanley (Chief District Attorney Investigator, San Luis Obispo County), Suzanne Hunter (CDAA Training Consultant), Kerry Martin (Victim/Witness Program Director, Sacramento County District Attorney's Office), Karyn Sinunu (Santa Clara County Assistant District Attorney), Thomas Toller (CDAA Publications Director), William Woods (Los Angeles County Deputy District Attorney). Their hard work and dedication made the production of this manual possible.

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Lastly, thanks to our staff for providing the editing and layout: Laura Bell, Publications Production Coordinator; Lauren King, Editor; and Kathy M. Sheehan, Editor.



W. Scott Thorpe  
Chief Executive Officer

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# Chapter 1

## Victims' Constitutional and Statutory Rights

### I. California Constitution, Article I, § 28(a) & (b)—“Victims’ Bill of Rights”; Restitution

(a) **Legislative findings and declaration; rights of victims.** The People of the State of California find and declare that the enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights, is a matter of grave statewide concern.

The rights of victims pervade the criminal justice system, encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

To accomplish these goals, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people’s lives.

(b) **Restitution.** It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

*(Adopted by Initiative (Proposition 8) at the June 8, 1982, Primary Election.)*

### II. Penal Code § 679—Legislative Declarations and Intent

In recognition of the civil and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of this citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the Legislature declares its intent, in the enactment of this title, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity. It is the further intent that the rights enumerated in Section 679.02 relating to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants. It is

the intent of the Legislature to add to Section 679.02 references to new rights as or as soon after they are created. The failure to enumerate in that section a right which is enumerated elsewhere in the law shall not be deemed to diminish the importance or enforceability of that right.

*(Added by Stats.1986, c. 1427, § 1.)*

### **III. Penal Code § 679.01—Definitions**

As used in this title, the following definitions shall control:

- (a) “Crime” means an act committed in this state which, if committed by a competent adult, would constitute a misdemeanor or felony.
- (b) “Victim” means a person against whom a crime has been committed.
- (c) “Witness” means any person who has been or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced.

*(Added by Stats.1986, c. 1427, § 1.)*

### **IV. Penal Code § 679.02—Rights of Victims and Witnesses**

(a) The following are hereby established as the statutory rights of victims and witnesses of crimes:

- (1) To be notified as soon as feasible that a court proceeding to which he or she has been subpoenaed as a witness will not proceed as scheduled, provided the prosecuting attorney determines that the witness’ attendance is not required.
- (2) Upon request of the victim or a witness, to be informed by the prosecuting attorney of the final disposition of the case, as provided by Section 11116.10.
- (3) For the victim, the victim’s parents or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to be notified of all sentencing proceedings, and of the right to appear, to reasonably express his or her views, have those views preserved by audio or video means as provided in Section 1191.16, and to have the court consider his or her statements, as provided by Sections 1191.1 and 1191.15.
- (4) For the victim, the victim’s parents or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to be notified of all juvenile disposition hearings in which the alleged act would have been a felony if committed by an adult, and of the right to attend and to express his or her views, as provided by Section 656.2 of the Welfare and Institutions Code.



(5) Upon request by the victim or the next of kin of the victim if the victim has died, to be notified of any parole eligibility hearing and of the right to appear, either personally as provided by Section 3043 of this code, or by other means as provided by Sections 3043.2 and 3043.25 of this code, to reasonably express his or her views, and to have his or her statements considered, as provided by Section 3043 of this code and by Section 1767 of the Welfare and Institutions Code.

(6) Upon request by the victim or the next of kin of the victim if the crime was a homicide, to be notified of an inmate's placement in a reentry or work furlough program, or notified of the inmate's escape as provided by Section 11155.

(7) To be notified that he or she may be entitled to witness fees and mileage, as provided by Section 1329.1.

(8) For the victim, to be provided with information concerning the victim's right to civil recovery and the opportunity to be compensated from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code and Section 1191.2 of this code.

(9) To the expeditious return of his or her property which has allegedly been stolen or embezzled, when it is no longer needed as evidence, as provided by Chapter 12 (commencing with Section 1407) and Chapter 13 (commencing with Section 1417) of Title 10 of Part 2.

(10) To an expeditious disposition of the criminal action.

(11) To be notified, if applicable, in accordance with Sections 679.03 and 3058.8 if the defendant is to be placed on parole.

(12) To be notified by the district attorney's office where the case involves a violent felony, as defined in subdivision (c) of Section 667.5, or in the event of a homicide, the victim's next of kin, of a pending pretrial disposition before a change of plea is entered before a judge.

(A) A victim of any felony may request to be notified, by the district attorney's office, of a pretrial disposition.

(B) If it is not possible to notify the victim of the pretrial disposition before the change of plea is entered, the district attorney's office or the county probation department shall notify the victim as soon as possible.

(C) The victim may be notified by any reasonable means available.

Nothing in this paragraph is intended to affect the right of the people and the defendant to an expeditious disposition as provided in Section 1050.

(13) For the victim, to be notified by the district attorney's office of the right to request, upon a form provided by the district attorney's office, and receive a notice pursuant to paragraph

(14), if the defendant is convicted of any of the following offenses:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289, in violation of Section 220.

(B) A violation of Section 207 or 209 committed with the intent to commit a violation of Section 261, 262, 286, 288, 288a, or 289.

(C) Rape, in violation of Section 261.

(D) Oral copulation, in violation of Section 288a.

(E) Sodomy, in violation of Section 276.

(F) A violation of Section 288.

(G) A violation of Section 289.

(14) When a victim has requested notification pursuant to paragraph (13), the sheriff shall inform the victim that the person who was convicted of the offense has been ordered to be placed on probation, and give the victim notice of the proposed date upon which the person will be released from the custody of the sheriff.

(b) The rights set forth in subdivision (a) shall be set forth in the information and educational materials prepared pursuant to Section 13897.1. The information and educational materials shall be distributed to local law enforcement agencies and local victims' programs by the Victims' Legal Resource Center established pursuant to Chapter 11 (commencing with Section 13897) of Title 6 of Part 4.

(c) Local law enforcement agencies shall make available copies of the materials described in subdivision (b) to victims and witnesses.

(d) Nothing in this section is intended to affect the rights and services provided to victims and witnesses by the local assistance centers for victims and witnesses.

*(Added by Stats.1986, c. 1427, § 1; Amended by Stats.1988, c. 33, § 1; Stats.1988, c. 137, § 1; Stats.1995, c. 411 (S.B.221), § 2; Stats.1997, c. 902 (A.B.152), § 1; Stats.1998, c. 928 (A.B.1927), § 2.)*

## Chapter 2

### Victims' Rights in Absence of Criminal Charges

#### I. Penal Code § 679.02(a)(8)—Rights of Victims and Witnesses

(a) The following are hereby established as the statutory rights of victims and witnesses of crimes:

(8) For the victim, to be provided with information concerning the victim's right to civil recovery and the opportunity to be compensated from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code and Section 1191.2 of this code.

Government Code section 13962(b) states that "It shall be the duty of every local law enforcement agency to inform crime victims of the provisions of this chapter, of the existence of victim centers, and in counties where no victim center exists, to provide application forms to victims who desire to seek compensation pursuant to this chapter."

There is no statute that dictates who has a duty to inform victims of the right to civil recovery. The prosecutor has the right to inform the victim of a right to a civil recovery. However, if the case is never sent to the prosecutor's office for review, then a crime victim may never receive any information regarding possible civil remedies.

#### II. Penal Code § 1001.64—Written Agreement to Forego Prosecution; Conditions

The district attorney may enter into a written agreement with the person to forego prosecution on the bad check for a period to be determined by the district attorney, not to exceed six months, pending all of the following:

(a) Completion of a class or classes conducted by the district attorney or private entity under contract with the district attorney.

(b) Full restitution being made to the victim of the bad check.

(c) Full payment of the collection fee, if any, specified in Section 1001.65.

*(Added by Stats.1985, c. 1059, § 1.)*

### III. Penal Code § 14150—Findings and Declarations

The Legislature hereby finds and declares:

(a) Over the last 10 years, criminal case filings, including misdemeanor filings, have been increasing faster than any other type of filing in California's courts. Between 1981 and 1991, nontraffic misdemeanor and infraction filings in municipal and justice courts increased by 35 percent.

(b) These misdemeanor cases add to the workload that is now straining the California court system. In addition, many of these cases are ill-suited to complete resolution through the criminal justice system because they involve underlying disputes which may result in continuing conflict and criminal conduct within the community.

(c) Many victims of misdemeanor criminal conduct feel excluded from the criminal justice process. Although they were the direct victims of the offenders' criminal conduct, the process does not currently provide them with a direct role in holding the offender accountable for this conduct.

(d) Community conflict resolution programs utilizing alternative dispute resolution (ADR) processes such as mediation and arbitration have been effectively used in California and elsewhere to resolve conflicts involving conduct that could be charged as a misdemeanor. These programs can assist in reducing the number of cases burdening the court system. By utilizing ADR processes, these programs also provide an opportunity for direct participation by the victims of the conduct, thereby increasing victims' satisfaction with the criminal justice process. In addition, by bringing the parties together, these programs may reduce conflict within the community by facilitating the settlement of disputes that are causing repeated misdemeanor criminal conduct and may increase compliance with restitution agreements by encouraging the offender to accept personal responsibility.

(e) As of the effective date of this section, the San Francisco and Contra Costa district attorney offices refer between 1,000 and 1,500 cases per year involving conduct which could be charged as a misdemeanor to California Community Dispute Services, which provides ADR services. Between 70 to 75 percent of these cases are successfully resolved through the ADR process, and the rate of compliance with the agreements reached is between 80 and 93 percent.

(f) The State of New York has developed a substantial statewide alternative dispute resolution program in which 65 percent of the cases using the services are of a criminal nature. These cases are referred to arbitration, conciliation, and mediation. Of the criminal misdemeanor cases that were mediated, 82 percent reached an agreement through the mediation process.

(g) It is in the public interest for community dispute resolution programs to be established to provide ADR services in cases involving conduct which could be charged as a misdemeanor and for district attorneys and courts to be authorized to refer cases to these programs.

*(Added by Stats.1992, c. 696 (A.B.1344), § 91, eff. Sept. 15, 1992.)*

#### IV. Penal Code § 14153—Consent of Parties Required

Both the alleged victim and the person alleged to have committed the conduct shall knowingly and voluntarily consent to participate in the ADR process conducted by the community conflict resolution program.

*(Added by Stats.1992, c. 696 (A.B.1344), § 91, eff. Sept. 15, 1992.)*

#### V. Threats and Duty to Warn—Sample *Tarasoff* Policy

(From the Santa Clara County District Attorney's Office Policy and Procedure Manual)

DEPT. 202

Revised June 1, 1987 (Effective Immediately)

Threats: Duty to Warn

Index 303.172

The California Supreme Court, in *Tarasoff v. Regents of the University of California* (1976) 17 Cal.3d 425, established the proposition that public officials may be liable to a victim where they hear a mental patient express death threats about a victim, and the officials neither get the patient committed nor warn the victim. If threats from a mentally ill person (or, by analogy, the participants in our criminal cases) come to our attention, we should warn the victim of such threats.

All personnel of the District Attorney's office should take the following steps when it comes to their attention because of remarks made in this office or in correspondence directed to this office that some individual is threatening death or bodily injury to another person who is unaware of the existence and nature of the threat:

- (1) Immediately make a note of the name, address, and, if possible, the telephone number of the party making the threat and the potential victim.
- (2) Make a brief note as to the nature of the threat and the relationship of the parties.
- (3) Personally deliver the above in writing to the Chief Inspector immediately.
- (4) The Chief Inspector will be responsible to see that the potential victim is promptly notified of such threat.

Please note that the above procedure has no application where the person threatened relates the threat to this office. It only applies where the victim is unaware that the threat has been made.

## VI. Civil Remedies—CAL 1976-40

### FORMAL OPINION NO. 1976-40

**ISSUE:** May a prosecutor ethically inform a crime victim of possible civil remedies?

**DIGEST:** A prosecutor may properly inform a crime victim of civil remedies available against a criminal.

#### AUTHORITIES

**INTERPRETED:** Rule 2-105(B) of the Rules of Professional Conduct of the State Bar.

#### DISCUSSION:

The Committee has been asked whether a prosecutor may properly inform a crime victim who has suffered a property loss that a small claims court action could be brought against the criminal (or his parents, if he is a juvenile) in an effort to recover the loss. The inquirer indicates that the convicted criminal has not been ordered to make restitution of the loss as a condition of the probation.

It is the Committee's opinion that information regarding civil remedies properly may be provided to the crime victim by the prosecutor in response to the victim's inquiry. Further, the prosecutor may volunteer the information, absent improper motives.

Canon 2 of the American Bar Association Code of Professional Responsibility provides some guidance. Canon 2 states, "A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available." Ethical Consideration 2-3 of the American Bar Association Code of Professional Responsibility expands upon Canon 2 as follows:

"The giving of advice that one should take legal action could well be a fulfillment of the duty of the legal profession to assist laymen in recognizing legal problems."

The prosecutor has an obligation to answer reasonable questions of members of the public. Unquestionably, a crime victim has an interest in learning what legal remedies are available. The loss of property is a legal problem warranting resolution. Failure to mention the availability of a possible civil remedy could mislead the victim. Nonetheless, volunteering the information raises questions of relation and motive. Rule 2-105(B) of the Rules of Professional Conduct states:

"A member of the State Bar shall not advise the commencement, prosecution or defense of a case unless he has been consulted in reference thereto, except when his relation to a party or to the subject matter is such as to make it proper for him to do so."

As the prosecutor has not been consulted about the civil action, the volunteering of the information would only be proper if his relation to the crime victim was "such as to make it proper for him to do so." We believe such a relation exists under these circumstances. The

prosecutor is a public servant who stands to gain nothing personally by informing a member of the public of his civil remedies.

It is improper for the prosecutor to volunteer the information, however, when he is motivated by a desire for publicity or a desire to harass or injure the criminal. Thus, American Bar Association Code of Professional Responsibility, Ethical Consideration 2–3 further provides:

“Whether a lawyer acts properly in volunteering advice to a layman to seek legal services depends upon the circumstances... the advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. Hence, the advice is improper if motivated by a desire to secure personal publicity, or cause litigation to be brought merely to harass or injure another.”

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of The State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Governors, any persons or tribunals charged with regulatory responsibilities, or any member of the State Bar.

A district attorneys office may have a policy prohibiting employees of the office from providing referrals to specific private attorneys and may only allow referrals to a local bar association. This policy prevents the appearance of public attorneys possibly benefiting from their association with a crime victim (referral fees, etc.).

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## Chapter 3

### Victims' Rights Pretrial or Before the Preliminary Examination

Once the criminal case has been filed, the prosecution team and the court should be vigilant about protecting the rights of the victims. Many of these rights have to do with the victims' privacy and safety concerns.

The period between the filing of the case and the felony preliminary hearing can be very confusing and unsettling for victims. They may be new to the criminal justice system and unsure what to expect. Their expectations are shaped largely by movies and television. It is beneficial to invest a few minutes of time in an explanation of the criminal justice process and the nature of the up-coming hearings.

#### I. Government Code § 6254(f)—Public Records; Exemption of Particular Records

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provisions of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266(a), 266(b), 266(c), 266(e), 266(f), 266(j), 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006 statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9 or 647.6 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this subdivision may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266(a), 266(b), 266(c), 266(e), 266(f), 266(j), 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006 statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9 or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

*(Added by Stats.1981, c. 684, p. 2484, § 1.5, eff. Sept. 23, 1981, operative Jan. 1, 1982. Amended by Stats.1982, c. 83, p. 242, § 1, eff. March 1, 1982; Stats.1982, c. 1492, p. 5778, § 2; Stats.1982, c. 1594, p. 6299, § 2, eff. Sept. 30, 1982; Stats.1983, c. 200, § 1, eff. July 12, 1983; Stats.1983, c. 621, § 1; Stats.1983, c. 955, § 1; Stats.1983, c. 1315, § 1; Stats.1984, c. 1516, § 1, eff. Sept. 28, 1984; Stats.1985, c. 103, § 1; Stats.1985, c. 1218, § 1; Stats.1986, c. 185, § 2; Stats.1987, c. 634, § 1, eff. Sept. 14, 1987; Stats.1987, c. 635, § 1; Stats.1988, c. 870, § 1; Stats.1988, c. 1371, § 2; Stats.1989, c. 191, § 1; Stats.1990, c. 1106 (S.B.2106), § 2; Stats.1991, c. 278 (A.B.99), § 1.2, eff. July 30, 1991; Stats.1991, c. 607 (S.B.98), § 4; Stats.1992, c. 3 (A.B.1681), § 1, eff. Feb. 10, 1992; Stats.1992, c. 72 (A.B.1525), § 2, eff. May 28, 1992; Stats.1992, c. 1128 (A.B.1672), § 2, operative July 1, 1993; Stats.1993, c. 606 (A.B.166), § 1, eff. Oct. 1, 1993; Stats.1993, c. 610 (A.B.6), § 1, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 1, eff. Oct. 1, 1993; Stats.1993, c. 1265 (S.B.798), § 14; Stats.1994, c. 82 (A.B.2547), § 1; Stats.1994, c. 1263 (A.B.1328), § 1.5; Stats.1995, c. 438 (A.B.985), § 1; Stats.1995, c. 777 (A.B.958), § 2; Stats.1995, c. 778 (S.B.1059), § 1.5; Stats.1995, c. 778 (S.B.1059), § 1.5, operative July 1, 1996; Stats.1996, c. 1075 (S.B.1444), § 11; Stats.1997, c. 623 (A.B.1126), § 1; Stats.1998, c. 485 (A.B.2803), § 83; Stats.1998, c. 13 (A.B.487), § 1; Stats.1998, c. 110 (A.B.1795), § 1; Stats.2000, c. 184 (A.B.1349), § 1; Stats.2001, c. 159 (S.B.662), § 105; Stats.2002, c. 175 (S.B.1643), § 1; Stats.2003, c. 230 (A.B.1762), § 1, eff. Aug. 11, 2003; Stats.2004, c. 8 (A.B.1209), § 1, eff. Jan. 22, 2004; Stats.2004, c. 183 (A.B.3082), § 134; Stats.2004, c. 228 (S.B.1103), § 2, eff. Aug. 16, 2004; Stats.2004, c. 882 (A.B.2445), § 1; Stats.2004, c. 937 (A.B.1933), § 2.5; Stats.2005, c. 22 (S.B.1108), § 71; Stats.2005, c. 476 (A.B.1495), § 1, eff. Oct. 4, 2005; Stats.2005, c. 670 (S.B.922), § 1.5, eff. Oct. 7, 2005; Stats.2006, c. 538 (S.B.1852), § 232; Stats.2007, c. 577 (A.B.1750), § 1, eff. Oct. 13, 2007; Stats.2007, c. 578 (S.B.449), § 1.5.)*

## **II. Penal Code § 136.2—Orders by Court**

(a) Except as provided in subdivision (c), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

- (1) Any order issued pursuant to Section 6320 of the Family Code.
- (2) An order that a defendant shall not violate any provision of Section 136.1.
- (3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.
- (4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.
- (5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7)(A) Any order protecting victims of violent crime from all contact, by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts or violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B)(i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides a follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to subdivision (g) of Section 12021.

(C) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1,

or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c)(1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(d)(1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(e)(1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

*(Added by Stats.1980, c. 686, p. 2077, § 2.2. Amended by Stats.1988, c. 182, § 1, eff. June 15, 1988; Stats.1989, c. 1378, § 1; Stats.1990, c. 935 (A.B.3593), § 6; Stats.1996, c. 904 (A.B.2224), § 2; Stats.1997, c. 48 (A.B.340), § 1; Stats.1997, c. 847 (A.B.45), § 1.5; Stats.1998, c. 187 (A.B.1531), § 2; Stats.1999, c. 83 (S.B.966), § 136; Stats.1999, c. 661 (A.B.825), § 9; Stats.2001, c. 698 (A.B.160), § 4; Stats.2003, c. 498 (S.B.226), § 6; Stats.2005, c. 132 (A.B.112), § 1; Stats.2005, c. 465 (A.B.118), § 2; Stats.2005, c. 631 (S.B.720), § 3; Stats.2005, c. 702 (A.B.1288), § 1.7.)*

### **III. Penal Code § 679.02(a)(2) & (9)—Rights of Victims and Witnesses**

(a) The following are hereby established as the statutory rights of victims and witnesses of crimes:

(2) Upon request of the victim or a witness, to be informed by the prosecuting attorney of the final disposition of the case, as provided by Section 11116.10.\*

(9) To the expeditious return of his or her property which has allegedly been stolen or embezzled, when it is no longer needed as evidence, as provided by Chapter 12 (commencing with Section 1407) and Chapter 13 (commencing with Section 1417) of Title 10 of Part 2.

*(Added by Stats.1986, c. 1427, § 1. Amended by Stats.1988, c. 33, § 1; Stats.1988, c. 137, § 1; Stats.1995, c. 411 (S.B.221), § 2; Stats.1997, c. 902 (A.B.152), § 1; Stats.1998, c. 928 (A.B.1927), § 2.)*

\* Penal Code section 11116.10 states that upon request of the victim or witness, the prosecutor must, within 60 days of the final disposition of the case, furnish a letter to the victim or witness informing them of that disposition.

### **IV. Penal Code § 841.5—Disclosure of Address or Telephone Number of Victim or Witness**

(a) Except as otherwise required by Chapter 10 (commencing with Section 1054) of Title 7, or by the United States Constitution or the California Constitution, no law enforcement officer or employee of a law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim or witness in the alleged offense.

(b) Nothing in this section shall impair or interfere with the right of a defendant to obtain information necessary for the preparation of his or her defense through the discovery process.

(c) Nothing in this section shall impair or interfere with the right of an attorney to obtain the address or telephone number of any person who is a victim of, or a witness to, an alleged offense where a client of that attorney has been arrested for, or may be a defendant in, a criminal action related to the alleged offense.

(d) Nothing in this section shall preclude a law enforcement agency from releasing the entire contents of an accident report as required by Section 20012 of the Vehicle Code.

*(Added by Stats.1992, c. 3 (A.B.1681), § 2, eff. Feb. 11, 1992.)*

**V. Penal Code § 1054.2—Disclosure of Victim’s or Witness’s Address or Telephone Number Prohibited**

(a)(1) Except as provided in paragraph (2), no attorney may disclose or permit to be disclosed to a defendant, members of the defendant’s family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section 1054.1, unless specifically permitted to do so by the court after a hearing and a showing of good cause.

(2) Notwithstanding paragraph (1), an attorney may disclose or permit to be disclosed the address or telephone number of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant’s case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided by this section, is prohibited.

(3) Willful violation of this subdivision by an attorney, persons employed by the attorney, or persons appointed by the court is a misdemeanor.

(b) If the defendant is acting as his or her own attorney, the court shall endeavor to protect the address and telephone number of a victim or witness by providing for contact only through a private investigator licensed by the Department of Consumer Affairs and appointed by the court or by imposing other reasonable restrictions, absent a showing of good cause as determined by the court.

*(Added by Initiative Measure (Prop. 115), approved June 5, 1990, eff. June 6, 1990. Amended by Stats.1995, c. 184 (A.B.1226), § 1; Stats.1997, c. 498 (A.B.207), § 2; Stats.1998, c. 485 (A.B.2803), § 133.)*

**VI. Penal Code § 1191.25—Notice to Victim of Crime Committed by In-Custody Informant Regarding Intention to Reduce Informant’s Sentence in Exchange for Testimony in Another Case**

The prosecution shall make a good faith attempt to notify any victim of a crime which was committed by, or is alleged to have been committed by, an in-custody informant, as defined in subdivision (a) of Section 1127a, within a reasonable time before the in-custody informant is called to testify. The notice shall include information concerning the prosecution’s intention to offer the in-custody informant a modification or reduction in sentence or dismissal of the case or early parole in exchange for the in-custody informant’s testimony in another case. The notification or attempt to notify the victim shall be made prior to the commencement of the trial in which the in-custody informant is to testify where the intention to call him or her is known at that time, but in no case shall the notice be made later than the time the in-custody informant is called to the stand.

Nothing contained in this section is intended to affect the right of the people and the defendant to an expeditious disposition of a criminal proceeding, as provided in Section 1050. The victim of any case alleged to have been committed by the in-custody informant may



exercise his or her right to appear at the sentencing of the in-custody informant pursuant to Section 1191.1, but the victim shall not have a right to intervene in the trial in which the in-custody informant is called to testify.

*(Added by Stats.1989, c. 901, § 2.)*

**VII. Penal Code § 1270.1—Persons Arrested for Violent Felonies; Hearing Prior to Possible Release on Bail or on Own Recognizance; Reasons for Imposing Bail in Amount Greater or Less Than Bail Schedule**

(a) Before any person who is arrested for any of the following crimes may be released on bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, or may be released on his or her own recognizance, a hearing shall be held in open court before the magistrate or judge:

(1) A serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, but not including a violation of subdivision (a) of Section 460 (residential burglary).

(2) A violation of Section 136.1 where punishment is imposed pursuant to subdivision (c) of Section 136.1, 262, 273.5, 422 where the offense is punished as a felony, or 646.9.

(3) A violation of paragraph (1) of subdivision (e) of Section 243.

(4) A violation of Section 273.6 if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party.

(b) The prosecuting attorney and defense attorney shall be given a two court-day written notice and an opportunity to be heard on the matter. If the detained person does not have counsel, the court shall appoint counsel for purposes of this section only. The hearing required by this section shall be held within the time period prescribed in Section 825.

(c) At the hearing, the court shall consider evidence of past court appearances of the detained person, the maximum potential sentence that could be imposed, and the danger that may be posed to other persons if the detained person is released. In making the determination whether to release the detained person on his or her own recognizance, the court shall consider the potential danger to other persons, including threats that have been made by the detained person and any past acts of violence. The court shall also consider any evidence offered by the detained person regarding his or her ties to the community and his or her ability to post bond.

(d) If the judge or magistrate sets the bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, the judge or magistrate shall state the reasons for that decision and shall address the issue of threats made against the victim or witness, if they were made, in the record. This statement shall be included in the record.

*(Added by Stats.1988, c. 492, § 1. Amended by Stats.1993-94, 1st Ex.Sess., c. 58 (A.B.59), § 1; Stats.1995, c. 91 (S.B.975), § 130; Stats.1997, c. 557 (S.B.641), § 1; Stats.1999, c. 703 (A.B.1284), § 2; Stats.2003, c. 30 (A.B.1488), § 1.)*

**VIII. Penal Code § 1275—Setting, Reducing, or Denying Bail; Protection of Public; Seriousness of Offense Charged; Source of Bail**

(a) In setting, reducing, or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. The public safety shall be the primary consideration.

In considering the seriousness of the offense charged, the judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant.

(b) In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge or magistrate shall consider the following: (1) the alleged amounts of controlled substances involved in the commission of the offense, and (2) whether the defendant is currently released on bail for an alleged violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code.

(c) Before a court reduces bail below the amount established by the bail schedule approved for the county, in accordance with subdivisions (b) and (c) of Section 1269b, for a person charged with a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, the court shall make a finding of unusual circumstances and shall set forth those facts on the record. For purposes of this subdivision, “unusual circumstances” does not include the fact that the defendant has made all prior court appearances or has not committed any new offenses.

*(Added by Stats.1927, c. 737, p. 1387, § 1. Amended by Stats.1987, c. 644, § 2; Stats.1988, c. 272, § 1; Stats.1988, c. 547, § 2; Stats.1990, c. 117 (A.B.574), § 1; Stats.1997, c. 34 (A.B.728), § 1; Stats.1998, c. 726 (S.B.55), § 1.)*

**IX. Health & Safety Code § 1374.75—Victims of Domestic Violence; Enrollment, Coverage, or Rate Discrimination; Underwriting Coverage on Basis of Medical Condition**

(a) No health care service plan shall deny, refuse to enroll, refuse to renew, cancel, restrict, or otherwise terminate, exclude, or limit coverage, or charge a different rate for the same coverage, on the basis that the applicant or covered person is, has been, or may be a victim of domestic violence.

(b) Nothing in this section shall prevent a health care service plan from underwriting coverage on the basis of the medical condition of an individual so long as the consideration of the condition (1) does not take into account whether such an individual’s medical condition was caused by an act of domestic violence, (2) is the same with respect to an applicant or enrollee who is not the subject of domestic violence as with an applicant or enrollee who is the subject of domestic violence, and (3) does not violate any other act, regulation, or rule of law. The

fact that an individual is, has been, or may be the subject of domestic violence shall not be considered a medical condition.

(c) As used in this section, “domestic violence” means domestic violence, as defined in Section 6211 of the Family Code.

*(Added by Stats.1995, c. 603 (A.B.1973), § 1.)*

**X. Insurance Code § 10144.2—Victims of Domestic Violence; Health Care Service Plans; Enrollment, Coverage, or Rate Discrimination; Underwriting Coverage on Basis of Medical Condition**

(a) No disability insurer covering hospital, medical, or surgical expenses shall deny, refuse to insure, refuse to renew, cancel, restrict, or otherwise terminate, exclude, or limit coverage or charge a different rate for the same coverage, on the basis that the applicant or insured person is, has been, or may be a victim of domestic violence.

(b) Nothing in this section shall prevent a disability insurer covering hospital, medical, or surgical expenses from underwriting coverage on the basis of the medical condition of an individual so long as the consideration of the condition (1) does not take into account whether such an individual’s medical condition was caused by an act of domestic violence, (2) is the same with respect to an applicant or insured who is not the subject of domestic violence as with an applicant or insured who is the subject of domestic violence, and (3) does not violate any other act, regulation, or rule of law. The fact that an individual is, has been, or may be the subject of domestic violence shall not be considered a medical condition.

(c) As used in this section, “domestic violence” means domestic violence, as defined in Section 6211 of the Family Code.

*(Added by Stats.1995, c. 603 (A.B.1973), § 2.)*

**XI. Frequently Asked Questions**

**1. Is the victim of a crime entitled to get copies of the crime report?**

Generally yes. Government Code section 6254(f) requires law enforcement to provide witness names and addresses, as well as witness statements, to the victim unless disclosure of that information would endanger the safety of a witness or the successful completion of an investigation. Often the prosecutor may not want the victim to be aware of other witness statements while the case is ongoing. While this can be frustrating for victims, the goal is to protect the victim from later claims that he or she tailored his or her testimony to match that of other witnesses.

**2. Does the victim have a right to keep his or her name from being disclosed to the public?**

The law provides that certain information related to crimes be made public, including the victim’s name. However, victims of sexual assault, domestic violence, and stalking may request their names be withheld from public disclosure. Remember though that the

defense attorney and the defendant will be entitled to know the victim's name through the criminal discovery process.<sup>1</sup>

**3. Is the defense allowed to know the victim's address and telephone number?**

Except in unusual circumstances, the law requires that the defense attorney and those working for him or her be provided the names and addresses of all witnesses including the victim. A contact telephone number is also usually provided through the discovery process. However, the law forbids the defense attorney from giving that information to the defendant or the defendant's family.<sup>2</sup>

**4. Can the defendant bail out before he or she has been arraigned by the judge?**

In most cases, yes. However, if the defendant is arrested for a serious or violent felony or violation of a restraining order where the defendant made threats or went to the victim's house or workplace, then he cannot be released on bail until the court holds a hearing.<sup>3</sup>

**ENDNOTES**

1. Government Code § 6254(f)(2).
2. Penal Code § 1054.2.
3. Penal Code § 1270.1.

## Chapter 4

### Victims' Rights at Court Hearings

The prosecutor has more flexibility when calling witnesses at a preliminary hearing as opposed to a trial. At a preliminary hearing, the testimony of a witness may be presented through a police officer, and the witness need not be called at all. However, the prosecutor may evaluate the case, the importance of the witnesses' testimony, and the likelihood that the witness will be unavailable at trial and decide to call the witness to testify at the preliminary hearing. It is rarely productive to promise a witness at the outset that he or she will not be needed to testify at the preliminary hearing. He or she can be told that is an option, but the final decision will rest with the prosecutor.

In many cases, it is actually very helpful to have crime victims testify at the preliminary hearing. It is also true that the prospect of testifying is usually enough to make most victims very apprehensive. There are several things that can be done to ease that apprehension. First, the prosecutor or victim witness advocate can explain the purpose of a preliminary hearing—who will be there and what will happen. Second, a courtroom tour may make the victim more comfortable with the physical setting. Third, many victims are entitled to a support person during their testimony and they need to be informed of this right.

Witnesses with special needs—who that have physical disabilities or those who are very young—may require accommodation in the courtroom. The statutes below outline the authority for making those accommodations (e.g., frequent breaks, rearranging the physical space). The prosecutor should investigate the need for these accommodations and request them of the court early on.

The scheduling of witnesses is difficult to manage and requires good communication between the prosecution team and the witness. Determine ahead of time when there might be conflicts with the victim's schedule, and inform the victim promptly when a hearing is going to be continued.

In cases where it is anticipated the victim may be unavailable for the trial or may be less cooperative at the time of trial, the prosecutor should consider videotaping the preliminary hearing. That videotape may be used later at the trial if the witness is deemed unavailable.

The following statutes outline provisions relevant to victims' rights at court hearings.

#### **I. Penal Code § 861.5—Postponement to Accommodate Special Needs of Child Witness Age 10 or Younger**

Notwithstanding subdivision (a) of Section 861, the magistrate may postpone the preliminary examination for one court day in order to accommodate the special physical, mental, or emotional needs of a child witness who is 10 years of age or younger or a dependent person as defined in paragraph (3) of subdivision (f) of Section 288.

The magistrate shall admonish both the prosecution and defense against coaching the witness prior to the witness' next appearance in the preliminary examination.

*(Added by Stats.1085, c. 308, § 1. Amended by Stats.2004, c. 823 (A.B.20), § 12; Stats.2005, c. 279 (S.B.1107), § 7.)*

## II. Penal Code § 868—Rights of Victim’s Family After Exclusion of Public

The examination shall be open and public. However, upon the request of the defendant and a finding by the magistrate that exclusion of the public is necessary in order to protect the defendant’s right to a fair and impartial trial, the magistrate shall exclude from the examination every person except the clerk, court reporter and bailiff, the prosecutor and his or her counsel, the Attorney General, the district attorney of the county, the investigating officer, the officer having custody of a prisoner witness while the prisoner is testifying, the defendant and his or her counsel, the officer having the defendant in custody, and a person chosen by the prosecuting witness who is not himself or herself a witness but who is present to provide the prosecuting witness moral support, provided that the person so chosen shall not discuss prior to or during the preliminary examination the testimony of the prosecuting witness with any person, other than the prosecuting witness, who is a witness in the examination. Upon motion of the prosecution, members of the alleged victim’s family shall be entitled to be present and seated during the examination. The court shall grant the motion unless the magistrate finds that the exclusion is necessary to protect the defendant’s right to a fair and impartial trial, or unless information provided by the defendant or noticed by the court establishes that there is a reasonable likelihood that the attendance of members of the alleged victim’s family poses a risk of affecting the content of the testimony of the victim or any other witness. The court shall admonish members of the alleged victim’s family who are present and seated during the examination not to discuss any testimony with family members, witnesses, or the public. Nothing in this section shall affect the exclusion of witnesses as provided in Section 867 of the Penal Code.

For purposes of this section, members of the alleged victim’s family shall include the alleged victim’s spouse, parents, legal guardian, children, or siblings.

*Enacted 1872. Amended by Stats.1915, c. 468, p. 772, § 1; Stats.1957, c. 1242, p. 2549, § 1; Stats.1961, c. 220, p. 1241, § 1; Stats.1965, c. 239, p. 1222, § 1; Stats.1976, c. 1178, p. 5274, § 2; Stats.1982, c. 83, p. 245, § 3, eff. March 1, 1982, operative March 1, 1982; Stats.1986, c. 868, § 2; Stats.1988, c. 277, § 2.)*

## III. Penal Code § 868.7—Exclusion of Public; Prosecutor’s Request

(a) Notwithstanding any other provision of law, the magistrate may, upon motion of the prosecutor, close the examination in the manner described in Section 868 during the testimony of a witness:

(1) Who is a minor or a dependent person with a substantial cognitive impairment, as defined in paragraph (3) of subdivision (f) of Section 288, and is the complaining victim of a sex offense, where testimony before the general public would be likely to cause serious psychological harm to the witness and where no alternative procedures, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, are available to avoid the perceived harm.

(2) Whose life would be subject to a substantial risk in appearing before the general public, and where no alternative security measures, including, but not limited to, efforts to conceal his or her features or physical description, searches of members of the public attending the examination, or the temporary exclusion of other actual or potential witnesses, would be adequate to minimize the perceived threat.

(b) In any case where public access to the courtroom is restricted during the examination of a witness pursuant to this section, a transcript of the testimony of such witness shall be made available to the public as soon as is practicable.

This section shall become operative on January 1, 1987.

*(Added by Stats.1983, c. 284, § 2, operative Jan. 1, 1987. Amended by Stats.2004, c. 823 (A.B.20), § 13.)*

#### **IV. Penal Code § 872—Commitment When Showing Sufficient; Holding Over**

(a) If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe that the defendant is guilty, the magistrate shall make or indorse on the complaint an order, signed by him or her, to the following effect: It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe that the within named A.B. is guilty, I order that he or she be held to answer to the same.”

(b) Notwithstanding Section 1200 of the Evidence Code, the finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement officer or honorably retired law enforcement officer relating the statements of declarants made out of court offered for the truth of the matter asserted. An honorably retired law enforcement officer may only relate statements of declarants made out of court and offered for the truth of the matter asserted that were made when the honorably retired officer was an active law enforcement officer. Any law enforcement officer or honorably retired law enforcement officer testifying as to hearsay statements shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.

*(Enacted 1872. Amended by Code Am.1880, c. 60, p. 37, § 1; Stats.1905, c. 570, p. 762, § 1; Stats.1981, c. 1026, p. 3941, § 1; Initiative Measure (Prop. 115), approved June 5, 1990, eff. June 6, 1990; Stats.2005, c. 18 (A.B.557), § 1.)*

Note: The purpose of this statute, which permits hearsay testimony at a preliminary hearing is to protect victims from having to testify at both a preliminary hearing and a trial.<sup>1</sup>

**V. Penal Code § 1346—Videotape of Preliminary Examination Testimony if Victim of Certain Sex Offenses Is Age 15 or Less or Is Developmentally Disabled**

(a) When a defendant has been charged with a violation of Section 220, 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5, 289, or 647.6, where the victim either is a person 15 years of age or less or is developmentally disabled as a result of mental retardation, as specified in subdivision (a) of Section 4512 of the Welfare and Institutions Code, the people may apply for an order that the victim's testimony at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape.

(b) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(c) Upon timely receipt of the application, the magistrate shall order that the testimony of the victim given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

(d) If at the time of trial the court finds that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable within the meaning of Section 240 of the Evidence Code, the court may admit the videotape of the victim's testimony at the preliminary hearing as former testimony under Section 1291 of the Evidence Code.

(e) Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) Any videotape made pursuant to this section shall be made available to the prosecuting attorney, the defendant, and his or her attorney for viewing during ordinary business hours. Any videotape which is made available pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim.

(g) The tape shall be destroyed after five years have elapsed from the date of entry of judgment; provided, however, that if an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been rendered.

*(Added by Stats.1982, c. 98, § 1. Amended by Stats.1983, c. 942, § 1; Stats.1984, c. 1423, § 8, eff. Sept. 26, 1984; Stats.1985, c. 309, § 1; Stats.1986, c. 681, § 1; Stats.1989, c. 1402, § 13; Stats.1998, c. 97 (A.B.126), § 1.)*

**VI. Penal Code § 1346.1—Videotaping of Testimony at Preliminary Hearing for Cases Involving Rape or Corporal Injury of Spouse**

(a) When a defendant has been charged with a violation of Section 262 or subdivision (a) of Section 273.5, the people may apply for an order that the victim's testimony at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape.



(b) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(c) Upon timely receipt of the application, the magistrate shall order that the testimony of the victim given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

(d) If the victim's prior testimony given at the preliminary hearing is admissible pursuant to the Evidence Code, then the videotape recording of that testimony may be introduced as evidence at trial.

*(Added by Stats.1993, c. 344 (S.B.178), § 1.)*

**VII. Code of Civil Procedure § 1219—Imprisonment for Contempt Exemption; Sexual Assault and Domestic Violence Victims Who Refuse to Testify**

(a) Except as provided in subdivisions (b) and (c), when the contempt consists of the omission to perform an act which is yet in the power of the person to perform, he or she may be imprisoned until he or she has performed it, and in that case the act shall be specified in the warrant of commitment.

(b) Notwithstanding any other law, no court may imprison or otherwise confine or place in custody the victim of a sexual assault for contempt when the contempt consists of refusing to testify concerning that sexual assault.

(c) In a finding of contempt for a victim of domestic violence who refuses to testify, the court shall not incarcerate the victim, but may require the victim to attend up to 72 hours of a domestic violence program for victims or require the victim to perform up to 72 hours of appropriate community service, provided that in a subsequent finding of contempt for refusing to testify arising out of the same case, the court shall have the option of incarceration pursuant to subdivision (a).

(d) As used in this section:

(1) "Sexual assault" means any act made punishable by Section 261, 262, 264.1, 285, 286, 288, 288a, or 289 of the Penal Code.

(2) "Domestic violence" means "domestic violence" as defined in Section 6211 of the Family Code.

*(Enacted 1872. Amended by Stats.1980, c. 676, § 68; Stats.1984, c. 1644, § 2; Stats.1991, c. 866 (A.B.363), § 4; Stats.1992, c. 163 (A.B.2641), §58, operative Jan. 1, 1994; Stats.1993, c. 219 (A.B. 1500), § 69.7.)*

## VIII. Family Code § 6211—Domestic Violence

“Domestic violence” is abuse perpetrated against any of the following persons:

- (a) A spouse or former spouse.
- (b) A cohabitant or former cohabitant, as defined in Section 6209.
- (c) A person with whom the respondent is having or has had a dating or engagement relationship.
- (d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).
- (e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
- (f) Any other person related by consanguinity or affinity within the second degree.

*(Added by Stats.1993, c. 219 (A.B.1500) § 154.)*

## IX. Labor Code § 230(b), (c), (d)—Witness; Notice to Employer; Right to Time Off; Reinstatement and Reimbursement

(b) An employer may not discharge or in any manner discriminate or retaliate against an employee, including, but not limited to, an employee who is a victim of a crime, for taking time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

(c) An employer may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence or a victim of sexual assault for taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child.

(d)(1) As a condition of taking time off for a purpose set forth in subdivision (c), the employee shall give the employer reasonable advance notice of the employee’s intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence or sexual assault.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence or sexual assault, or other evidence from the court or prosecuting attorney that the employee has appeared in court.

(C) Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence or sexual assault.

(3) To the extent allowed by law, the employer shall maintain the confidentiality of any employee requesting leave under subdivision (c).

*(Added by Stats.1968, c. 1270, p. 2395, § 1. Amended by Stats.1978, c. 161, p. 392, § 1; Stats.1999, c. 340 (S.B.56), § 1; Stats.2000, c. 487 (A.B.2357), § 2; Stats.2002, c. 275 (A.B. 2195), § 1.)*

## **X. Penal Code § 679.02(a)(1), (7), (10)—Rights of Victims and Witnesses**

(a) The following are hereby established as the statutory rights of victims and witnesses of crimes:

(1) To be notified as soon as feasible that a court proceeding to which he or she has been subpoenaed as a witness will not proceed as scheduled, provided the prosecuting attorney determines that the witness' attendance is not required.

(7) To be notified that he or she may be entitled to witness fees and mileage as provided by Section 1329.1.

(10) To an expeditious disposition of the criminal action.

*(Added by Stats.1986, c. 1427, § 1. Amended by Stats.1988, c. 33, § 1; Stats.1988, c. 137, § 1; Stats.1995, c. 411 (S.B.221), § 2; Stats.1997, c. 902 (A.B.152), § 1; Stats. 1998, c. 928 (A.B.1927), § 2.)*

## **XI. Penal Code § 859.1—Exclusion of Public; Minor or Dependent Person Testimony Regarding Certain Offenses; Guidelines for Making Determination**

(a) In any criminal proceeding in which the defendant is charged with any offense specified in Section 868.8 on a minor under the age of 16 years, or a dependent person with a substantial cognitive impairment, as defined in paragraph (3) of subdivision (f) of Section 288, the court shall, upon motion of the prosecuting attorney, conduct a hearing to determine whether the testimony of, and testimony relating to, a minor or dependent person shall be closed to the public in order to protect the minor's or the dependent person's reputation.

(b) In making this determination, the court shall consider all of the following:

(1) The nature and seriousness of the offense.

- (2) The age of the minor, or the level of cognitive development of the dependent person.
- (3) The extent to which the size of the community would preclude the anonymity of the victim.
- (4) The likelihood of public opprobrium due to the status of the victim.
- (5) Whether there is an overriding public interest in having an open hearing.
- (6) Whether the prosecution has demonstrated a substantial probability that the identity of the witness would otherwise be disclosed to the public during that proceeding, and demonstrated a substantial probability that the disclosure of his or her identity would cause serious harm to the witness.
- (7) Whether the witness has disclosed information concerning the case to the public through press conferences, public meetings, or other means.
- (8) Other factors the court may deem necessary to protect the interests of justice.

*(Added by Stats.1990, c. 1276 (A.B.1325), § 1. Amended by Stats.2004, c. 823 (A.B.20), § 11.)*

## **XII. Penal Code § 868.5—Specified Sexual Assault, Domestic Violence, and Child Abduction Cases—Right of Prosecuting Witness to Have Persons of Own Choosing Present**

(a) Notwithstanding any other law, a prosecuting witness in a case involving a violation of Section 187, 203, 205, 207, 211, 215, 220, 240, 242, 243.4, 245, 261, 262, 273a, 273d, 273.5, 273.6, 278, 278.5, 286, 288, 288a, 288.5, 289, or 647.6, or former Section 277 or 647a, or a violation of subdivision (1) of Section 314, shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section

shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

*(Added by Stats.1978, c. 1310, p. 4298, § 1. Amended by Stats.1983, c. 347, § 1; Stats. 1984, c. 1423, § 4, eff. Sept. 26, 1984; Stats.1985, c. 467, § 1; Stats., c. 704, § 1; Stats. 1987, c. 1418, § 6.5; Stats.1988, c. 574, § 1; Stats.1988, c. 1398, § 2; Stats.1989, c. 503, § 1; Stats.1989, c. 1402, § 8.5; Stats. 1991, c. 336 (S.B.542), § 1; Stats.1993, c. 610 (A.B.6), § 14, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 15, eff. Oct. 1, 1993; Stats.1996, c. 988 (A.B.2936), § 10.)*

Note: When the court follows the procedures set out in Penal Code section 868.5, a support person accompanying a minor witness does not violate the defendant's confrontation right.<sup>2</sup>

The statute allows support for both adult and child witnesses.<sup>3</sup>

Although the statute does not expressly require the people to show a case-specific finding of need for a support person at the witness stand, such a showing is consistent with *Coy v. Iowa* (1988) 487 U.S. 1012.<sup>4</sup>

### **XIII. Penal Code § 868.6—Separate Room in Courthouse for Minors Under 16**

(a) It is the purpose of this section to provide a nonthreatening environment for minors involved in the judicial system in order to better enable them to speak freely and accurately of the experiences that are the subject of judicial inquiry.

(b) Each county is encouraged to provide a room, located within, or within a reasonable distance from, the courthouse, for the use of minors under the age of 16. Should any such room reach full occupancy, preference shall be given to minors under the age of 16 whose appearance has been subpoenaed by the court. The room may be multipurpose in character. The county may seek the assistance of civic groups in the furnishing of the room and the provision of volunteers to aid in its operation and maintenance. If a county newly constructs, substantially remodels or refurbishes any courthouse or facility used as a courthouse on or after January 1, 1988, that courthouse or facility shall contain the room described in this subdivision.

*(Added by Stats.1986, c. 976, § 1.)*

**XIV. Penal Code § 868.8—Special Precautions for Victims with Disabilities and Minor Victims in Proceedings Alleging Certain Offenses**

Notwithstanding any other provision of law, in any criminal proceeding in which the defendant is charged with a violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of Section 314, Section 647.6, or former Section 647a, or any crime that constitutes domestic violence defined in Section 13700, committed with or upon a person with a disability or a minor under the age of 11, the court shall take special precautions to provide for the comfort and support of the person with a disability or minor and to protect him or her from coercion, intimidation, or undue influence as a witness, including, but not limited to, any of the following:

(a) In the court's discretion, the witness may be allowed reasonable periods of relief from examination and cross-examination during which he or she may retire from the courtroom. The judge may also allow other witnesses in the proceeding to be examined when the person with a disability or child witness retires from the courtroom.

(b) Notwithstanding Section 68110 of the Government Code, in his or her discretion, the judge may remove his or her robe if the judge believes that this formal attire intimidates the person with a disability or the minor.

(c) In the court's discretion the judge, parties, witnesses, support persons, and court personnel may be relocated within the courtroom to facilitate a more comfortable and personal environment for the person with a disability or child witness.

(d) In the court's discretion, the taking of the testimony of the person with a disability or the minor may be limited to normal school hours if there is no good cause to take the testimony of the person with a disability or the minor during other hours.

(e) For the purposes of this section, the term "disability" is defined in subdivision (i) of Section 12926 of the Government Code.

*(Added by Stats.1985, c. 1174, § 2. Amended by Stats.1986, c. 273, § 1; Stats.1986, c. 1051, § 2; Stats.1987, c. 1418, § 7; Stats.1989, c. 1402, § 9; Stats.2001, c. 62 (A.B.77), § 1.)*

**XV. Penal Code § 1102.6—Presence of Victim at Criminal Proceeding; Exclusion of Victim**

The right of a victim of crime to be present during any criminal proceeding shall be secured as follows:

(a) Notwithstanding any other law, and except as specified in subdivision (d), a victim shall be entitled to be present and seated at all criminal proceedings where the defendant, the prosecuting attorney, and the general public are entitled to be present.

(b) A victim may be excluded from a criminal proceeding only if each of the following criteria are met:

(1) Any movant, including the defendant, who seeks to exclude the victim from any criminal proceeding, demonstrates that there is a substantial probability that overriding interests will be prejudiced by the presence of the victim. “Overriding interests” may include, but are not limited to, the following:

- (A) The defendant’s right to a fair trial.
- (B) The government’s interest in inhibiting the disclosure of sensitive information.
- (C) The protection of witnesses from harassment and physical harm.
- (D) The court’s interest in maintaining order.
- (E) The protection of sexual offense victims from the trauma and embarrassment of testifying.
- (F) Safeguarding the physical and psychological well being of a minor.
- (G) The preservation of trade secrets.

(2) The court considers reasonable alternatives to exclusion of the victim from the criminal proceeding.

(3) The exclusion of the victim from any criminal proceeding, or any limitation on his or her presence at any criminal proceeding, is narrowly tailored to serve the overriding interests identified by the movant.

(4) Following a hearing at which any victim who is to be excluded from a criminal proceeding is afforded an opportunity to be heard, the court makes specific factual findings that support the exclusion of the victim from, or any limitation on his or her presence at, the criminal proceeding.

(c) As used in this section, “victim” means (1) the alleged victim of the offense and one person of his or her choosing or however many more the court may allow under the particular circumstances surrounding the proceeding, (2) in the event that the victim is unable to attend the proceeding, two persons designated by the victim or however many more the court may allow under the particular circumstances surrounding the proceeding, or (3) if the victim is no longer living, two members of the victim’s immediate family or however many more the court may allow under the particular circumstances surrounding the proceeding.

(d) Nothing in this section shall prevent a court from excluding a victim from a criminal proceeding, pursuant to Section 777 of the Evidence Code, when the victim is subpoenaed as a witness. An order of exclusion shall be consistent with the objectives of paragraphs (1) to (4), inclusive, of subdivision (b) to allow the victim to be present, whenever possible, at all proceedings.

*(Added by Stats.1995, c. 332 (A.B.149) § 3.)*

**XVI. Penal Code § 1328.5—Peace Officer May State Business Address Instead of Residence**

Whenever any peace officer is a witness before any court or magistrate in any criminal action or proceeding in connection with a matter regarding an event or transaction which he has perceived or investigated in the course of his duties, where his testimony would become a matter of public record, and where he is required to state the place of his residence, he need not state the place of his residence, but in lieu thereof, he may state his business address.

*(Added by Stats.1971, c. 636, p. 1254, § 4.)*

**XVII. Penal Code § 1328.6—Criminalist or Other Examiner May State Business Address Instead of Residence**

Whenever any criminalist, questioned document examiner, latent print analyst, polygraph examiner employed by the Department of Justice, a police department, a sheriff's office, or a district attorney's office, an intelligence specialist or other technical specialist employed by the Department of Justice, a custodial officer employed in a local detention facility, or an employee of the county welfare department or the department which administers the county public social services program, is a witness before any court or magistrate in any criminal action or proceeding in connection with a matter regarding an event or transaction which he or she has perceived or investigated in the course of his or her official duties, where his or her testimony would become a matter of public record, and where he or she is required to state the place of his or her residence, he or she need not state the place of his or her residence, but in lieu thereof, he or she may state his or her business address, unless the court finds, after an in camera hearing, that the probative value of the witness's residential address outweighs the creation of substantial danger to the witness.

Nothing in this section shall abridge or limit a defendant's right to discover or investigate this information. This section is not intended to apply to confidential informants.

*(Added by Stats.1977, c. 858, p. 2597, § 1. Amended by Stats.1984, c. 535, § 1.)*

**XVIII. Penal Code § 1329—Expenses Advanced to Witness**

(a) When a person attends before a magistrate, grand jury, or court, as a witness in a criminal case, whether upon a subpoena or in pursuance of an undertaking, or voluntarily, the court, at its discretion, if the attendance of the witness be upon a trial may by an order upon its minutes, or in any criminal proceeding, by a written order, direct the county auditor to draw his warrant upon the county treasurer in favor of such witness for witness' fees at the rate of twelve dollars (\$12) for each day's actual attendance and for a reasonable sum to be specified in the order for the necessary expenses of such witness. The court, in its discretion, may make an allowance under this section, or under any appropriate section in Chapter 1 (commencing with Section 68070), Title 8, of the Government Code, other than Section 68093. The allowances are county charges.

(b) The court, in its discretion, may authorize payment to such a witness, if he is employed and if his salary is not paid by his employer during the time he is absent from his employment



because of being such a witness, of a sum equal to his gross salary for such time, but such sum shall not exceed eighteen dollars (\$18) per day. The sum is a county charge.

A person compensated under the provisions of this subdivision may not receive the payment of witness' fees as provided for in subdivision (a).

*(Enacted 1872. Amended by Code Am.1875-76, c. 154, p. 117, § 1; Stats.1931, c. 695, p. 1437, § 1; Stats.1937, c. 184, p. 480, § 1; Stats.1957, c. 1908, p. 3339, § 1; Stats.1970, c. 1061, p. 1893, § 7; Stats.1973, c. 1083, p. 2199, § 1; Stats.1981, c. 184, § 5.)*

**XIX. Penal Code § 1329.1—Witness Entitled to Fees and Mileage; Notice on Subpoena**

Any witness who is subpoenaed in any criminal action or proceeding shall be given written notice on the subpoena that the witness may be entitled to receive fees and mileage. Such notice shall indicate generally the manner in which a request or claim for fees and mileage should be made.

*(Added by Stats.1979, c. 67, p. 171, § 2, operative July 1, 1980.)*

**XX. Penal Code § 1334.4—Immunity from Arrest for Out-of-State Witness**

If a person comes into this State in obedience to a subpoena directing him to attend and testify in this State, he shall not, while in this State pursuant to the subpoena or order, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the subpoena.

*(Added by Stats.1937, c. 262, p. 564, § 1.)*

**XXI. Penal Code § 1347.5—Use of Closed-Circuit Television and Other Accommodations if Victim of Certain Offenses Is Disabled**

(a) It is the intent of the Legislature, in enacting this section, to provide the court with discretion to modify court procedures, as a reasonable accommodation, to assure that adults and children with disabilities who have been victims of an alleged sexual or otherwise specified offense are able to participate effectively in criminal proceedings. In exercising its discretion, the court shall balance the rights of the defendant against the right of the victim who has a disability to full access and participation in the proceedings, while preserving the integrity of the court's truthfinding function.

(1) For purposes of this section, the term "disability" is defined in paragraphs (1) and (2) of subdivision (c) of Section 11135 of the Government Code.

(2) The right of the victim is not to confront the perpetrator, but derives under both Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 and following) as a right to participate in or benefit from the same services or services that are equal or as effective as those enjoyed by persons without disabilities.

(b) Notwithstanding any other law, in any criminal proceeding in which the defendant is charged with a violation of Section 220, 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of Section 314, Section 368, 647.6, or with any attempt to commit a crime listed in this subdivision, committed with or upon a person with a disability, the court in its discretion may make accommodations to support the person with a disability, including, but not limited to, any of the following:

(1) Allow the person with a disability reasonable periods of relief from examination and cross-examination during which he or she may retire from the courtroom. The judge may also allow other witnesses in the proceeding to be examined when the person with a disability retires from the courtroom.

(2) Allow the person with a disability to utilize a support person pursuant to Section 868.5 or a regional center representative providing services to a developmentally disabled individual pursuant to Article 1 (commencing with Section 4620) or Article 2 (commencing with Section 4640) of Chapter 5 of Division 4.5 of the Welfare and Institutions Code. In addition to, or instead of, allowing the person with a disability to utilize a support person or regional center representative pursuant to this paragraph, the court may allow the person with a disability to utilize a person necessary to facilitate the communication or physical needs of the person with a disability.

(3) Notwithstanding Section 68119 of the Government Code, the judge may remove his or her robe if the judge believes that this formal attire prevents full participation of the person with a disability because it is intimidating to him or her.

(4) The judge, parties, witnesses, support persons, and court personnel may be relocated within the courtroom to facilitate a more comfortable and personal environment for the person with a disability as well as accommodating any specific requirements for communication by that person.

(c) The prosecutor may apply for an order that the testimony of the person with a disability at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape.

(1) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(2) Upon timely receipt of the application, the judge shall order that the testimony of the person with a disability given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

(3) If at the time of trial the court finds that further testimony would cause the person with a disability emotional trauma so that he or she is medically unavailable or otherwise unavailable within the meaning of Section 240 of the Evidence Code, the court may admit the videotape of his or her testimony at the preliminary hearing as former testimony under Section 1291 of the Evidence Code.

(4) Any videotape that is taken pursuant to this subdivision is subject to a protective order of the court for the purpose of protecting the privacy of the person with a disability. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(d) Notwithstanding any other law, the court in any criminal proceeding, upon written notice of the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the person with a disability is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of the person with a disability be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, and defendant, and communicated to the courtroom by means of two-way closed-circuit television, if the court makes all of the following findings:

(1) The person with a disability will be called on to testify concerning facts of an alleged sexual offense, or other crime as specified in subdivision (b), committed on or with that person.

(2) The impact on the person with a disability of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and convincing evidence to be so substantial as to make the person with a disability unavailable as a witness unless closed-circuit television is used. The refusal of the person with a disability to testify shall not alone constitute sufficient evidence that the special procedure described in this subdivision is necessary in order to accommodate the disability. The court may take into consideration the relationship between the person with a disability and the defendant or defendants.

(A) Threats of serious bodily injury to be inflicted on the person with a disability or a family member, of incarceration, institutionalization, or deportation of the person with a disability or a family member, or of removal of the person with a disability from his or her residence by withholding needed services when the threats come from a service provider, in order to prevent or dissuade the person with a disability from attending or giving testimony at any trial or court proceeding or to prevent that person from reporting the alleged offense or from assisting in criminal prosecution.

(B) Use of a firearm or any other deadly weapon during the commission of the crime.

(C) Infliction of great bodily injury upon the person with a disability during the commission of the crime.

(D) Conduct on the part of the defendant or defense counsel during the hearing or trial that causes the person with a disability to be unable to continue his or her testimony.

(e)(1) The hearing on the motion brought pursuant to this subdivision shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the person with a disability to testify at the hearing; nor shall the court deny the motion on the ground that the person with a disability has not testified.

(3) In determining whether the impact on an individual person with a disability of one or more of the factors enumerated under paragraph (2) of subdivision (d) is so substantial that the person is unavailable as a witness unless the closed-circuit television procedure is employed, the court may question the person with a disability in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person described under paragraph (2) of subdivision (b), the prosecutor, and defense counsel present. At this time the court shall explain the process to the person with a disability. The defendant or defendants shall not be present; however, the defendant or defendants shall have the opportunity to contemporaneously observe the proceedings by closed-circuit television. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(f) When the court orders the testimony of a victim who is a person with a disability to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of assuring the full participation of the victim who is a person with a disability by accommodating that individual's disability.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support person, if the person is part of the court's accommodation of the disability, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the person with a disability.

(5) Order that a complete record of the examination of the person with a disability, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and his or her attorney, during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape that is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the person with a disability. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(g) When the court orders the testimony of a victim who is a person with a disability to be taken in another place outside the courtroom, nothing in this section shall prohibit the court from ordering the victim to appear in the courtroom for a limited purpose, including the identification of the defendant or defendants as the court deems necessary.

(h) The examination shall be under oath, and the defendant shall be able to see and hear the person with a disability. If two-way closed-circuit television is used, the defendant's image shall be transmitted live to the person with a disability.

(i) Nothing in this section shall affect the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(j) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(k) This section shall not be construed to obviate the need to provide other accommodations necessary to ensure accessibility of courtrooms to persons with disabilities nor prescribe a lesser standard of accessibility or usability for persons with disabilities than that provided by Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 and following) and federal regulations adopted pursuant to that act.

(l) The Judicial Council shall report to the Legislature, no later than two years after the enactment of this subdivision, on the frequency of the use and effectiveness of admitting the videotape of testimony by means of closed-circuit television.

*(Added by Stats.1995, c.844 (S.B.303), § 1. Amended by Stats.1998, c. 97 (A.B.126), § 2; Stats.2004, c. 823 (A.B.20), § 16.)*

See also Penal Code sections 4.4, 4.5, and 6.10 for other sections that allow use of videotaping or closed-circuit television viewing of victims.

## **XXII. Welfare & Institutions Code § 676—Rights of Victim in Juvenile Court Hearings and Admission of the Public**

(a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

- (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.
- (6) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.
- (7) Any offense specified in subdivision (a) of Section 289 of the Penal Code.
- (8) Kidnapping for ransom.
- (9) Kidnapping for purpose of robbery.
- (10) Kidnapping with bodily harm.
- (11) Assault with intent to murder or attempted murder.
- (12) Assault with a firearm or destructive device.
- (13) Assault by any means of force likely to produce great bodily injury.
- (14) Discharge of a firearm into an inhabited dwelling or occupied building.
- (15) Any offense described in Section 1203.09 of the Penal Code.
- (16) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.
- (17) Any felony offense in which a minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.
- (18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.
- (19) Any felony offense described in Section 136.1 or 137 of the Penal Code.
- (20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and Safety Code.
- (21) Criminal street gang activity which constitutes a felony pursuant to Section 186.22 of the Penal Code.
- (22) Manslaughter as specified in Section 192 of the Penal Code.
- (23) Driveby shooting or discharge of a weapon from or at a motor vehicle as specified in Sections 246, 247, and 12034 of the Penal Code.
- (24) Any crime committed with an assault weapon, as defined in Section 12276 of the Penal Code, including possession of an assault weapon as specified in subdivision (b) of Section 12280 of the Penal Code.

(25) Carjacking, while armed with a dangerous or deadly weapon.

(26) Kidnapping, in violation of of Section 209.5 of the Penal Code.

(27) Torture, as described in Sections 206 and 206.1 of the Penal Code.

(28) Aggravated mayhem, in violation of Section 205 of the Penal Code.

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily harm; oral copulation by force, violence, duress, menace, or threat of great bodily harm; or any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.

(2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age.

(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders. As used in this subdivision, "good cause" shall be limited to protecting the personal safety of the minor, a victim, or a member of the public. The court shall make a written finding, on the record, explaining why good cause exists to make the name of the minor confidential.

(d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and (f), when a petition is sustained for any offense listed in subdivision (a), the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition of the court that are contained in the court file shall be available for public inspection. Nothing in this subdivision shall be construed to authorize public access to any other documents in the court file.

(e) The probation officer or any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit the disclosure if it appears that the harm to the minor, victims, witnesses, or public from the public disclosure outweighs the benefit of public knowledge. However, the court shall not prohibit disclosure for the benefit of the minor unless the court makes a written finding that the reason for the prohibition is to protect the safety of the minor.

(f) Nothing in this section shall be applied to limit the disclosure of information as otherwise provided for by law.

(g) The juvenile court shall for each day that the court is in session, post in a conspicuous place which is accessible to the general public, a written list of hearings that are open to the general public pursuant to this section, the location of those hearings, and the time when the hearings will be held.

*(Added by Stats.1961, c. 1616, p. 3480, § 2. Amended by Stats.1980, c. 322, p. 662, § 1; Stats.1981, c. 140, p. 922, § 1; Stats.1982, c. 283, § 1, eff. June 21, 1982; Stats.1982, c. 1295, § 1; Stats.1984, c. 398, § 1; Stats.1987, c. 828, § 169; Stats.1987, c. 704, § 2; Stats.1990, c. 246 (A.B.2638) § 2; Stats.1993, c. 610 (A.B.6), § 29, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), §33, eff. Oct. 1, 1993; Stats.1994, c. 453 (A.B.560), § 8); Stats.1998, c. 925 (A.B.1290), § 6; Stats.1998, c. 936 (A.B.105), § 20, eff. Sept. 28, 1998; Stats.1998, c. 936 (A.B. 105), § 20.5, eff. Sept. 28, 1008, operative Jan. 1, 1999; Stats.1999, c. 996 (S.B.334), § 18; Initiative Measure (Prop. 21, § 25, approved March 7, 2000, eff. March 8, 2000).)*

### **XXIII. Welfare & Institutions Code § 676.5—Victim of Juvenile Offense; Right to Attend Juvenile Proceedings; Exclusions**

The right of victims of juvenile offenses to be present during juvenile proceedings, as specified in subdivision (a), shall be secured as follows:

(a) Notwithstanding any other law, and except as provided in subdivision (d), a victim and up to two support persons of the victim's choosing shall be entitled to be admitted, on the same basis as he or she may be admitted to trials in a court of criminal jurisdiction, to juvenile court hearings concerning petitions filed pursuant to Section 602 alleging the commission of any criminal offense, and shall be so notified by the probation officer in person or by registered mail, return receipt requested, together with a notice explaining all other rights and services available to the victim with respect to the case.

(b) A victim or his or her support person may be excluded from a juvenile court hearing described in subdivision (a) only if each of the following criteria are met:

(1) Any movant, including the minor defendant, who seeks to exclude the victim or his or her support person from a hearing, demonstrates that there is a substantial probability that overriding interests will be prejudiced by the presence of the victim or his or her support person.

(2) The court considers reasonable alternatives to exclusion of the victim or his or her support person from the hearing.

(3) The exclusion of the victim or his or her support person from a hearing, or any limitation on his or her presence at a hearing, is narrowly tailored to serve the overriding interests identified by the movant.

(4) Following a hearing at which any person who is to be excluded from a juvenile court hearing is afforded an opportunity to be heard, the court makes specific factual findings that support the exclusion of the victim or his or her support person from, or any limitation on his or her presence at, the juvenile court hearing.

(c) As used in this section, "victim" means (1) the alleged victim of the offense and one person of his or her choosing or however many more the court may allow under the particular circumstances surrounding the proceeding, (2) in the event that the victim is unable to attend the proceeding, two persons designated by the victim or however many more the court may allow under the particular circumstances surrounding the proceeding, or (3) if the victim is no



longer living, two members of the victim's immediate family or however many more the court may allow under the particular circumstances surrounding the proceeding.

(d) Nothing in this section shall prevent a court from excluding a victim or his or her support person from a hearing, pursuant to Section 777 of the Evidence Code, when the victim is subpoenaed as a witness. An order of exclusion shall be consistent with the objectives of paragraphs (1) to (4), inclusive, of subdivision (b) to allow the victim to be present, whenever possible, at all hearings.

*(Added by Stats.1995, c. 332 (A.B.149), § 4. Amended by Stats.1999, c. 996 (S.B.334), § 19.)*

#### **XXIV. Frequently Asked Questions**

- 1. Is the victim allowed to choose a support person who is also a witness in the case?**  
Yes, however, in that case, the support person must testify before the victim does, and the victim may not be present during that testimony.
- 2. If the victim testifies at the preliminary hearing, does the victim have to testify again at the trial?**  
Yes. The defendant has the right to confront all witnesses in the case and so the victim does need to testify at the trial. The preliminary hearing testimony can only be used in lieu of the victim's testimony if the victim is unavailable to testify at the trial.
- 3. If the victim of sexual assault or domestic violence refuses to testify, can he or she be held in contempt?**  
The court can hold the victim in contempt for refusing to testify; however, the court cannot put a sexual assault victim in custody as punishment for the contempt. A domestic violence victim who refuses to testify may first be required to attend counseling or do community service before the court can consider the option of incarceration.
- 4. Does the victim have the right to be present at every court hearing?**  
Yes. The victim or any person appearing on behalf of the victim has the right to be present at all court proceedings open to the public. The court does have the ability to exclude the victim, but that power is very limited.



## Chapter 5

### The Rights of Victims Who Have Been Exposed to AIDS-Related Conditions

Law enforcement officers, emergency medical personnel, firefighters, as well as sexual assault victims, are at enhanced risk for exposure to defendants who are HIV positive. Victims have very legitimate concerns about infection, and it is our responsibility to respond in a timely manner to those concerns.

Those victims who are law enforcement officers, emergency medical personnel, and firefighters will look to Health and Safety Code section 121060, which is outlined below. This section allows for preconviction testing upon a finding of probable cause by the judge.

Sexual assault victims also may request preconviction testing upon a finding of probable cause by the judge. The probable cause hearing usually coincides with the preliminary hearing but may be done separately. In some cases, there are victims of an uncharged sexual assault who may petition the court for a testing order. Penal Code section 1524.1 provides for the issuance of a search warrant for this purpose. It is the prosecutor's duty to advise the victim of the right to make this request.

Most HIV orders are made postconviction pursuant to Penal Code section 1202.1, and it is the duty of the prosecutor or victim advocate to inform the victim of the right to receive the results of the HIV test. The prosecutor should ensure that the testing order is reflected in the court's minutes since it is often the court minutes that trigger the custodial facility's responsibility to make sure the blood or saliva sample is collected.

#### I. Health & Safety Code § 121050—Purpose

The people of the State of California find and declare that AIDS, AIDS-related conditions, and other communicable diseases pose a major threat to the public health and safety.

The health and safety of the public, victims of sexual crimes, and peace officers, firefighters, and custodial personnel who may come into contact with infected persons, have not been adequately protected by law. The purpose of this chapter is to require that information that may be vital to the health and safety of the public, victims of certain crimes, certain defendants and minors, and custodial personnel, custodial medical personnel, peace officers, firefighters and emergency medical personnel put at risk in the course of their official duties, be obtained and disclosed in an appropriate manner in order that precautions can be taken to preserve their health and the health of others or that those persons can be relieved from groundless fear of infection.

It is the intent of this chapter to supersede in case of conflict existing statutes or case law on the subjects covered including but not limited to the confidentiality and consent provisions contained in Chapter 7 (commencing with Section 120975), Chapter 8 (commencing with Section 121025), and Chapter 10 (commencing with Section 121075).

*(Added by Stats.1995, c. 415 (S.B. 1360), § 7.)*

## II. Health & Safety Code § 121055—Sexual Crimes

Any defendant charged in any criminal complaint filed with a magistrate or court with any violation of Penal Code Sections 261, 261.5, 262, 266b, 266c, 286, 288, or 288a and any minor with respect to whom a petition has been filed in a juvenile court alleging violation of any of the foregoing laws, shall be subject to an order of a court having jurisdiction of the complaint or petition requiring testing as provided in this chapter.

If an alleged victim listed in the complaint or petition makes a written request for testing under this section, the prosecuting attorney, or the alleged victim may petition the court for an order authorized under this section.

The court shall promptly conduct a hearing upon any such petition. If the court finds that probable cause exists to believe that a possible transfer of blood, saliva, semen, or other bodily fluid took place between the defendant or minor and the alleged victim in an act specified in this section, the court shall order that the defendant or minor provide two specimens of blood for testing as provided in this chapter.

Copies of the test results shall be sent to the defendant or minor, each requesting victim and, if the defendant or minor is incarcerated or detained, to the officer in charge and the chief medical officer of the facility where the person is incarcerated or detained.

*(Added by Stats.195, c. 415 (S.B. 1360), § 7.)*

Note: The victim, not the prosecutor, must make the request for testing.<sup>1</sup>

## III. Health & Safety Code § 121060—Assaults on Officers

Any person charged in any criminal complaint filed with a magistrate or court and any minor with respect to whom a petition has been filed in juvenile court, in which it is alleged in whole or in part that the defendant or minor interfered with the official duties of a peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or other bodily fluids on, upon, or through the skin or membranes of a peace officer, firefighter, or emergency medical personnel shall in addition to any penalties provided by law be subject to an order of a court having jurisdiction of the complaint or petition requiring testing as provided in this chapter.

The peace officer, firefighter, emergency medical personnel or the employing agency, officer, or entity may petition the court for an order authorized under this section.

The court shall promptly conduct a hearing upon any such petition. If the court finds that probable cause exists to believe that a possible transfer of blood, saliva, semen, or other bodily fluid took place between the defendant or minor and the peace officer, firefighter, or emergency medical personnel, as specified in this section, the court shall order that the defendant or minor provide two specimens of blood for testing as provided in this chapter.

Copies of the test results shall be sent to the defendant or minor, each peace officer, firefighter, and emergency medical personnel named in the petition and his or her employing agency, officer, or entity, and if the defendant or minor is incarcerated or detained, to the officer in charge and the chief medical officer of the facility where the person is incarcerated or detained.

*(Added by Stats.1995, c. 415 (S.B.1360), § 7.)*

Note: A statute requiring mandatory AIDS blood testing of criminal defendants alleged to have transferred bodily fluids in an assault to a peace officer does not violate due process.<sup>2</sup>

#### **IV. Penal Code § 1202.1—Mandatory AIDS Testing for Persons Convicted of Specified Sexual Offenses; Disclosure of Results; Confidentiality**

(a) Notwithstanding Sections 120975 and 120990 of the Health and Safety Code, the court shall order every person who is convicted of, or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of a violation of, a sexual offense listed in subdivision (e), whether or not a sentence or fine is imposed or probation is granted, to submit to a blood or oral mucosal transudate saliva test for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS) within 180 days of the date of conviction. Each person tested under this section shall be informed of the results of the blood or oral mucosal transudate saliva test.

(b) Notwithstanding Section 120980 of the Health and Safety Code, the results of the blood or oral mucosal transudate saliva test to detect antibodies to the probable causative agent of AIDS shall be transmitted by the clerk of the court to the Department of Justice and the local health officer.

(c) Notwithstanding Section 120980 of the Health and Safety Code, the Department of Justice shall provide the results of a test or tests as to persons under investigation or being prosecuted under 647f or 12022.85, if the results are on file with the department, to the defense attorney upon request; and the results also shall be available to the prosecuting attorney upon request for the purpose of either preparing counts for a subsequent offense under Section 647f or sentence enhancement under Section 12022.85 or complying with subdivision (d).

(d)(1) In every case in which a person is convicted of a sexual offense listed in subdivision (e) or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of the commission of a sexual offense listed in subdivision (e), the prosecutor or the prosecutor's victim-witness assistance bureau shall advise the victim of his or her right to receive the results of the blood or oral mucosal transudate saliva test performed pursuant to subdivision (a). The prosecutor or the prosecutor's victim-witness assistance bureau shall refer the victim to the local health officer for counseling to assist him or her in understanding the extent to which the particular circumstances of the crime may or may not have placed the victim at risk of transmission of human immunodeficiency virus (HIV) from the accused, to

ensure that the victim understands the limitations and benefits of current tests for HIV, and to assist the victim in determining whether he or she should make the request.

(2) Notwithstanding any other law, upon the victim's request, the local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, as specified in subdivision (g), positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances as follows:

(A) To help the victim understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the perpetrator.

(B) To insure that the victim understands both the benefits and limitations of the current tests for HIV.

(C) To obtain referrals to appropriate health care and support services.

(e) For purposes of this section, "sexual offense" includes any of the following:

(1) Rape in violation of Section 261 or 264.1.

(2) Unlawful intercourse with a person under 18 years of age in violation of Section 261.5 or 266c.

(3) Rape of a spouse in violation of Section 262 or 264.1.

(4) Sodomy in violation of Section 266c or 286.

(5) Oral copulation in violation of Section 266c or 288a.

(6)(A) Any of the following offenses, if the court finds that there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the defendant to the victim.

(i) Sexual penetration in violation of Section 264.1, 266c or 289. (ii) Aggravated sexual assault of a child in violation of Section 269. (iii) Lewd or lascivious conduct with a child in violation of Section 288. (iv) Continuous sexual abuse of a child in violation of Section 288.5. (v) the attempt to commit any offense described in clauses (i) to (v) inclusive.

(B) For purposes of this paragraph, the court shall note its finding on the court docket and minute order if one is prepared.

(f) Any blood or oral mucosa transudate saliva tested pursuant to subdivision (a) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the person who is

tested unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances.

(h) The local health officer and victim shall comply with all laws and policies relating to medical confidentiality, subject to the disclosure authorized by subdivisions (g) and (i).

(i) Any victim who receives information from the local health officer pursuant to subdivision (g) may disclose the information as he or she deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person who transmits test results or discloses information pursuant to this section shall be immune from civil liability for any action taken in compliance with this section.

*(Added by Stats.1988, c. 1597, § 2, operative Jan. 1, 1989. Amended by Stats.1994, c. 121 (A.B.2815), § 1, eff. June 30, 1994; Stats.1995, c. 396 (A.B.681), § 1; Stats.1996, c. 1023 (S.B. 1497), § 391, eff. Sept. 29, 1996; Stats.1998, c. 55 (S.B.351), § 2, eff. June 5, 1998, operative July 1, 1998; Stats.2002, c. 831 (A.B.2794), § 1; Stats.2003, c. 468 (S.B.851), § 16.)*

Note: The mandatory blood test for AIDS is not punishment.<sup>3</sup>

## V. Penal Code § 1524.1—HIV Testing of Defendant at Request of Victim of Crime

(a) The primary purpose of the testing and disclosure provided in this section is to benefit the victim of a crime by informing the victim whether the defendant is infected with the HIV virus. It is also the intent of the Legislature in enacting this section to protect the health of both victims of crime and those accused of committing a crime. Nothing in this section shall be construed to authorize mandatory testing or disclosure of test results for the purpose of a charging decision by a prosecutor, nor, except as specified in subdivisions (g) and (i), shall this section be construed to authorize breach of the confidentiality provisions contained in Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code.

(b)(1) Notwithstanding the provisions of Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime, the court, at the request of the victim, may issue a search warrant for the purpose of testing the accused's blood or oral mucosal transudate saliva with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds, upon the conclusion of the hearing described in paragraph (3), or in those cases in which a preliminary hearing is not required to be held, that there is probable cause to believe that the accused

committed the offense, and that there is probable cause to believe that blood, semen, or any other bodily fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim.

(2) Notwithstanding the provisions of Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information or indictment with a crime under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or with an attempt to commit any of the offenses and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the offenses or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the offenses and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the offenses the court, at the request of the victim of the uncharged offense, may issue a search warrant for the purpose of testing the accused's blood or oral mucosal transudate saliva with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds that there is probable cause to believe that the accused committed the uncharged offense, and that there is probable cause to believe that blood, semen, or any other body fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim. As used in this paragraph, "Section 289.5" refers to the statute enacted by Chapter 293 of the Statutes of 1991, penetration by an unknown object.

(3)(A) Prior to the issuance of a search warrant pursuant to paragraph (1), the court, where applicable and at the conclusion of the preliminary examination if the defendant is ordered to answer pursuant to Section 872, shall conduct a hearing at which both the victim and the defendant have the right to be present. During the hearing, only affidavits, counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (1) shall be admissible.

(B) Prior to the issuance of a search warrant pursuant to paragraph (2), the court, where applicable, shall conduct a hearing at which both the victim and the defendant are present. During the hearing, only affidavits, counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (2) shall be admissible.

(4) A request for a probable cause hearing made by a victim under paragraph (2) shall be made before sentencing in the superior court, or before disposition on a petition in a juvenile court, of the criminal charge or charges filed against the defendant.

(c)(1) In all cases in which the person has been charged by complaint, information, or indictment with a crime, or is the subject of a petition filed in a juvenile court alleging the



commission of a crime, the prosecutor shall advise the victim of his or her right to make this request. To assist the victim of the crime to determine whether he or she should make this request, the prosecutor shall refer the victim to the local health officer for prerequisite counseling to help that person understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the accused, to ensure that the victim understands both the benefits and limitations of the current tests for HIV, to help the victim decide whether he or she wants to request that the accused be tested, and to help the victim decide whether he or she wants to be tested.

(2) The Department of Justice, in cooperation with the California District Attorneys Association, shall prepare a form to be used in providing victims with the notice required by paragraph (1).

(d) If the victim decides to request HIV testing of the accused, the victim shall request the issuance of a search warrant, as described in subdivision (b).

Neither the failure of a prosecutor to refer or advise the victim as provided in this subdivision, nor the failure or refusal by the victim to seek or obtain counseling, shall be considered by the court in ruling on the victim's request.

(e) The local health officer shall make provision for administering all HIV tests ordered pursuant to subdivision (b).

(f) Any blood or oral mucosal transudate saliva tested pursuant to subdivision (b) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the accused unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall have the responsibility for disclosing test results to the victim who requested the test and to the accused who was tested. However, no positive test results shall be disclosed to the victim or to the accused without also providing or offering professional counseling appropriate to the circumstances.

(h) The local health officer and victim shall comply with all laws and policies relating to medical confidentiality subject to the disclosure authorized by subdivisions (g) and (i). Any individual who files a false report of sexual assault in order to obtain test result information pursuant to this section shall, in addition to any other liability under law, be guilty of a misdemeanor punishable as provided in subdivision (c) of Section 120980 of the Health and Safety Code. Any individual as described in the preceding sentence who discloses test result information obtained pursuant to this section shall also be guilty of an additional misdemeanor punishable as provided for in subdivision (c) of Section 120980 of the Health and Safety Code for each separate disclosure of that information.

(i) Any victim who receives information from the health officer pursuant to subdivision (g) may disclose the test results as the victim deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person transmitting test results or disclosing information pursuant to this section shall be immune from civil liability for any actions taken in compliance with this section.

(k) The results of any blood or oral mucosal transudate saliva tested pursuant to subdivision (b) shall not be used in any criminal proceeding as evidence of either guilt or innocence.

*(Added by Stats.1988, c. 1088, § 1.5. Amended by Stats.1989, c. 1360, § 118; Stats.1993–94, 1st Ex.Sess., c. 20 (A.B.109), § 1; Stats.1996, c. 1023 (S.B.1497), § 393, eff. Sept. 29, 1996; Stats.2001, c. 784 (S.B.1316), § 556; Stats.2002, c. 787 (S.B.1798), § 24; Stats.2002, c. 831 (A.B.2794), § 2; Stats.2003, c. 62 (S.B.600), § 234.)*

## VI. Frequently Asked Questions

**1. Do all victims have the right to ask the court to order the defendant be tested for HIV?**

Victims of sexual crimes, peace officers, firefighters, and emergency medical personnel have the right to request the defendant be ordered to be tested for HIV if the victim can show that there was a possible transfer of blood, semen, or saliva between the defendant and the victim.

**2. Does the victim have to wait for a conviction before the court will order AIDS testing of the defendant?**

No. The victim can petition the court at a pretrial hearing.

**3. Are the HIV test results confidential?**

Yes. Only certain people are entitled to the defendant's test results including the victim, the local health officer, and the medical officer of the jail or prison where the defendant is in custody.

**4. Can the court order the defendant to be tested for other communicable diseases such as hepatitis B?**

Yes.

**VII. Sample Motions**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,  
v.  
Defendant.

No. SCD \_\_\_\_\_ /DA  
**NOTICE OF MOTION AND  
MOTION FOR ORDER TO  
TAKE AND TEST BLOOD  
SAMPLES FROM  
DEFENDANT (Health & Saf.  
Code §§ 121050 et seq.)**

\_\_\_\_\_

TO THE DEFENDANT ABOVE NAMED AND TO HIS ATTORNEY, \_\_\_\_\_:

PLEASE TAKE NOTICE that on \_\_\_\_\_, at \_\_\_\_\_, or as soon thereafter as the matter can be heard, in the assigned preliminary hearing department of the above-entitled court, \_\_\_\_\_, \_\_\_\_\_, California, the plaintiff, the People of the State of California, at the victim's request, will move the court for an order directing the defendant to submit to the taking of a sample of his blood.

This motion will be based on this notice; the pleadings, records and files in this matter; the attached declaration of \_\_\_\_\_, Deputy District Attorney; and such other evidence, oral or documentary, as may be presented at the hearing on said motion.

Dated: \_\_\_\_\_  
\_\_\_\_\_ District Attorney

By: \_\_\_\_\_  
Deputy District Attorney  
Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF \_\_\_\_\_  
\_\_\_\_\_DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,  
v.  
  
Defendant.

No. SCD  
DA  
**DECLARATION IN SUPPORT OF  
MOTION FOR ORDER TO TAKE  
AND TEST BLOOD SAMPLES  
FROM DEFENDANT (Health &  
Saf. Code §§ 121050 et seq.)**

\_\_\_\_\_  
I, \_\_\_\_\_, declare as follows:

I am a deputy district attorney for the County of \_\_\_\_\_, representing the People of the State of California in the above-entitled action.

I am informed that the victim, \_\_\_\_\_, said that during the commission of the offense, there was a possible transfer of blood and semen between the defendant and the victim. The possible transfer of said bodily fluid took place as the result of one or more of the following acts:

I am advised that the Chief of County Health Services, or designee, will perform the tests as ordered herein, and that the blood samples herein may be drawn at \_\_\_\_\_ if the defendant is in custody, or at \_\_\_\_\_, if the defendant is not in custody, and brings with him a copy of the order for transmission. Withdrawal of blood and testing shall be done pursuant to Health and Safety Code sections 121050 et seq.

On the basis of these facts and pursuant to Health and Safety Code sections 121050 et seq., and the fact that the victim has requested me to seek this order, I respectfully request that this court grant the motion for an order to test the defendant's blood for the human immunodeficiency virus (HIV).

I declare under penalty of perjury that the foregoing is true and correct.

Executed at \_\_\_\_\_, California, on \_\_\_\_\_, 2008.

\_\_\_\_\_  
Deputy District Attorney

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,  
v.  
  
Defendant.

No. SCD  
DA  
**ORDER TO TAKE AND TEST  
BLOOD SAMPLES FROM  
DEFENDANT (Health &  
Saf. Code §§ 121050 et seq.)**

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Probable cause appearing that a possible transfer of blood, saliva, semen, or other bodily fluid took place as alleged in the attached declaration;

IT IS HEREBY ORDERED that the defendant provide two specimens of blood, to be taken in a medically approved manner by licensed personnel either at the \_\_\_\_\_ County Jail, if the defendant is in custody, or if not in custody, the defendant is ordered to present himself along with a copy of this order to \_\_\_\_\_, between 8 a.m. and 9 a.m. the next business day following the granting of this order.

IT IS FURTHER ORDERED that these blood specimens shall be transmitted to the Chief of County Health Services, or designee, for tests to be conducted thereon for medically accepted indications of exposure to or infection by acquired immunity deficiency syndrome (AIDS) virus and AIDS-related conditions pursuant to Health and Safety Code sections 121050 et seq..

IT IS FURTHER ORDERED that the results of the test be sent by the Chief of County Health Services, or designee, to:

1. The defendant, \_\_\_\_\_;
2. The victim, \_\_\_\_\_;
3. The officer in charge of the facility and chief medical officer of the facility in which the defendant is detained, if the defendant is incarcerated; and
4. The State Department of Health, if the results of the test indicate infection with the AIDS virus.

Dated: \_\_\_\_\_

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Judge of the Superior Court

**ENDNOTES**

1. *People v. Guardado* (1995) 40 Cal.App.4th 757.
2. *Johnetta J. v. Municipal Court* (1990) 218 Cal.App.3d 1255.
3. *People v. McVickers* (1992) 4 Cal.4th 81.

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## Chapter 6

### Additional Rights for Sexual Assault Victims

There are special rules put in place to protect victims of sexual assault. Prosecutors and victim advocates need to be aware of these provisions and the responsibility to inform sexual assault victims of their rights.

For example, victims of certain sexual assault crimes have the right to have an advocate and a support person present during follow-up interviews with the detective, the prosecutor, and the defense attorney. Advocates can be a tremendous source of emotional comfort and reassurance for victims during these interviews. Support persons, who are generally laypersons, should be advised that by being present in the interview, they become witnesses and could later be called upon to testify concerning statements made during the interview. You should read the statutes carefully to see if the crime involved in your case implicates these rights. For example, the statute does not apply to all sexual assault crimes involving children.

Victims may choose to be identified in public documents and in court proceedings as Jane Doe or John Doe. Even if the victim does not choose to be identified in this way, the prosecutor should be careful not to include the victim's full name in public records such as the charging document, search warrants, arrest warrants, motions, and briefs. Instead, the prosecutor should consider using the first name and last initial (e.g., Allison S.) or other combinations of name and initial.

At the preliminary hearing or trial, the prosecutor or advocate should make sure the victim understands the right to have a support person in the courtroom with her. The prosecutor should also anticipate defense motions that attack the victim's credibility with reference to prior sexual history. A motion in limine filed with the court outlining the procedures to be followed pursuant to Evidence Code section 782 will help ensure that evidentiary safeguards are observed.

Finally, the prosecution's discovery obligations require that sensitive materials such as medical reports, genital photographs, and videotaped victim interviews be turned over to the defense attorney. The prosecutor should urge the court to impose a protective order on these materials.

#### **I. Evidence Code § 352.1—Exclusion of Rape Victim's Address and Telephone Number**

In any criminal proceeding under Section 261, 262, or Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a of the Penal Code, or in any criminal proceeding under subdivision (c) of Section 286 or subdivision (c) of Section 288a of the Penal Code in which the defendant is alleged to have compelled the participation of the victim by force, violence, duress, menace, or threat of great bodily harm, the district attorney may, upon written motion with notice to the defendant or the defendant's attorney, if he or she is represented by an attorney, within a reasonable time prior to any hearing, move to exclude from evidence the current address and telephone number of any victim at the hearing.

The court may order that evidence of the victim's current address and telephone number be excluded from any hearings conducted pursuant to the criminal proceeding if the court finds

that the probative value of the evidence is outweighed by the creation of substantial danger to the victim.

Nothing in this section shall abridge or limit the defendant's right to discover or investigate the information.

*(Added by Stats.1985, c. 335, § 3. Amended by Stats.1996, c. 1075 (S.B.144) § 5.)*

## **II. Evidence Code § 782—Procedure to Determine Relevancy of Sexual Conduct Evidence Proposed to Attack Credibility of Complaining Witness**

(a) In any of the circumstances described in subdivision (c), if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness under Section 780, the following procedure shall be followed:

(1) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness.

(2) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated. The affidavit shall be filed under seal and only unsealed by the court to determine if the offer of proof is sufficient to order a hearing pursuant to paragraph (3). After that determination, the affidavit shall be resealed by the court.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.

(4) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant pursuant to Section 780, and it is not inadmissible pursuant to Section 352 of this code, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(5) An affidavit resealed by the court pursuant to paragraph (2) shall remain sealed, unless the defendant raises an issue on appeal or collateral review relating to the offer of proof contained in the sealed document. If the defendant raises that issue on appeal, the court shall allow the Attorney General and appellate counsel for the defendant access to the sealed affidavit. If the issue is raised on collateral review, the court shall allow the district attorney and the defendant's counsel access to the sealed affidavit. The use of the information contained in the affidavit shall be limited solely to the pending proceeding.

(b) As used in this section, "complaining witness" means:



(1) The alleged victim of the crime charged, the prosecution of which is subject to this section, pursuant to paragraph (1) of subdivision (c).

(2) An alleged victim offering testimony pursuant to paragraph (2) or paragraph (3) of subdivision (c).

(c) The procedure provided by subdivision (a) shall apply in any of the following:

(1) In a prosecution under Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289 of the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit any crime defined in any of those sections, except if the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504.

(2) When an alleged victim testifies pursuant to subdivision (b) of Section 1101 as a victim of a crime listed in Section 243.4, 261, 261.5, 269, 285, 286, 288, 288a, 288.5, 289, 314, or 647.6 of the Penal Code, except if the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4 of the Penal Code, or in a state prison, as defined in Section 4504 of the Penal Code.

(3) When an alleged victim of sexual offense testifies pursuant to Section 1108, except if the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4 of the Penal Code, or in a state prison, as defined in Section 4504 of the Penal Code.

*(Added by Stats.1974, c. 569, p. 1388, § 1. Amended by Stats.1981, c. 726, p. 2876, § 1; Stats.1987, c. 177, § 1; Stats.1989, c. 1402, § 2; Stats.1996, c. 1075 (S.B.1444), § 6; Stats.2004, c. 61 (A.B.2829), § 1; Stats.2006, c. 225 (A.B.1996), § 1; Stats.2007, c. 130 (A.B.299), § 83.)*

### **III. Health & Safety Code § 1491—Examinations Without Charge; Testing for Venereal Disease and Pregnancy**

In addition to any examination performed without charge to a victim of rape or other sexual assault pursuant to Section 13823.95 of the Penal Code, a county hospital shall, without charge, provide the victim of rape, or other sexual assault with testing for venereal disease and pregnancy.

*(Added by Stats. 1976, c. 750, p. 1781, § 1. Amended by Stats.1988, c. 1575, § 2.)*

**IV. Health & Safety Code § 1492—Indemnification of Victims; Information; Victim Compensation Claim Forms**

A county hospital shall provide persons examined or treated in connection with rape or other sexual assaults with information regarding assistance which may be provided pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, together with forms made available by the State Board of Control for filing of claims thereunder.

*(Added by Stats.1976, c. 750, p. 1781, § 1.)*

**V. Penal Code § 264.2—Right to Receive Domestic Violence Card and Have a Crisis Center Notified Before Medical Examination**

(a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the “Victims of Domestic Violence” card, as specified in subparagraph (G) of paragraph (9) of subdivision (c) of Section 13701.

(b)(1) The law enforcement officer, or his or her agency, shall immediately notify the local rape victim counseling center, whenever a victim of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289 is transported to a hospital for any medical evidentiary or physical examination. The victim shall have the right to have a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, and a support person of the victim’s choosing present at any medical evidentiary or physical examination.

(2) Prior to the commencement of any initial medical evidentiary or physical examination arising out of a sexual assault, a victim shall be notified orally or in writing by the medical provider that the victim has the right to have present a sexual assault counselor and at least one other support person of the victim’s choosing.

(3) The hospital may verify with the law enforcement officer, or his or her agency, whether the local rape victim counseling center has been notified, upon the approval of the victim.

(4) A support person may be excluded from a medical evidentiary or physical examination if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination.

*(Added by Stats.1991, c. 999 (S.B.835), § 1; Amended by Stats.1992, c. 224 (S.B.1960), § 1; Stats.1997, c. 846 (A.B.807), § 1, eff. Oct. 10, 1997; Stats.1998, c. 4546 (A.B.1115), § 1; Stats.1998, c. 698 (A.B.1201), § 1.5; Stats.2006, c. 689 (S.B.1743), § 11.)*

**VI. Penal Code § 293—Notice to Sex Offense Victim That Victim’s Name Will Become Public Record Unless Victim Requests Otherwise; Disclosure of Victim’s Address Prohibited**

(a) Any employee of a law enforcement agency who personally receives a report from any person, alleging that the person making the report has been the victim of a sex offense, shall inform that person that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record, pursuant to Section 6254 of the Government Code.

(b) Any written report of an alleged sex offense shall indicate that the alleged victim has been properly informed pursuant to subdivision (a) and shall memorialize his or her response.

(c) No law enforcement agency shall disclose to any person, except the prosecutor, parole officers of the Department of Corrections, hearing officers of the parole authority, probation officers of county probation departments or other persons or public agencies where authorized or required by law, the address of a person who alleges to be the victim of a sex offense.

(d) No law enforcement agency shall disclose to any person, except the prosecutor, parole officers of the Department of Corrections, hearing officers of the parole authority, probation officers of county probation departments or other persons or public agencies where authorized or required by law, the name of a person who alleges to be the victim of a sex offense, if that person has elected to exercise his or her right pursuant to this section and Section 6254 of the Government Code.

(e) For purposes of this section, sex offense means any crime listed in paragraph (2) of subdivision (f) of Section 6254 of the Government Code which is also defined in Chapter 1 (commencing with Section 261) or Chapter 5 (commencing with Section 281) of Part 1 of Title 9.

(f) Parole officers of the Department of Corrections and hearing officers of the parole authority and probation officers of county probation departments, shall be entitled to receive information pursuant to subdivisions (c) and (d) only if the person to whom the information pertains alleges that he or she is the victim of a sex offense, the alleged perpetrator of which is a parolee who is alleged to have committed the sex offense while on parole, or in the case of a county probation officer, the person who is alleged to have committed the sex offense is a probationer or is under investigation by a county probation department pursuant to Section 1203.

*(Added by Stats.1992, c. 502 (S.B.296), § 1. Amended by Stats.1993, c. 555 (A.B.191), § 2, eff. Sept. 28, 1993; Stats.1993–94, 1st Ex.Sess., c. 36 (A.B.62), § 3; Stats.2006, c. 92 (A.B.2615), § 1. Stats.2007, c. 578 (S.B.449), § 2.)*

**VII. Penal Code § 293.5—Identity of Sex Offense Victim; Court May Grant Anonymity**

(a) Except as provided in Chapter 10 (commencing with Section 1054) of Part 2 of Title 7, or for cases in which the alleged victim of a sex offense, as specified in subdivision (e) of Section 293, has not elected to exercise his or her right pursuant to Section 6254 of the Government Code, the court, at the request of the alleged victim, may order the identity of the alleged victim in all records and during all proceedings to be either Jane Doe or John Doe, if the court finds that such an order is reasonably necessary to protect the privacy of the person and will not unduly prejudice the prosecution or the defense.

(b) If the court orders the alleged victim to be identified as Jane Doe or John Doe pursuant to subdivision (a) and if there is a jury trial, the court shall instruct the jury, at the beginning and at the end of the trial, that the alleged victim is being so identified only for the purpose of protecting his or her privacy pursuant to this section.

*(Added by 1992 c. 502 (S.B.296), § 2.)*

**VIII. Penal Code § 679.04—Right to Have Advocate Present at Examination or Interview; “Advocate” Defined**

(a) A victim of sexual assault as the result of any offense specified in paragraph (1) of subdivision (b) of Section 264.2 has the right to have victim advocates and a support person of the victim’s choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview. As used in this section, “victim advocate” means a sexual assault victim counselor, as defined in Section 1035.2 of the Evidence Code, or a victim advocate working in a center established under Article 2 (commencing with Section 13835) of Chapter 4 of Title 6 of Part 4.

(b)(1) Prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a sexual assault, a victim of sexual assault as the result of any offense specified in Section 264.2 shall be notified orally or in writing by the attending law enforcement authority or district attorney that the victim has the right to have victim advocates and a support person of the victim’s choosing present at the interview or contact. This subdivision applies to investigators and agents employed or retained by law enforcement or the district attorney.

(2) At the time the victim is advised of his or her rights pursuant to paragraph (1), the attending law enforcement authority or district attorney shall also advise the victim of the right to have victim advocates and a support person present at any interview by the defense attorney or investigators or agents employed by the defense attorney.

(c) An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section.

*(Added by Stats.1996, c. 1075 (S.B.1444), § 16. Amended by Stats.1997, c. 846 (A.B.807), § 2, eff. Oct. 10, 1997; Stats.1998, c. 456 (A.B.1115), § 2. Stats.2006, c. 689 (S.B.1743), § 12.)*

Note: Penal Code section 679.05 provides a similar right for victims of domestic violence.

## **IX. Penal Code § 679.02(a)(13), (14)—Selected Statutory Rights of Victims**

(a) The following are hereby established as the statutory rights of victims and witnesses of crimes:

(13) For the victim, to be notified by the district attorney's office of the right to request, upon a form provided by the district attorney's office, and receive a notice pursuant to paragraph (14), if the defendant is convicted of any of the following offenses:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289, in violation of Section 220.

(B) A violation of Section 207 or 209 committed with the intent to commit a violation of Section 261, 262, 286, 288, 288a, or 289.

(C) Rape, in violation of Section 261.

(D) Oral copulation, in violation of Section 288a.

(E) Sodomy, in violation of Section 286.

(F) A violation of Section 288.

(G) A violation of Section 289.

(14) When a victim has requested notification pursuant to paragraph (13), the sheriff shall inform the victim that the person who was convicted of the offense has been ordered to be placed on probation and give the victim notice of the proposed date upon which the person will be released from custody of the sheriff.

*(Added by Stats.1986, c. 1427, § 1. Amended by Stats.1988, c. 33, § 1; Stats.1988, c. 137, § 1; Stats.1995, c. 411 (S.B.221), § 2; Stats.1997, c. 902 (A.B.152), § 1; Stats.1998, c. 928 (A.B.1927), § 2.)*

**X. Penal Code § 939.21—Minor or Dependent Person Witness for Prosecution Authorized to Bring Support Person to Grand Jury Proceeding**

(a) Any prosecution witness before the grand jury in a proceeding involving a violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of Section 314, Section 368, 647.6, or former Section 647a, who is a minor or a dependent person, may, at the discretion of the prosecution, select a person of his or her own choice to attend the testimony of the prosecution witness for the purpose of providing support. The person chosen shall not be a witness in the same proceeding, or a person described in Section 1070 of the Evidence Code.

(b) The grand jury foreman shall inform any person permitted to attend the grand jury proceedings pursuant to this section that grand jury proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. The foreman also shall admonish that person not to prompt, sway, or influence the witness in any way. Nothing in this section shall preclude the presiding judge from exercising his or her discretion to remove a person from the grand jury proceeding whom the judge believes is prompting, swaying, or influencing the witness.

*(Added by Stats. 1998, c. 755 (A.B. 377), § 2. Amended by Stats. 2004, c. 823 (A.B. 20), § 14.)*

**XI. Penal Code § 1127d—Jury Instructions Regarding Rape Victim’s Previous Consensual Intercourse with Defendant**

(a) In any criminal prosecution for the crime of rape, or for violation of Section 261.5, or for an attempt to commit, or assault with intent to commit, any such crime, the jury shall not be instructed that it may be inferred that a person who has previously consented to sexual intercourse with persons other than the defendant or with the defendant would be therefore more likely to consent to sexual intercourse again. However, if evidence was received that the victim consented to and did engage in sexual intercourse with the defendant on one or more occasions prior to that charged against the defendant in this case, the jury shall be instructed that this evidence may be considered only as it relates to the question of whether the victim consented to the act of intercourse charged against the defendant in the case, or whether the defendant had a good faith reasonable belief that the victim consented to the act of sexual intercourse. The jury shall be instructed that it shall not consider this evidence for any other purpose.

(b) A jury shall not be instructed that the prior sexual conduct in and of itself of the complaining witness may be considered in determining the credibility of the witness pursuant to Chapter 6 (commencing with Section 780) of Division 6 of the Evidence Code.

*(Added by Stats. 1974 c. 1093, p. 2320, § 1. Amended by Stats. 1979 c. 994, p. 3384, § 5; Stats. 1990 c. 269 (A.B. 2629), § 1.)*

Note: See also CALJIC 10.61, CALJIC 10.61.1, and Evidence Code section 1101(b).

**XII. Penal Code § 1203.1g—Restitution for Medical or Psychological Treatment of Minor Sexual Assault Victim**

In any case in which a defendant is convicted of sexual assault on a minor, and the defendant is eligible for probation, the court, as a condition of probation, shall order him or her to make restitution for the costs of medical or psychological treatment incurred by the victim as a result of the assault and that he or she seek and maintain employment and apply that portion of his or her earnings specified by the court toward those costs.

As used in this section, “sexual assault” has the meaning specified in subdivisions (a) and (b) of Section 11165.1. The defendant is entitled to a hearing concerning any modification of the amount of restitution based on the costs of medical and psychological treatment incurred by the victim subsequent to the issuance of the order of probation.

*(Added by Stats.1985, c. 313, § 1. Amended by Stats.1990, c. 45 (A.B. 1893), § 7; Stats.1993, c. 589 (A.B.2211), § 122; Stats.1994, c. 146 (A.B.3601), § 168.)*

**XIII. Penal Code § 1347—Use of Closed-Circuit Television to Communicate Testimony if Victim of Certain Sexual Offenses Is Age 13 or Less**

(a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ alternative court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant or defendants against the need to protect a child witness and to preserve the integrity of the court’s truth finding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these alternative procedures.

(b) Notwithstanding any other law, the court in any criminal proceeding, upon written notice by the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court’s own motion, may order that the testimony of a minor 13 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:

(1) The minor’s testimony will involve a recitation of the facts of any of the following:

(A) An alleged sexual offense on or with the minor.

(B) An alleged violent felony, as defined in subdivision (c) of Section 667.5, of which the minor is a victim.

(C) An alleged felony offense specified in Section 273a or 273d of which the minor is a victim.

(2) The impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (E), inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit television is used.

(A) Testimony by the minor in the presence of the defendant would result in the child suffering serious emotional distress so that the child would be unavailable as a witness.

(B) The defendant used a deadly weapon in the commission of the offense.

(C) The defendant threatened serious bodily injury to the child or the child's family, threatened incarceration or deportation of the child or a member of the child's family, threatened removal of the child or a member of the child's family, threatened removal of the child from the child's family, or threatened from dissolution of the child's family in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding, or to prevent the minor from reporting the alleged sexual offense, or from assisting in criminal prosecution.

(D) The defendant inflicted great bodily injury upon the child in the commission of the offense.

(E) The defendant or his or her counsel behaved during the hearing or trial in a way that caused the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary to obtain the minor's testimony.

(3) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

(c) If the court orders the use of closed-circuit television, two-way closed-circuit television shall be used, except that if the impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (E), inclusive, of paragraph (2) of subdivision (b), is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness even if two-way closed-circuit television is used, one-way closed-circuit television may be used. The prosecution shall give the defendant or defendants at least 30 days written notice of the prosecution's intent to seek the use of one-way closed-circuit television, unless good cause is shown to the court why this 30-day notice requirement should not apply.

(d)(1) The hearing on a motion brought pursuant to this section shall be conducted out of the presence of the jury.



(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the minor to testify at the hearing; nor shall the court deny the motion on the ground that the minor has not testified.

(3) In determining whether the impact on an individual child of one or more of the five factors enumerated in paragraph (2) of subdivision (b) is so substantial that the minor is unavailable as a witness unless two-way or one-way closed-circuit television is used, the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(e) When the court orders the testimony of a minor to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support witness, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the minor.

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant or defendants, and his or her attorney during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape that is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the witness. This subdivision does not affect subdivision (b) of Section 868.7.

(f) When the court orders the testimony of a minor to be taken in another place outside the courtroom, only the minor, a support person designated pursuant to Section 868.5, a non-

uniformed bailiff, any technicians necessary to operate the closed-circuit equipment, and, after consultation with the prosecution and the defense, a representative appointed by the court, shall be physically present for the testimony. A videotape shall record the image of the minor and his or her testimony, and a separate videotape shall record the image of the support person.

(g) When the court orders the testimony of a minor to be taken in another place outside the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his or her testimony to meet for a reasonable period of time with the judge, the prosecutor, and defense counsel. A support person for the minor shall also be present. This meeting shall be for the purpose of explaining the court process to the child and to allow the attorneys an opportunity to establish rapport with the child to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or defendants or any of the facts of the case with the minor during this meeting.

(h) When the court orders the testimony of a minor to be taken in another place outside the courtroom, nothing in this section prohibits the court from ordering the minor to be brought into the courtroom for a limited purpose, including the identification of the defendant or defendants as the court deems necessary.

(i) The examination shall be under oath, and the defendant or defendants shall be able to see and hear the minor witness and, if two-way closed-circuit television is used, the defendant's image shall be transmitted live to the witness.

(j) Nothing in this section affects the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(k) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(l) Nothing in this section shall be construed to prohibit a defendant from being represented by counsel during any closed-circuit testimony.

*(Added by Stats.1985, c. 43, § 1, eff. May 20, 1985. Amended by Stats.1986, c. 774, § 2; Stats.1987, c. 828, § 88; Stats.1991, c. 948 (S.B.905), § 1; Stats.1998, c. 669 (A.B.1077), § 1; Stats.1998, c. 670 (A.B.1692), § 1.5; Stats.1999, c. 83 (S.B.966), § 153; Stats.2000, c. 207 (S.B.1715), § 1; Stats.2002, c. 96 (S.B.1559), § 1; Stats.2005, c. 480 (S.B.138), § 1.)*

**XIV. Penal Code § 13823.95—Costs Incurred by Emergency Medical Facilities for Examination of Sexual Assault Victims**

No costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the examination of the victim of a sexual assault, as described in the protocol developed pursuant to Section 13823.5, when the examination is performed, pursuant to Sections 13823.5 and 13823.7, for the purposes of gathering evidence for possible prosecution, shall be charged directly or indirectly to the victim of the assault. Those costs shall be treated as local costs and charged to the local governmental agency in whose jurisdiction the alleged offense was committed.

Bills for these costs shall be submitted to the law enforcement agency in the jurisdiction in which the alleged offense was committed which requests the examination.

The law enforcement agency in the jurisdiction in which the alleged offense was committed which requests the examination has the option of determining whether or not the examination will be performed in the office of a physician and surgeon.

*(Added by Stats.1986, c. 84, § 2. Amended by Stats.1988, c. 1575, § 6; Stats.1991, c. 824 (S.B.768), § 1.)*

**XV. Penal Code § 637.4—Prohibition on Use of Polygraph Examination as Prerequisite to Accusatory Pleading**

(a) No state or local governmental agency involved in the investigation or prosecution of crimes, or any employee thereof, shall require or request any complaining witness, in a case involving the use of force, violence, duress, menace, or threat of great bodily harm in the commission of any sex offense, to submit to a polygraph examination as a prerequisite to filing an accusatory pleading.

(b) Any person who has been injured by a violator of this section may bring an action against the violator for his actual damages or one thousand dollars (\$1,000), whichever is greater.

*(Added by Stats.1980, c. 880, p. 2761, § 1.)*

**XVI. Penal Code § 1112—No Psychiatric Examination Necessary for Sexual Assault Victim**

Notwithstanding the provisions of subdivision (d) of Section 28 of Article I of the California Constitution, the trial court shall not order any prosecuting witness, complaining witness, or any other witness, or victim in any sexual assault prosecution to submit to a psychiatric or psychological examination for the purpose of assessing his or her credibility.

*(Added by Stats.1980, c. 16, p. 63, § 1. Amended by Stats.1984, c. 1101, § 1, eff. Sept. 13, 1984.)*

Note: This section also applies to juvenile dependency proceedings involving allegations of sexual assault.<sup>1</sup>

## XVII. Penal Code § 680—Sexual Assault Victims’ DNA Bill of Rights

(a) This section shall be known as and may be cited as the “Sexual Assault Victims’ DNA Bill of Rights.”

(b) The Legislature finds and declares all of the following:

(1) Deoxyribonucleic acid (DNA) and forensic identification analysis is a powerful law enforcement tool for identifying and prosecuting sexual assault offenders.

(2) Victims of sexual assaults have a strong interest in the investigation and prosecution of their cases.

(3) Law enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.

(4) The growth of the Department of Justice’s Cal-DNA databank and the national databank through the Combined DNA Index System (CODIS) makes it possible for many sexual assault perpetrators to be identified after their first offense, provided that rape kit evidence is analyzed in a timely manner.

(5) Timely DNA analysis of rape kit evidence is a core public safety issue affecting men, women, and children in the State of California. It is the intent of the Legislature, in order to further public safety, to encourage DNA analysis of rape kit evidence within the time limits imposed by subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.

(6) A law enforcement agency assigned to investigate a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289 should perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner in order to assure the longest possible statute of limitations, pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.

(7) For the purpose of this section, “law enforcement” means the law enforcement agency with the primary responsibility for investigating an alleged sexual assault.

(c)(1) Upon the request of a sexual assault victim, the law enforcement agency investigating a violation of Section 261, 261.5, 262, 286, 288aa, or 289 may inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim’s case. The law enforcement agency may, at its discretion, require that the victim’s request be in writing. The law enforcement agency may respond to the victim’s request with either an oral or written communication, or by electronic mail, if an electronic mail address is available. Nothing in this subdivision requires that the law enforcement agency communicate with the victim or the victim’s designee regarding the status of DNA testing absent a specific request from the victim or the victim’s designee.

(2) Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims have the following rights:

(A) The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from their case.

(B) The right to be informed whether or not the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence has been entered into the Department of Justice Data Bank of case evidence.

(C) The right to be informed whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Department of Justice Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation.

(3) This subdivision is intended to encourage law enforcement agencies to notify victims of information which is in their possession. It is not intended to affect the manner of or frequency with which the Department of Justice provides this information to law enforcement agencies.

(d) If the law enforcement agency elects not to analyze DNA evidence within the time limits established by subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803, victim of a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289, where the identity of the perpetrator is in issue, shall be informed, either orally or in writing, of that fact by the law enforcement agency.

(e) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case prior to the expiration of the statute of limitations as set forth in Section 803, a victim of a violation of Section 261, 261.5, 262, 286, 288a, or 289 shall be given written notification by the law enforcement agency of that intention.

(f) Written notification under subdivision (d) or (e) shall be made at least 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence from an unsolved sexual assault case where the election not to analyze the DNA or the destruction or disposal occurs prior to the expiration of the statute of limitations specified in subdivision (i) of Section 803.

(g) A sexual assault victim may designate a sexual assault victim advocate, or other support person of the victim's choosing, to act as a recipient of the above information required to be provided by this section.

(h) It is the intent of the Legislature that a law enforcement agency responsible for providing information under subdivision (c) do so in a timely manner and, upon request of the victim or the victim's designee, advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware. In order to be entitled to

receive notice under this section, the victim or the victim's designee shall keep appropriate authorities informed of the name, address, telephone number, and electronic mail address of the person to whom the information should be provided, and any changes of the name, address, telephone number, and electronic mail address, if an electronic mailing address is available.

(i) A defendant or person accused or convicted of a crime against the victim shall have no standing to object to any failure to comply with this section. The failure to provide a right or notice to a sexual assault victim under this section may not be used by a defendant to seek to have the conviction or sentence set aside.

(j) The sole civil or criminal remedy available to a sexual assault victim for a law enforcement agency's failure to fulfill its responsibilities under this section is standing to file a writ of mandamus to require compliance with subdivision (d) or (e).

*(Added by Stats.2003, c. 537 (A.B.898), § 1.)*

## **XVIII. Frequently Asked Questions:**

**1. Does a sexual assault victim have to use his or her real name in court?**

No. The victim may choose to be referred to as Jane Doe or John Doe in court proceedings.

**2. Does a sexual assault victim's address and phone number have to be disclosed to the defense attorney?**

Generally, unless there are special circumstances requiring confidentiality, an address and phone number will be turned over to the defense attorney. The defense attorney cannot give this information to the defendant or the defendant's family.<sup>2</sup> The court can also exclude any reference to the address and phone number in court.

**3. When is the victim entitled to have an advocate or support person present?**

The victim has the right to an advocate and support person present at the medical examination, at the follow-up interviews with the investigator, the prosecutor and the defense attorney as well as the preliminary hearing and trial.

**4. Does the victim have the right to know if a DNA profile of the suspect has been developed from the evidence?**

Yes. The victim may make a specific request to law enforcement to be so notified.

**XIX. Sample Motions**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, No. SCD  
Plaintiff, DA  
v.  
Defendant.

**DECLARATION IN SUPPORT  
OF ORDER RE: PROTECTION  
OF VICTIM'S MEDICAL  
RECORDS**

I, \_\_\_\_\_, declare:

1. I am a deputy district attorney assigned to the \_\_\_\_\_ Division of the \_\_\_\_\_ County District Attorney's Office.
2. I am presently assigned to handle the above-entitled case in which defendant is charged with \_\_\_\_\_ counts of \_\_\_\_\_, in violation of Penal Code section \_\_\_\_\_.
3. The victim, \_\_\_\_\_, was examined by a forensic sexual assault nurse examiner at \_\_\_\_\_ on \_\_\_\_\_, regarding the facts concerning the charges in this case.
4. During the examination, photographs were taken of the victim including injuries to the genitalia.
5. The People are in possession of said photographs and have no opposition to discovery of the photographs by defendant, so long as the contents are protected by the attached Order Re: Protection of Victim's Medical Record.

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

Executed at \_\_\_\_\_, California, on this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Deputy District Attorney

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,

No.  
DA

v.

Defendant.

**ORDER RE: PROTECTION OF  
VICTIM'S MEDICAL  
RECORDS**

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Counsel for defendant, \_\_\_\_\_, is requesting production of certain medical records, to wit: photographs obtained during a forensic sexual assault examination of the victim, \_\_\_\_\_, conducted at \_\_\_\_\_ on \_\_\_\_\_.

Because these records may be subject to the Constitutional Right to Privacy, this court, the Honorable \_\_\_\_\_ presiding, for good cause shown, makes the following order:

IT IS HEREBY ORDERED that a true and correct copy of medical records, to wit: photographs, be released to counsel for defendant or their designated representative subject to the following conditions:

1. All records obtained are deemed in the constructive custody of the court and are to be returned to the Office of the District Attorney at the conclusion of this proceeding for purposes of destruction.
2. Use of records obtained under this order is limited to this proceeding and may not be used for any other purpose such as teaching or training.
3. No duplicating or copying of said records is permitted.
4. Said records may be reviewed by the defendant, counsel for the defendant, or any expert witness retained by the defendant; however, any expert witness shall sign a declaration acknowledging that said witness is familiar with the terms of this order.
5. Counsel appearing ex parte and presenting this order for the court's signature shall have so notified all other counsel of record in this proceeding.
6. All reasonable expenses incurred in the production of these records shall be the responsibility of the party seeking production. Payment is required at the time of production.
7. All items obtained under this order are to be returned to the Office of the District Attorney 30 days after verdict or sentencing.

SO ORDERED.

Dated:

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Judge of the Superior Court



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF \_\_\_\_\_  
\_\_\_\_\_DIVISION

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

No.  
DA

Plaintiff,  
v.  
Defendant.

**ORDER RE: PROTECTION OF  
VICTIM'S MEDICAL RECORD  
(VIDEOTAPE)**

\_\_\_\_\_  
\_\_\_\_\_  
Counsel for defendant, \_\_\_\_\_, is requesting production of certain medical records, to wit: VIDEOTAPE obtained during a child abuse examination of the victim, \_\_\_\_\_ conducted at \_\_\_\_\_ on \_\_\_\_\_.

Because these records may be subject to the confidentiality provisions of the Child Abuse Reporting Act and the Constitutional Right to Privacy, this court, the Honorable Judge \_\_\_\_\_ presiding, for good cause shown, makes the following order.

IT IS HEREBY ORDERED that a true and correct copy of medical records, to wit: VIDEOTAPE be released to counsel for the defendant or their designated representative subject to the following conditions:

1. All records obtained are deemed in the constructive custody of the court and are to be returned to the Office of the District Attorney at the conclusion of this proceeding for purposes of destruction.
2. Use of records obtained under this order is limited to this proceeding and may not be used for any other purpose such as teaching or training.
3. That no duplicating or copying of said records is permitted.
4. That said records may be reviewed by the defendant, counsel for the defendant or any expert witness retained by defendant; however, any expert witness shall sign a declaration acknowledging that said witness is familiar with the terms of this order.
5. Counsel appearing ex parte and presenting this order for the Court's signature shall have notified all other counsel of record in this proceeding.
6. All reasonable expenses incurred in the production of these records shall be the responsibility of the party seeking production. Payment is required at the time of production.
7. All items obtained under this order are to be returned to the Office of the District Attorney thirty (30) days after verdict or sentencing.

Dated: \_\_\_\_\_

Reviewed and approved as to form and content:

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Attorney for Defendant

SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ DIVISION**

THE PEOPLE OF THE STATE OF CALIFORNIA,

No.

DA

Plaintiff,

**TRIAL BRIEF (excerpted)**

v.

Defendant.

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Comes now the plaintiff, the People of the State of California, by and through their attorneys, \_\_\_\_\_ District Attorney, \_\_\_\_\_, Deputy District Attorney, and respectfully submits the following TRIAL BRIEF.

**I  
EVIDENCE OF ANY PRIOR  
SEXUAL ACTIVITY OF THE VICTIM IS INADMISSIBLE  
PURSUANT TO EVIDENCE CODE SECTIONS 1103 AND 782**

Section 1103:

Evidence Code section 1103 allows a defendant to offer evidence of a victim's character or a trait of character to prove the victim acted consistently with that trait. The exception to this section, however, is a sexual assault case. Evidence Code section 1103(c)(1) states:

“Notwithstanding any other provision of this code to the contrary ... in any prosecution under Section 261 ... of the Penal Code ... opinion evidence, reputation evidence, and any evidence of specific instances of the complaining witness' sexual conduct, or any of such evidence, is not admissible by the defendant in order to prove consent by the complaining witness.”

Evidence Code section 1103 absolutely prohibits a defendant in a rape case from using the victim's testimony and her presumed denial of consent to introduce evidence “that she engaged in sexual activity with 1 other man, 10 other men, or 100 other men, nor that she engaged in such activity freely or for monetary compensation. This rule properly prevents the victim of sexual assault from being herself placed on trial.” *People v. Rioz* (1984) 161 Cal. App.3d 905, 916.

The humane treatment of rape victims, as mandated by section 1103(c) has been recognized by numerous appellate courts. In *People v. Blackburn* (1976) 56 Cal.App.3d 685, 690, the court stated that the purpose of section 1103 is “to deny to a defendant charged with rape or a related crime the right to introduce evidence that the victim had previously engaged in sexual activity and thereby to invite the trier of fact to infer that she consented to intercourse with the defendant so as to negate a necessary element of the crime of rape.”

However, there are three exceptions to the rule. First, this rule does not apply to evidence of the complaining witness' prior sexual conduct with the defendant. (Evid. Code § 1103(c)(3).) Second, if the prosecutor introduces evidence about the victim's sexual history, the defendant may cross-examine the witness giving the testimony and may offer evidence to specifically rebut such evidence. (Evid. Code § 1103(c)(4).) Third, the defendant is not precluded from attacking the complaining witness' credibility, **provided** Evidence Code section 782 is complied with. (Evid. Code § 1103(c)(5).)

Section 782:

Evidence Code section 782 reads as follows:

(a) In any of the circumstances described in subdivision (c), if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness under Section 780, the following procedure shall be followed:

(1) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness.

(2) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated. The affidavit shall be filed under seal and only unsealed by the court to determine if the offer of proof is sufficient to order a hearing pursuant to paragraph (3). After that determination, the affidavit shall be resealed by the court.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.

(4) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant pursuant to Section 780, and is not inadmissible pursuant to Section 352 of this code, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(5) An affidavit resealed by the court pursuant to paragraph (2) shall remain sealed, unless the defendant raises an issue on appeal or collateral review relating to the offer of proof contained in the sealed document. If the defendant raises that issue on appeal, the court shall allow the Attorney General and appellate counsel for the defendant access to the sealed affidavit. If the issue is raised on collateral review, the court shall allow the district attorney and defendant's counsel access to the sealed affidavit. The use of the information contained in the affidavit shall be limited solely to the pending proceeding.

(b) As used in this section, "complaining witness" means:

(1) The alleged victim of the crime charged, the prosecution of which is subject to this section, pursuant to paragraph (1) of subdivision (c).

(2) An alleged victim offering testimony pursuant to paragraph (2) or paragraph (3) of subdivision (c).

(c) The procedure provided by subdivision (a) shall apply in any of the following:

(1) In a prosecution under Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289 of the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy

to commit any crime defined in any of those sections, except if the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504.

(2) When an alleged victim testifies pursuant to subdivision (b) of Section 1101 as a victim of a crime listed in Section 243.4, 261, 261.5, 269, 285, 286, 288, 288a, 288.5, 289, 314, or 647.6 of the Penal Code, except if the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4 of the Penal Code, or in a state prison, as defined in Section 4504 of the Penal Code.

(3) When an alleged victim of a sexual offense testifies pursuant to Section 1108, except if the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4 of the Penal Code, or in a state prison, as defined in Section 4504 of the Penal Code.

Section 782 seeks to restrain attacks on the credibility of the complaining witness by establishing a procedural framework. Thus, the defendant must bear the burden of offering to prove, under oath, the relevance of the complaining witness's sexual conduct to attack her credibility in some way other than by attacking her character. Section 782 applies only when the credibility of the complaining witness is attacked and the procedural requirements of that section must be strictly enforced.

Therefore, before such evidence can be admitted, Evidence Code section 782 requires the defendant to make a written offer of proof indicating the evidence to be presented and its relevance in the form of an affidavit. The offer of proof must be sufficient to allow the trier of fact to determine whether to require a hearing. (*People v. Blackburn, supra.*) If the court finds the offer of proof sufficient, it must hold a hearing outside the presence of the jury and allow examination of the victim concerning the offer of proof. The court then weighs the evidence under Evidence Code section 780 (credibility) and Evidence Code section 352 and may limit or exclude the proffered evidence.

In the present case, the defense may claim that no assault occurred or that the acts were consensual. Prior sexual conduct of the victim is not admissible pursuant to Evidence Code section 1103 and there is no basis for any exception. Any evidence regarding the victim's prior sexual history is absolutely irrelevant and grossly prejudicial. Therefore, the court should exclude any cross-examination by the defense or other evidence offered of prior sexual conduct of the victim.

Dated: \_\_\_\_\_ Respectfully submitted: \_\_\_\_\_

#### ENDNOTES

1. *In re Dolly A.* (1986) 177 Cal.App.3d 195.
2. Penal Code § 1054.2.

## Chapter 7

### Victims' Rights at Disposition and Sentencing

#### I. Penal Code § 679.02(a)(12)—Rights of Victims and Witnesses

(a) The following are hereby established as the statutory rights of victims and witnesses of crimes:

(12) To be notified by the district attorney's office where the case involves a violent felony, as defined in subdivision (c) of Section 667.5, or in the event of a homicide, the victim's next of kin, of a pending pretrial disposition before a change of plea is entered before a judge.

(A) A victim of any felony may request to be notified, by the district attorney's office, of a pretrial disposition.

(B) If it is not possible to notify the victim of the pretrial disposition before the change of plea is entered, the district attorney's office or the county probation department shall notify the victim as soon as possible.

(C) The victim may be notified by any reasonable means available.

Nothing in this paragraph is intended to affect the right of the people and the defendant to an expeditious disposition as provided in Section 1050.

*(Added by Stats.1986, c. 1427, § 1. Amended by Stats.1988 c. 33, § 137, § 1; Stats.1995, c. 441 (S.B.221). § 2; Stats.1997, c. 902 (A.B.152), § 1; Stats.1998, c. 928 (A.B.1927), § 2.)*

#### II. Penal Code § 667.5(c)—List of Violent Felonies

Murder.....	Penal Code § 187
Voluntary Manslaughter .....	Penal Code § 192(a)
Mayhem.....	Penal Code §§ 203, 205
Forcible Rape .....	Penal Code §§ 261(a)(2), 261(a)(6), 262(1), 262(4)(6)
Forcible Sodomy .....	Penal Code §§ 286(c)—force, 286(d)
Oral Copulation.....	Penal Code § 288a(c) & (d)
Lewd Act on a Child .....	Penal Code § 288(a) & (b)
Any felony punishable by death or life.....	<i>Common examples:</i> Penal Code §§ 206, 209, 12310
Any felony with GBI.....	Penal Code §§ 12022.7, 12022.8, 12022.9
Any felony with firearm use.....	Penal Code §§ 12022.3, 12022.5, 12022.55
Robbery .....	Penal Code § 211
Arson .....	Penal Code § 451(a) & (b)
Forcible Penetration by Foreign Object .....	Penal Code §§ 289(a)—force, 289(j)

Attempted Murder .....	Penal Code § 664/187
Exploding Destructive Device .....	Penal Code §§ 12308, 12309, 12310
Kidnapping .....	Penal Code §§ 207, 208, 209, 209.5
Continuous Sexual Abuse of a Child .....	Penal Code § 288.5
Carjacking With Use of a Deadly Weapon .....	Penal Code § 215(a)
Assault With Intent to Commit Mayhem, Rape, or Oral Copulation .....	Penal Code § 220
Rape, Spousal Rape, or Sexual Penetration, In Concert.....	Penal Code § 264.1
Gang Extortion .....	Penal Code § 518/186.22
Gang Threats.....	Penal Code § 136.1/186.22
Residential Burglary With Another Present .....	Penal Code § 460(a)
Firearm discharge offenses .....	Penal Code § 12022.53
Weapons of Mass Destruction .....	Penal Code § 11418(b) & (c)

### III. Sample Letter Notifying Victim of Pretrial Disposition

Date: \_\_\_\_\_

Re: People v. \_\_\_\_\_

Docket No.: \_\_\_\_\_

Report No.: \_\_\_\_\_

Dear \_\_\_\_\_,

This is to inform you that the defendant in this case has pled guilty to \_\_\_\_\_, under the following conditions:

(List charges defendant pled to)

If you have any questions concerning this case, you should contact \_\_\_\_\_ (Attorney)

at \_\_\_\_\_ (Phone)

The next regular step in the criminal proceedings is sentencing, which has been set on \_\_\_\_\_, \_\_\_\_\_ before the Honorable \_\_\_\_\_ (Month) (Day) (Year) (Judge) in Department \_\_\_\_\_, located at \_\_\_\_\_.

Prior to the sentencing date, the Adult Probation Department makes a recommendation to the judge regarding an appropriate sentence for the defendant. The Adult Probation Department will contact you prior to sentencing, and provide you with an opportunity to express your views on the appropriate sentence, proper amount of restitution, and your feelings about the case.

You can call the Adult Probation Department at \_\_\_\_\_ and, by providing the (Phone No.)

defendant's name and docket number, speak with the individual probation officer handling the case.

You, as a crime victim (or your parents or guardian), have a right to appear and express your views at the sentencing hearing.

Yours truly,

Victim Witness Advocate

#### IV. Sample Letter Notifying Next of Kin of Pretrial Disposition

Date: \_\_\_\_\_

Re: People v. \_\_\_\_\_

Docket No.: \_\_\_\_\_

Report No.: \_\_\_\_\_

Dear \_\_\_\_\_,

This is to inform you that the defendant in this case has pled guilty to \_\_\_\_\_ under the following conditions:  
(List charges defendant pled to),

\_\_\_\_\_ at \_\_\_\_\_  
(Attorney)

\_\_\_\_\_.  
(Phone)

The next regular step in the criminal proceedings is sentencing, which has been set on \_\_\_\_\_, \_\_\_\_\_ before the Honorable \_\_\_\_\_  
(Month) (Day) (Year) (Judge)  
in Department \_\_\_\_\_, located at \_\_\_\_\_.

Prior to the sentencing date, the Adult Probation Department makes a recommendation to the judge regarding an appropriate sentence for the defendant. The Adult Probation Department will contact you prior to sentencing, and provide you with an opportunity to express your views on the appropriate sentence, proper amount of restitution, and your feelings about the case.

You can call the Adult Probation Department at \_\_\_\_\_ and, by providing the  
(Phone No.)  
defendant's name and docket number, speak with the individual probation officer handling the case.

You, as next of kin to a crime victim, have a right to appear and express your views at sentencing.

Yours truly,

Victim Witness Advocate

**V. Sample Letter Notifying Victim of Pending Pretrial Disposition Hearing**

Date: \_\_\_\_\_

Re: People v. \_\_\_\_\_

Docket No.: \_\_\_\_\_

Report No.: \_\_\_\_\_

Dear \_\_\_\_\_,

This case is set for a settlement conference on \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
(Month) (Day) (Year) (Time)  
before the Honorable \_\_\_\_\_, in Department \_\_\_\_\_, at  
(Judge)  
\_\_\_\_\_.  
(Location of Court)

The purpose of a settlement conference is to determine if the defendant is willing to  
plead guilty prior to \_\_\_\_\_.  
(Preliminary Hearing/Trial)

This is not a subpoena, you need not appear.

If you have any questions concerning the scheduled settlement conference, or any  
input concerning this case, you should contact \_\_\_\_\_ by calling \_\_\_\_\_.  
(Attorney) (Phone)

If the defendant pleads guilty at the settlement conference, the next regular step  
in the criminal proceeding is sentencing. Prior to the sentencing, the Adult Probation  
Department will contact you and provide you with an opportunity to express your views on  
the appropriate sentence, proper amount of restitution, and your thoughts about the case.

Yours truly,

Victim Witness Advocate

**VI. Welfare & Institutions Code § 742—Notification to Victim Regarding Final Disposition of Case**

(a) Upon the request of an alleged victim of a crime, the probation officer shall, within 60 days of the final disposition of a case within which a petition has been filed pursuant to Section 602, inform that person by letter of the final disposition of the case. “Final disposition” means dismissal, acquittal, or findings made pursuant to this article. If the court orders that restitution shall be made to the victim of a crime, the amount, terms, and conditions thereof shall be included in the information provided pursuant to this section.



(b) In any case in which a petition has been filed pursuant to Section 602, the probation officer shall inform the victim of the offense, if any, of any victim-offender conferencing program or victim impact class available in the county, and of his or her right pursuant to subdivision (a) to be informed of the final disposition of the case, including his or her right, if any, to victim restitution, as permitted by law.

*(Added by Stats.1976, c. 1070, p. 4813, § 4. Amended by Stats.1981, c. 447, p. 1696, § 1; Stats.1998, c. 761 (S.B.2074), § 2.)*

## **VII. Penal Code § 679.02(a)(3) & (4)—Rights of Victims and Witnesses**

(a) The following are hereby established as the statutory rights of victims and witnesses of crimes:

(3) For the victim, the victim's parents or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to be notified of all sentencing proceedings, and of the right to appear, to reasonably express his or her views, have those views preserved by audio or video means as provided in Section 1191.16, and to have the court consider his or her statements, as provided by Sections 1191.1 and 1191.15.

(4) For the victim, the victim's parents or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to be notified of all juvenile disposition hearings in which the alleged act would have been a felony if committed by an adult, and of the right to attend and to express his or her views, as provided by Section 656.2 of the Welfare and Institutions Code.

*(Added by Stats.1986, c. 1427, § 1. Amended by Stats.1988, c. 33, § 1; Stats.1988, c. 137, § 11 Stats.1005, c. 411 (S.B.221), § 2; Stats.1997, c. 902 (A.B.152), § 1; Stats.1998, c. 928 (A.B.1927), § 2.)*

## **VIII. Penal Code § 1191.1—Appearance of Victim, Parents, Guardian, or Next of Kin at Sentencing**

The victim of any crime, or the parents or guardians of the victim if the victim is a minor, or the next of kin of the victim if the victim has died, have the right to attend all sentencing proceedings under this chapter and shall be given adequate notice by the probation officer of all sentencing proceedings concerning the person who committed the crime.

The victim or up to two of the victim's parents or guardians if the victim is a minor, or the next of kin of the victim if the victim has died, have the right to appear, personally or by counsel, at the sentencing proceeding and to reasonably express his, her, or their views concerning the crime, the person responsible, and the need for restitution. The court in imposing sentence shall consider the statements of victims, parents or guardians, and next of kin made pursuant to this section and shall state on the record its conclusion concerning whether the person would pose a threat to public safety if granted probation.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

*(Added by Initiative Measure (Prop. 8, § 6, approved June 8, 1982). Amended by Stats.1984, c. 1425, § 1; Stats.1993, c. 338 (A.B.237), § 1.)*

Note: The sentencing court may rely upon a victim impact statement contained within the probation report.<sup>1</sup>

At a sentencing hearing, the defendant does not have a right to confront or cross examine a person making a victim impact statement.<sup>2</sup>

The sentencing court **may** consider multiple out-of-court or unsworn statements from the family and friends of the victim of a violent crime. (Emphasis added) Consideration of the victim's view does not violate the defendant's due process rights.<sup>3</sup>

If the victim has not been notified of the hearing, the court may nonetheless go forward with the sentencing.<sup>4</sup>

The victim's right is only to be heard at the sentencing hearing; this right does not attach to a continuance of a sentencing hearing.<sup>5</sup>

## **IX. Penal Code § 1191.15—Taped Statement in Lieu of Personal Appearance**

(a) The court may permit the victim of any crime, or his or her parent or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to file with the court a written, audiotaped, or videotaped statement, or statement stored on a CD Rom, DVD, or any other recording medium acceptable to the court, expressing his or her views concerning the crime, the person responsible, and the need for restitution, in lieu of or in addition to the person personally appearing at the time of judgment and sentence. The court shall consider the statement filed with the court prior to imposing judgment and sentence.

Whenever an audio or video statement or statement stored on a CD Rom, DVD, or other medium is filed with the court, a written transcript of the statement shall also be provided by the person filing the statement, and shall be made available as a public record of the court after the judgment and sentence have been imposed.

(b) Whenever a written, audio, or video statement or statement stored on a CD Rom, DVD, or other medium is filed with the court, it shall remain sealed until the time set for imposition of judgment and sentence except that the court, the probation officer, and counsel for the parties may view and listen to the statement not more than two court days prior to the date set for imposition of judgment and sentence.

(c) No person may, and no court shall, permit any person to duplicate, copy, or reproduce by any audio or visual means any statement submitted to the court under the provisions of this section.

(d) Nothing in this section shall be construed to prohibit the prosecutor from representing to the court the views of the victim or his or her parent or guardian or the next of kin.

(e) In the event the court permits an audio or video statement or statement stored on a CD Rom, DVD, or other medium to be filed, the court shall not be responsible for providing any equipment or resources needed to assist the victim in preparing the statement.

*(Added by Stats.1988, c. 935, § 1. Amended by Stats.2004, c. 1 (A.B.2), § 1, eff. Jan. 21, 2004.)*

Note: The sentencing court may consider multiple out-of-court or unsworn statements from the family and friends of the victim of a violent crime.<sup>6</sup>

**X. Penal Code § 1170(b)—Determinative Sentencing**

When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation.

In determining the appropriate term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall select the term which, in the court's discretion, best serves the interests of justice. The court shall set forth on the record the reasons for imposing the term selected and the court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

*(Added by Stats.2007, c. 3, (S.B.40), § 3, eff. March 30, 2007, operative Jan. 1, 2009. Amended by Stats.2007, c. 740 (A.B.1539), § 2, operative Jan. 1, 2009.)*

**XI. Sample Victim Impact Statement**

If you need more space to answer any of the following questions, please feel free to use as much paper as you need, and simply attach those sheets of paper to this impact statement. Thank you.

Your Name \_\_\_\_\_

Defendant's Name(s) \_\_\_\_\_

1. How has this crime affected you and those close to you? Please feel free to discuss your feelings about what has happened and how it has affected your general well-being. Has this crime affected your relationship with any family members, friends, co-workers, and other people? As a result of this crime, if you or others close to you have sought any type of victim services, such as counseling by either a licensed professional, member of the clergy, or a community-sponsored support group, you may wish to mention this.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. What physical injuries or symptoms have you or others close to you suffered as a result of this crime? You may want to write about how long the injuries lasted, or how long they are

expected to last, and if you sought medical treatment for these injuries. You may also want to discuss what changes you have made in your life as a result of these injuries.

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3. Has this crime affected your ability to perform your work, make a living, run a household, go to school or enjoy any other activities you previously performed or enjoyed? If so, please explain how these activities have been affected by this crime.

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## **XII. Penal Code § 1191.16—Right to Record Victim Impact Statement**

The victim of any crime, or the parents or guardians of the victim if the victim is a minor, or the next of kin of the victim if the victim has died, who choose to exercise their rights with respect to sentencing proceedings as described in Section 1191.1 may, in any case where the defendant is subject to an indeterminate term of imprisonment, have their statements simultaneously recorded and preserved by means of videotape, videodisc, or any other means of preserving audio and video, if they notify the prosecutor in advance of the sentencing hearing and the prosecutor reasonably is able to provide the means to record and preserve the statement. If a video and audio record is developed, that record shall be maintained and preserved by the prosecution and used in accordance with the regulations of the Board of Prison Terms at any hearing to review parole suitability or the setting of a parole date.

*(Added by Stats.1997, c. 902, (A.B.152), § 2.)*

## **XIII. Sample Victim Impact Letters for Victim Reference**

### **A. Sample Letter #1**

I can't even bring myself to court today to address this opportunity with you directly, because the thought of seeing you causes me so much anxiety, sadness and embarrassment. You will never understand the psychological damage you have caused me and the emotional damage I will endure forever as a result of your perversions. You preyed on my personal privacy in my most intimate settings and robbed me. You violated my comfort zone and for that I will forever have trust and paranoia issues. I hope you receive a sentence that is fitting for the damage you have caused. You may do your time and be done; however I will never ever forget the images on that video tape on that day the detectives asked me to identify myself. Nor will I ever forget the fear in my roommate's eyes when she came running into my room trembling "there's a camera in my room."

— Victim

## B. Sample Letter #2—Impact Statement of a Vehicle Robbery Victim

Dear Mr. \_\_\_\_\_,

I am writing you this letter in hopes you will see how your one mistake affected so many lives. On April 30, 2005, you walked up onto my property and drove off with my vehicle. Whatever your reasoning was that night, it hurt more people than you know.

You see I am a mother of two children. I work three jobs so I can support those two children. Seven days a week, sometimes 20 hour days, I work to make a living. You're probably wondering, OK, what does that matter? One of my jobs is childcare. **You would know that though.** How do I know? My business paperwork for each child was in that car. Along with business cards, car seats, and **each of their belongings.** On that night without any regard to whose those belongings were, you tossed my/our belongings. I also lost my way of transportation for my childcare business. You see that vehicle was just purchased a month ago, so I can expand my business. I still do not have my vehicle because of your decision. I have been unable to provide the childcare I agreed to because I cannot pick up these children for the parents. It hasn't just "hurt" my business though.

On April 29, my children and I planned to go on our first vacation in a long time. That Friday night we shopped for all our vacation "goodies," packed our car, and planned to leave bright and early Saturday morning. Wow, what a surprise, no car. You could never imagine the feeling that goes through you when something like that happens. You took away our excitement, happiness, and hope. Let me paint the picture a little clearer. Three people, **two of them children,** are walking outside early one morning ready to go on vacation. Just bought all their new swimsuits, swimming gear, and toys. Then, **nothing** ... because everything is gone. Just a car, you're thinking, huh? Nope! My personal belongings were in that car as well. My daughter's car seat, our clothes, and all of our belongings! Are you getting the picture? Are you seeing how your decision that night has affected so many others? It isn't about the money, Mr. \_\_\_\_\_. It was **OUR** stuff, not yours! It is the hard work I put into making sure we have what we need. It was our sentimental belongings that were in that car the night you stole it!

We moved into this home not so long ago for a fresh start. We moved into it for security, safety, and a new life. **You stole all that.** We no longer have security. We no longer feel safe, all because of your one decision. Why? I will never know. I hope that this letter gives you some insight on your future decisions. Mr. \_\_\_\_\_, it wasn't just a car. **It was our car.**

—Victim

### C. Sample Letter #3—Impact Statement of a Child Pornography Victim

My name is \_\_\_\_\_. I am 13 years old. When I was five years old, \_\_\_\_\_, a millionaire who was a pedophile, adopted me from Russia. I was rescued almost three years ago when the FBI raided his home in a child pornography sting.

When I arrived at \_\_\_\_\_'s house, I was only five years old and didn't know much English. I did know that he didn't have a bedroom for me. Or a bed. Instead I slept with him in his bed for almost five years until I was 10 years old. During that time \_\_\_\_\_ made me have sex with him every day.

He made me take showers with him ... Sometimes he chained me in the basement and took pictures of me with dildos or dressed in a wedding gown. He would pretend to marry me and then made me have sex with him. There was oral sex, anal sex, dildos and sex toys. He did and made me do terrifying things when I was just 5, 6, 7, 8, 9, and 10 years.

I can't even remember all the abusive things he did to me. Unfortunately, though, I can't forget because there are pictures of the abuse. Hundreds and hundreds of pictures of \_\_\_\_\_ doing horrible things to me like the kind I describe above. ... All of this and I was just a child. Since he didn't want me to grow up, he only let me eat a little bit of food—plain pasta, raw vegetables, no meat. Five years after I went to live with him I had only gained a little bit of weight. When the FBI found me I was 10 years old but only wore a size 6X.

The absolute worse thing about everything that happened to me was that \_\_\_\_\_ put my pictures on the Internet. He traded them with other people like baseball cards. What kind of people want to see pictures of a little girl being abused in this way?

I have been told that my pictures are the most popular on the Internet. How can so many people delight in the horrible things that happened to me?

I still don't really understand why this happened to me or why so many people want to see these terrible things. I know that these pictures will never end and that my "virtual abuse" will go on forever. Usually when someone is raped and abused, the criminal goes to prison and the abuse ends. But since \_\_\_\_\_ put these pictures on the Internet, my abuse is still going on.

Anyone can see them. People ask for them and are still downloading them. Day after day. People want to see me being abused. I want every single person who downloads my picture to go to jail and really be punished as much as possible. They are as evil as \_\_\_\_\_. They want to see me suffer. They want to see me starved and hurt and sad and abused.

Child pornography is not a victimless crime. I am a victim and I still suffer every day and every time someone sees me being abused. I ask that you think about me and everything I have gone through when you sentence this person to prison. Think about the abuse I have endured and give this person a long, long time to think about the evil he did by taking pleasure in my pain.

**XIV. Penal Code § 1191.25—Notice to Victim of Crime Committed by In-Custody Informant Regarding Intention to Reduce Informant’s Sentence in Exchange for Testimony in Another Case**

The prosecution shall make a good faith attempt to notify any victim of a crime which was committed by, or is alleged to have been committed by, an in-custody informant, as defined in subdivision (a) of Section 1127a, within a reasonable time before the in-custody informant is called to testify. The notice shall include information concerning the prosecution’s intention to offer the in-custody informant a modification or reduction in sentence or dismissal of the case or early parole in exchange for the in-custody informant’s testimony in another case. The notification or attempt to notify the victim shall be made prior to the commencement of the trial in which the in-custody informant is to testify where the intention to call him or her is known at that time, but in no case shall the notice be made later than the time the in-custody informant is called to the stand.

Nothing contained in this section is intended to affect the right of the people and the defendant to an expeditious disposition of a criminal proceeding, as provided in Section 1050. The victim of any case alleged to have been committed by the in-custody informant may exercise his or her right to appear at the sentencing of the in-custody informant pursuant to Section 1191.1, but the victim shall not have a right to intervene in the trial in which the in-custody informant is called to testify.

*(Added by Stats.1989 c. 901, § 2.)*

**XV. Penal Code § 11116.10— Notice of Disposition to Victim**

(a) Upon the request of a victim or a witness of a crime, the prosecuting attorney shall, within 60 days of the final disposition of the case, inform the victim or witness by letter of such final disposition. Such notice shall state the information described in Section 13151.1.

(b) As used in this section, “victim” means any person alleged or found, upon the record, to have sustained physical or financial injury to person or property as a direct result of the crime charged.

(c) As used in this section, “witness” means any person who has been or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced.

(d) As used in this section, “final disposition” means an ultimate termination of the case at the trial level including, but not limited to, dismissal, acquittal, or imposition of sentence by the court, or a decision by the prosecuting attorney, for whatever reason, not to file the case.

(e) Subdivision (a) does not apply in any case where the offender or alleged offender is a minor unless the minor has been declared not a fit and proper subject to be dealt with under the juvenile court law.

(f) This section shall not apply to any case in which a disposition was made prior to the effective date of this section.

*(Added by Stats.1976, c. 1061, p. 4701, § 1. Amended by Stats.1978, c. 152, p. 377, § 8, eff. May 24, 1978, operative July 1, 1978; Stats.1986, c. 1427, § 2.)*

**XVI. Welfare & Institutions Code § 656.2—Minors Committing Acts That Would Have Been Felonies if Committed by Adults; Statement of Victim or Victim’s Next of Kin; Information Concerning Victim’s Rights; Attendance at Hearing**

(a) Notwithstanding any other provision of law, a victim shall have the right to present a victim impact statement in all juvenile court hearings concerning petitions filed pursuant to Section 602 alleging the commission of any criminal offense. In any case in which a minor is alleged to have committed a criminal offense, the probation officer shall inform the victim of the rights of victims to submit a victim impact statement. If the victim exercises the right to submit a victim impact statement to the probation officer, the probation officer shall include the statement in his or her social study submitted to the court pursuant to Section 706 and, if applicable, in his or her report submitted to the court pursuant to Section 707. The probation officer also shall advise those persons as to the time and place of the disposition hearing to be conducted pursuant to Sections 702 and 706; any fitness hearing to be conducted pursuant to Section 707, and any other judicial proceeding concerning the case.

The probation officer shall also provide the victim with information concerning the victim’s right to an action for civil damages against the minor and his or her parents and the victim’s opportunity to be compensated from the restitution fund. The information shall be in the form of written material prepared by the Judicial Council and shall be provided to each victim for whom the probation officer has a current mailing address.

(b) Notwithstanding any other provisions of law, the persons from whom the probation officer is required to solicit a statement pursuant to subdivision (a) shall have the right to attend the disposition hearing conducted pursuant to Section 702 and to express their views concerning the offense and disposition of the case pursuant to Section 706, and to attend any fitness hearing conducted pursuant to Section 707, and to be present during juvenile proceedings as provided in Section 676.5.

(c) Notwithstanding any other provision of law, in any case in which a minor is alleged to have committed an act subject to a fitness hearing under Section 707, the victim shall have the right to be informed of all court dates and continuances pertaining to the case, and shall further have the right to obtain copies of the charging petition, the minutes of the proceedings, and orders of adjudications and disposition of the court that are contained in the court file. The arresting agency shall notify the victim in a timely manner of the address and telephone number of the juvenile branch of the district attorney’s office that will be responsible for the case and for informing the victim of the victim’s right to attend hearings and obtain documents as provided in this section. The district attorney shall, upon request, inform the victim of the date of the fitness hearing, the date of the disposition hearing, and the dates for any continuances of those hearings, and shall inform the court if the victim seeks to exercise his or her right to obtain copies of the documents described in this subdivision.

Where the proceeding against the minor is based on a felony that is not listed in Section 676, a victim who obtains information about the minor under this subdivision shall not disclose or disseminate this information beyond his or her immediate family or support persons authorized by Section 676, unless authorized to do so by a judge of the juvenile court, and the judge may suspend or terminate the right of the victim to access to information under



this subdivision if the information is improperly disclosed or disseminated by the victim or any members of his or her immediate family. The intentional dissemination of documents in violation of this subdivision is a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500). Documents released by the court to a victim pursuant to this section shall be stamped as confidential and with a statement that the unlawful dissemination of the documents is a misdemeanor punishable by a fine of not more than five hundred dollars (\$500).

(d) Upon application of the district attorney for good cause and a showing of potential danger to the public, the court may redact any information contained in any documents released by the court to a victim pursuant to this section.

(e) For purposes of this section, “victim” means the victim, the parent or guardian of the victim if the victim is a minor, or, if the victim has died, the victim’s next of kin.

*(Added by Stats.1989, c. 569, § 3, eff. Sept. 21, 1989. Amended by Stats.1995, c. 234 (A.B.889), § 2; Stats.1997, c. 910 (S.B.1195), § 1; Stats.1999, c. 996 (S.B.334), § 17.5.)*

## **XVII. Frequently Asked Questions**

### **1. Who can speak at a sentencing hearing?**

The victim, minor victim’s parents or guardian, or the next of kin if the victim has died.

### **2. Can the victim or victim’s next of kin make a virtual appearance at sentencing?**

Yes. The views of the victim or victim’s next of kin can be preserved electronically (audio or video) and replayed to the court. Such recordings are also useful for future parole hearings.

### **3. Can the defendant’s attorney cross-examine me again at a sentencing hearing?**

No. The defendant does not have the right to cross-examine you. Under the law you have a right to speak to the judge directly and express your views.

### **4. My friends and family want to write to the judge about how the crime has affected me. Will the court consider more than one letter?**

Yes. The court may consider multiple letters from your family and friends at sentencing.

## **ENDNOTES**

1. *People v. Sanders* (1990) 221 Cal.App.3d 350, 361–362.
2. *People v. Birmingham* (1990) 217 Cal.App.3d 180, 184.
3. *People v. Mockel* (1990) 226 Cal.App.3d 51; *People v. Zikorus* (1983) 150 Cal.App.3d 324.
4. *People v. Superior Court (Thompson)* (1984) 154 Cal.App.3d 319.
5. *Dix v. Superior Court* (1991) 53 Cal.3d 442.
6. *People v. Mockel* (1990) 226 Cal.App.3d 581.

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## Chapter 8 Restitution

### I. Introduction

Beginning in the early 1980s, legislation and ballot initiatives have instituted many rights designed to protect victims of crime. Historically, when a crime has been committed, the chief concern of criminal justice agencies has been apprehending and dealing with the criminal, and after police leave the scene of the crime, the victim was frequently forgotten. In the wake of the crime, many victims and witnesses are further victimized by the criminal justice system.<sup>1</sup>

In 1982, California voters approved Proposition 8, amending the California Constitution to include a Victims' Bill of Rights. The passage of Proposition 8 added Article I, section 28(b) to the California Constitution, guaranteeing victims of crime the right to restitution from the offender.

Subsequently, in 1983, the Legislature enacted statutes guaranteeing victims the right to restitution. These statutes governing restitution were added to the Government Code and the Penal Code. In September 1994, the Legislature amended the restitution statutes, making Penal Code section 1202.4 and Welfare and Institutions Code section 730.6 the governing statutes in adult and juvenile cases, respectively. Since 1994, Penal Code section 1202.4 and Welfare and Institutions Code section 730.6 have been amended several times to strengthen a victim's right to restitution. Additionally, California's appellate courts have issued a vast body of case law through rulings to further guide trial courts in the ordering of restitution.

This chapter will discuss current restitution statutory and case law that will be useful in seeking restitution orders on behalf of victims of crime. The chapter begins with a discussion of the Victim Compensation Program, which provides assistance to victims of violent crime. Next, the chapter discusses restitution fines, which courts must order every convicted defendant or ward to pay. The chapter then discusses mandatory victim restitution in adult and juvenile cases, discretionary victim restitution, statutory restitution, and the effect insurance settlements may have on restitution. Also included in this chapter are several points and authorities sections that may be used when pursuing restitution, as well as common forms.

For additional information or assistance concerning any of the material in this chapter, please contact Deputy District Attorney Joanne Evoy at the San Diego District Attorney's Office by phone at (619) 685-6638 or e-mail at [joanne.evoy@sdcdca.org](mailto:joanne.evoy@sdcdca.org).

### II. The Victim Compensation Program

The California Victim Compensation and Government Claims Board (VCGCB) administers the Victim Compensation Program (VCP), which reimburses eligible crime victims for specified out-of-pocket losses as a result of criminal activity perpetrated against them. Compensation is provided for eligible expenses to victims who are physically injured or

threatened with physical injury as a result of the crime. Specific members of the victim's family or other persons who lived with the victim may also qualify for assistance. A California resident may apply for benefits even if the crime occurred while the victim was outside of California. Nonresidents of California may apply for assistance if the crime occurred while the nonresident was in California. The VCP may help victims pay for crime-related expenses when not reimbursed by other sources, including

- Medical and dental treatment
- Mental health services
- Income loss
- Funeral and burial expenses
- Loss of support for dependents when a victim is killed or disabled because of a crime
- Job retraining
- Home or vehicle modifications
- Home security
- Relocation
- Insurance co-payments
- Crime scene clean-up
- Medically necessary equipment such as a wheelchair
- Childcare services when a caregiver is killed or disabled because of a crime

The maximum amount of compensation for all expenses may not exceed \$70,000.

The VCP is not funded by tax dollars. The program uses the state's Restitution Fund to reimburse eligible victims. The Fund derives its revenue primarily from three distinct sources: (1) court-ordered restitution fines and orders, (2) a federal grant from the federal Office for Victims of Crime, and (3) a portion of penalty assessments.

In fiscal year 2005–2006, the VCP received approximately 47,000 applications; 43,500 were found to be eligible.

**A. What Amount Does the Victim Compensation Program Pay Out?**

The VCP paid approximately \$66 million to more than 30,000 victims of crime in fiscal year 2005–2006. This represents payments not only to new victims, but victims with ongoing expenses from prior years. A victim's losses may extend for many months, if not years.

Payments by crime category are as follows (figures are rounded up):

<b>Crime</b>	<b>Payment</b>
Assault	\$33,000,000
Homicide	\$15,300,000
Sexual Assault	\$ 1,800,000
Child Abuse	\$ 7,000,000
DUI	\$ 2,300,000
Other Vehicular Crimes	\$ 2,500,000
Stalking	\$ 144,000

Robbery	\$ 2,600,000
Terrorism	\$ 1,500
Kidnapping	\$ 162,000
Arson	\$ 27,000
Other crimes	\$ 926,500
<b>Total</b>	<b>\$65,761,000</b>

The chart below provides the benefit payouts by category for fiscal year 2005–06.

<b>Benefit</b>	<b>Bills</b>	<b>Payout</b>
Medical and medical-related	18,373	\$24,700,000
Mental health	45,590	\$14,600,000
Income/support	8,635	\$12,000,000
Funeral/burial	2,572	\$10,300,000
Relocation	2,060	\$ 2,800,000
Dental	741	\$ 1,200,000
Rehab and other	298	\$ 235,000
Attorney payments to date		\$ 183,000
<b>Total</b>	<b>78,269</b>	<b>\$66,018,000</b>

## **B. State Restitution Recovery Program**

The Victim Compensation and Government Claims Board is charged with compensating eligible victims for expenses incurred as a result of a qualifying crime. One of the programs VCGCB oversees is the State of California’s restitution recovery program. The program serves victims of crime through tracking, monitoring, and collecting monies owed to the state Restitution Fund.

VCGCB collaborates with the criminal justice community on efforts to impose and collect restitution fines and orders against offenders of violent crimes. California’s restitution program provides guidance to the criminal justice community and victims’ rights advocacy groups on enforcing restitution laws. The program facilitates these groups working together to safeguard the rights of victims and hold offenders accountable for their crimes.

For questions about the program, contact VCGCB at (916) 491-3766. Information can also be found on the VCGCB Web site at [www.vcgcb.ca.gov/restitution.htm](http://www.vcgcb.ca.gov/restitution.htm).

## **C. Criminal Restitution Compact Program**

Since 1996, VCGCB has contracted with local prosecutors for assistance with restitution. These agreements, or Criminal Restitution Compacts (CRC), have staff at District and City Attorney offices throughout the state dedicated to imposing court-ordered restitution fines and orders against criminal offenders.

More than 20 counties and one city participate in the CRC program, including Alameda, Contra Costa, Fresno, Los Angeles, Merced, Monterey, Napa, Orange, Riverside, Sacramento, San Bernardino, San Diego (city and district attorney offices), San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Shasta, Solano, Sonoma, Stanislaus, Tulare, and Ventura.

Upon receipt of a victim's application to recover crime-related expenses, VCGCB staff notifies the restitution specialist assigned within the district attorney's or city attorney's office. The restitution specialist works with the prosecuting attorney and monitors the case. If the case results in a conviction, the restitution specialist notifies the prosecutor (and if appropriate, the local probation office) that VCGCB requests that the court impose an appropriate restitution fine and order. The restitution specialist then provides VCGCB with information about the outcome of the criminal matter.

Restitution specialists provide training to prosecutors, probation officers, and court staff and work closely with probation departments to ensure that presentence investigation reports contain restitution recommendations. They also are a valuable resource to victims—assisting them in determining economic losses for submission of restitution claims, helping them obtain restitution orders from courts, and informing them of procedures for collection on these orders.

To obtain the name of your local restitution specialist for help with restitution-related issues, contact the VCGCB at (916) 491-3766.

### **III. Restitution Fines**

In every case in which a defendant is convicted or a petition against a minor is sustained, the court must order the defendant or the minor to pay a restitution fine. The restitution fine is deposited in the restitution fund and is used by the California Victim Compensation and Government Claims Board to fund the Victims of Crime Program, providing assistance for victims of violent crimes.

#### **A. Adult Offenders**

##### **1. Penal Code § 1202.4—Restitution**

###### **a. Amount of the Restitution Fine**

Penal Code section 1202.4(b) mandates that the court order every defendant convicted of a crime in California to pay a restitution fine. Subsection (b)(1) establishes a statutory range for the restitution fine: In misdemeanor cases, the court is to impose a restitution fine of no less than \$100 and no more than \$1,000, and in felony cases, the court is to impose a restitution fine of no less than \$200 and no more than \$10,000.

In cases where the defendant is sentenced to prison, there is a formula provided in Penal Code section 1202.4(b)(2) that the court may use in setting the amount of the restitution fine: \$200 x the number of years of imprisonment x the number of felony counts of which the defendant is convicted.

## **b. Ordering the Restitution Fine**

The court must order the minimum restitution fine regardless of the defendant's ability to pay.<sup>2</sup>

In setting the restitution fine above the minimum, the court shall consider any relevant factors, including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses (monetary or psychological) as a result of the crime, and the number of victims involved in the crime.<sup>3</sup> The defendant bears the burden of demonstrating an inability to pay.<sup>4</sup> The court is not required to make express findings concerning the factors it used to reach its decision regarding the amount of the restitution fine.<sup>5</sup> A separate hearing for the setting of the restitution fine is not required.<sup>6</sup>

### **(1) Defendant Must Be Advised of the Possible Range of the Restitution Fine**

The defendant must be advised of the range of the restitution fine that the court may impose. If the defendant is not advised that the court must impose a restitution fine and the possible range of the fine, the court may only impose the minimum fine.<sup>7</sup> But if the defendant is advised of the mandatory imposition of a restitution fine and the possible range of the fine, the court may impose a restitution fine above the minimum.<sup>8</sup> If the defendant is not advised of the restitution fine by the prosecution during plea negotiations, but the court advises the defendant of the fine and the possible range, the court may impose a restitution fine above the statutory minimum.<sup>9</sup>

### **(2) Sentencing a Defendant on Multiple Cases at the Same Hearing**

In *People v. Enos*,<sup>10</sup> the court held a single sentencing hearing for three separate cases against the defendant. The court ordered separate restitution fines for each case. The appellate court upheld the separate restitution fines, holding that the cases were not consolidated and that nothing in Penal Code section 1202.4(b) precludes courts from imposing separate restitution fines in multiple cases being disposed of at a single hearing, provided that the court does not order restitution fines in excess of the statutory maximum of \$10,000. Likewise, in *People v. Schoeb*,<sup>11</sup> the appellate court held that the trial court properly ordered five separate restitution fines because the defendant's five cases were not consolidated and the total of the fines did not exceed the \$10,000 maximum.

If the defendant, however, has multiple cases that were consolidated and was tried and sentenced on a joint case, the court may only impose one restitution fine.<sup>12</sup>

### **(3) Joint and Several Liability**

The court may not order the restitution fine jointly and severally liable between codefendants.<sup>13</sup>

### **(4) Waiving the Restitution Fine**

The court may waive the imposition of the restitution fine only in instances where the court finds compelling and extraordinary reasons to do so. The reasons must be stated on the record.<sup>14</sup> A defendant's inability to pay is not a compelling and extraordinary reason for waiving a restitution fine.<sup>15</sup>

If the court does not impose a restitution fine at sentencing and the prosecution does not object, the issue is waived. The prosecution may not seek imposition of the restitution fine on appeal.<sup>16</sup> Additionally, the trial court may not increase the original restitution fine after an appeal.<sup>17</sup>

## **2. Penal Code § 1202.44—Probation Revocation Restitution Fine**

In cases in which the court grants the defendant probation, the court must impose a probation revocation restitution fine under section 1202.44. This fine is in addition to the restitution fine imposed under section 1202.4(b). The probation revocation restitution fine must be in the same amount as the restitution fine. The fine is then stayed and becomes effective upon the revocation of the defendant's probation.

The defendant should be advised that the court must impose an additional probation revocation restitution fine in the same amount of the restitution fine, or advise the defendants that they face the imposition of restitution fines of up to \$20,000 if the court does not wish to specify the possible amounts it can order under sections 1202.4, and 1202.44.<sup>18</sup>

## **3. Penal Code § 1202.45—Parole Revocation Restitution Fine**

In cases in which the court sentences the defendant to prison, the court must impose a parole revocation restitution fine under section 1202.45. This fine is in addition to the restitution fine imposed under section 1202.4(b). The probation revocation restitution fine must be in the same amount as the restitution fine imposed. The fine is then stayed and becomes effective upon the revocation of the defendant's parole.

The defendant should be advised that the court must impose an additional parole revocation restitution fine in the same amount of the restitution fine, or be advised that restitution fines of up to \$20,000 could be imposed if the court does not wish to specify the possible amounts it can order under sections 1202.4 and 1202.45.<sup>19</sup>



In cases in which the defendant is granted probation but probation is subsequently revoked and the defendant is sentenced to prison, it is proper for the court to impose the parole revocation restitution fine at the time the court sentences the defendant to prison.<sup>20</sup>

#### **4. Penal Code § 1001.90—Diversion Restitution Fee**

In any case in which a defendant is charged with a felony or a misdemeanor and the court diverts the case, the court must impose a diversion restitution fee. The range of the diversion restitution fee is not less than \$100 and not more than \$1,000 for adult offenders.<sup>21</sup>

As with the restitution fine, the court is to order the defendant to pay the diversion restitution fee regardless of the defendant's ability to pay.<sup>22</sup> The court may waive the diversion restitution fee only in instances in which the court finds compelling and extraordinary reasons to do so and states those reasons on the record.<sup>23</sup> The defendant's inability to pay is not a compelling or extraordinary reason. In setting the diversion restitution fee above the minimum, the court may consider any relevant factors, including the seriousness and gravity of the offense, any economic gain by the defendant, and the extent to which any other person suffered economic or psychological losses as a result of the crime.<sup>24</sup> The defendant bears the burden of demonstrating an inability to pay the diversion restitution fee in excess of the minimum.<sup>25</sup> Express findings by the court as to the factors it considered in setting the fine is not required, nor is a separate hearing for setting the fee.<sup>26</sup>

#### **5. Enforcement of Restitution Fines**

Restitution fines may be enforced in the same manner as money judgments and are not subject to the 10-year limit for enforcement provided by Code of Civil Procedure section 683.010.<sup>27</sup>

### **B. Juvenile Offenders**

#### **1. Welfare & Institutions Code § 730.6—Restitution Fine**

##### **a. Amount of the Restitution Fine**

Welfare and Institutions Code section 730.6(b) mandates that the court order every minor found to be a ward of the court in California to pay a restitution fine. Section 730.6(b)(1) establishes a statutory range for the restitution fine in felony cases to be no less than \$100 and no more than \$1,000. Section 730.6(b)(2) establishes a statutory range for the restitution fine in misdemeanor cases to be no more than \$100. Penal Code section 1202.4(b)(1) establishes a statutory range for the restitution fine: in misdemeanor cases, the court is to impose a restitution fine of no less than \$100 and no more than \$1,000, and in felony cases, the court is to impose a restitution fine of no less than \$200 and no more than \$10,000.

## **b. Ordering the Restitution Fine**

The court must order the minimum restitution fine regardless of the minor's ability to pay.<sup>28</sup>

In setting the restitution fine above the minimum, the court shall consider any relevant factors, including, but not limited to, the minor's inability to pay, the seriousness and gravity of the offense, the circumstances of its commission, any economic gain derived by the minor as a result of the crime, the extent to which any other person suffered any losses (monetary or psychological) as a result of the crime, and the number of victims involved in the crime.<sup>29</sup> The court may consider the minor's future earning capacity when reviewing a minor's ability to pay the restitution fine.<sup>30</sup> The minor bears the burden of demonstrating an inability to pay.<sup>31</sup>

The court is not required to make express findings concerning the factors it used to reach its decision regarding the amount of the restitution fine.<sup>32</sup> A separate hearing for the setting of the restitution fine is not required.<sup>33</sup>

The court may waive the imposition of the restitution fine only in instances where the court finds compelling and extraordinary reasons to do so. The reasons must be stated on the record.<sup>34</sup> A minor's offender's inability to pay is not a compelling and extraordinary reason for waiving a restitution fine.<sup>35</sup>

## **IV. Victim Restitution**

In 1982, the people of the State of California approved Proposition 8 to amend the California Constitution to give victims of crime in California various rights. One of the constitutional rights given to victims by the passage of Proposition 8 was the addition of Article I, Section 28, subdivision (b) to the California Constitution, which gave victims the right to receive restitution:

It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary.

The California Legislature codified this amendment into both the Penal Code and Welfare and Institutions Code to mandate that the courts order defendants and minors to pay restitution to their victims.

Over the 25 years since the passage of the amendment to the California Constitution, the Legislature has made many changes to the statutes guaranteeing the right of victims to receive restitution, each one strengthening a victim's right to restitution. For example, in the early 1980s, the courts could not impose restitution orders on defendants in excess of \$10,000. Changes made to the Penal Code in the 1990s mandated that the courts order restitution is to

fully compensate victims for their economic losses, regardless of the amount. Today, Penal Code section 1202.4 and Welfare and Institutions Code section 730.6 mandate that victims of crime receive restitution from the offender.

The state's appellate courts have also issued numerous opinions over the years to provide further guidance for the trial courts on restitution issues. Opinions issued have ranged from determining which people and business entities qualify as victims entitled to receive restitution, to the amounts of restitution orders, to the economic losses for which victims are entitled to receive restitution.

## **A. Mandatory Restitution in Adult Cases**

Penal Code section 1202.4 is the main statute governing restitution in cases involving crimes committed by adult defendants. Penal Code section 1202.4(f) states that in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court.

### **1. Victims Entitled to Restitution Under Penal Code § 1202.4**

Penal Code section 1202.4 provides a list of people and organizations considered to be victims entitled to restitution. Victims entitled to restitution include individuals, an individual victim's immediate surviving family, businesses or governmental entities, people with certain specified relationships to the actual victim, and other people who are eligible to receive assistance from the California Victim Compensation and Government Claims Board.<sup>36</sup>

#### **a. Individual Victim**

In most cases it is rather simple to determine that an individual was a victim of the defendant's criminal conduct. It is possible, however, that this determination may be difficult. For example, in *People v. Hays*,<sup>37</sup> the defendant was convicted of contracting without a license. The trial court found that the defendant's customers were not victims. The appellate court reversed the trial court's finding, holding that whether the customer was a victim of the crime was a question of fact and that if the facts showed that the contract was in any way induced by the customer's assumption that the defendant had a contractor's license, the customer should be considered a victim.

#### **b. Immediate Surviving Family of Victims**

Under Penal Code section 1202.4(k)(1), the immediate surviving family members of the actual victim are considered to be victims entitled to restitution. For example, courts regularly order defendants in homicide cases to pay restitution to surviving family members who paid for funeral and burial costs of the victim.<sup>38</sup>

### c. **Businesses or Government Entities**

Businesses or governmental entities can also be victims of crime and are routinely ordered restitution to reimburse them for losses incurred as a result of crimes committed against them. For example, businesses are often victims of theft, burglary, robbery, embezzlement, and vandalism. Penal Code section 1202.4(k)(2) states that “Any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is the direct victim of a crime.”

#### **(1) Banks**

Banks have long been direct victims of criminal activity. But with the rapid growth of identity theft and fraud crimes in recent years, banks have become direct victims in a new way. In *People v. Saint-Amans*<sup>39</sup> the appellate court held that banks are direct victims entitled to restitution under Penal Code section 1202.4 when they reimburse holders of accounts with their banks who are victims of fraud. The court held that the bank did not act as an indemnitor; the bank was the object of the crime, and banks do not insure against anticipated risks, receive compensation for assuming such risk, or contract with account holders to assume liability for damages arising out of criminal conduct.<sup>40</sup>

#### **(2) Insurance Companies**

Insurance companies can be the victim of a crime and can receive restitution depending on the situation. In cases in which the insurance company is the direct victim of the crime (usually insurance fraud cases), insurance companies are entitled to restitution. In *People v. O’Casey*<sup>41</sup> the court ordered restitution to an insurance company because the defendant’s filing of a fraudulent worker’s compensation claim caused the insurance company to make payments to him. In *People v. Mology*<sup>42</sup> the court ordered restitution to insurance companies whom the defendant was targeting to settle claims he filed after he fraudulently caused car accidents and submitted false claims to insurance companies.

But insurance companies are not entitled to restitution to reimburse them for money paid out on behalf of their insured who was the victim of the crime. For instance, when a victim’s car is stolen or damaged, a victim’s residence or business is burglarized, or a victim’s medical insurance company pays for the victim’s medical treatment, the victim often files a claim with his or her insurance company. The California Supreme Court ruled in *People v. Birkett*<sup>43</sup> that insurance companies are not direct victims entitled to restitution by virtue of the fact that they have reimbursed a criminal victim for losses that the insurance company was under a contractual obligation to do so. The Legislature amended Penal Code section 1202.4 after the

*Birkett* ruling to conform to the court's decision. Section 1202.4(f)(2) states that "Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party," with the exception of the Victim Compensation Program.

### **(3) Trade Organizations**

A trade organization may be deemed to be a direct victim of a crime when it represents companies. In *People v. Ortiz*<sup>44</sup> the defendant counterfeited music tapes and sold them. The court found that a nonprofit trade organization representing several music labels in an effort to find and destroy counterfeit recordings and assist in the prosecution of counterfeiters, was a direct victim because the trade organization "stands in the shoes of the direct victims as their designated representative in the United States to protect their interests with respect to the counterfeiting of their products."<sup>45</sup>

### **(4) Government Entities**

Restitution is frequently ordered to government entities when they are the direct victim of a crime.

#### **(a) Burglary/Vandalism**

When two minors broke into a school and damaged property, the court ordered restitution to the school district for the damages and for the salaries of the maintenance workers and principals who were called away from their normal duties to repair the damage and clean up classrooms to ensure they were operable.<sup>46</sup>

#### **(b) Tax Fraud/Failure to Pay Taxes**

The California Franchise Tax Board was found to be a direct victim in a case in which the defendant was charged with tax evasion, and the trial court properly ordered restitution to the Franchise Tax Board for the back taxes the defendant owed.<sup>47</sup> The California Board of Equalization and the California Employment Development Department were also entitled to restitution according to Penal Code section 1202.4 for unpaid sales taxes, unpaid unemployment insurance withholdings, and investigative costs after the defendant pled guilty to fraudulently failing to report sales taxes and unemployment insurance withholdings.<sup>48</sup> The trial court also properly ordered restitution to the California Board of Equalization for unpaid sales taxes and interest after a jury convicted the defendant of failure to pay sales taxes.<sup>49</sup>

**(c) Welfare Fraud**

Courts have also found government entities to be direct victims entitled to restitution in welfare fraud cases. In *People v. Crow*,<sup>50</sup> the court found that government entities were direct victims under former Government Code section 13967 and ordered the defendant who committed welfare fraud to pay for fraudulently obtained funds. Restitution has also been ordered to government agencies as direct victims of welfare fraud under Penal Code section 1202.4.<sup>51</sup>

**(d) Instances in Which Government Entities Do Not Qualify as Direct Victims**

As stated above, government entities must have been the direct victim of a crime for the court to order restitution to the entity under Penal Code section 1202.4. For example, in several cases restitution has been denied to government entities that sought restitution for expenses they incurred in investigating, apprehending, and prosecuting criminals. In *People v. Torres*<sup>52</sup> the appellate court reversed a restitution order to a sheriff's department for money used by undercover officers to purchase drugs during an investigation in which the money was not recovered. Restitution for the cost of extraditing the defendant was denied in *People v. Burnett*<sup>53</sup> because the expense was a general cost of prosecution. (See also *People v. Baker*,<sup>54</sup> in which restitution to the government for the cost of prosecuting the defendant was denied.)

Although government entities may not qualify as direct victims entitled to restitution under Penal Code section 1202.4, they may be entitled to restitution at the discretion of the court or pursuant to special statutory schemes that authorize government entities to recoup expenses from defendants. (See page 124, Section V "Discretionary Restitution" and page 125, Section VI "Restitution by Statutory Schemes.")

**d. People with Certain Relationships to the Victim**

Penal Code section 1202.4(k)(3) provides that

any person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions victim:

(A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) At the time of the crime was a person 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 relationship of parent, grandparent, sibling, spouse, child, or grandchild.

(D) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.

(E) Is the primary caretaker of a minor victim.

This list mirrors the list of derivative victims who are eligible to receive assistance from the Victim Compensation Program, which is found in Government Code section 13955.

**e. People Authorized to Receive Assistance from the Victim Compensation Program**

Penal Code section 1202.4(k)(4) states, “Any person who is eligible to receive assistance from the Restitution Fund” is a victim. This would include an individual victim as well as people with specified relationships to the victim listed in section 1202.4(k)(3).

There are also additional individuals who are eligible to receive assistance from the Victim Compensation Program who are not included in the specifications of victims/derivative victims found in Penal Code section 1202.4(k)(4) or Government Code section 13955. For instance, a private citizen who acts to prevent a crime, apprehend a criminal, or rescue a person in immediate danger of injury or death (a “good Samaritan”) is eligible to receive assistance from the Victim Compensation Program to pay for injuries and/or property damage incurred during his/her intervention.<sup>55</sup> Also, any person who pays or assumes legal liability for the payment of a deceased victim’s medical, funeral, or burial expenses, or who pays the costs of cleaning up a residence in which a homicide occurred is eligible for compensation from the Victim Compensation Program.<sup>56</sup>

**2. The Victim Compensation Program**

Penal Code section 1202.4(f)(4) provides that the Victim Compensation Program is entitled to restitution from the defendant for the amount of assistance it provides to victims.<sup>57</sup> The Victim Compensation Program is the only third party entitled to restitution.

Penal Code section 1202.4(f)(4)(A) states that if the restitution fund has provided assistance to the victim, “the amount of assistance provided shall be presumed to be a direct result of the defendant’s criminal conduct and shall be included in the amount of restitution ordered.”

**a. Establishing Payments by the Board**

Penal Code section 1202.4(f)(4)(B) states that the amount of assistance provided shall be established by copies of bills that are submitted to VCGCB. The bills must also reflect the amount paid by the Board and whether the payment was for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support loss, or rehabilitation. Certified copies of the bills submitted to the Board, redacted to protect the privacy and safety of the victim, along with a statement under penalty of perjury from the custodian of records is sufficient to meet the requirement to show proof of payment by the Board.

Certified records of claims filed with VCGCB can be obtained by contacting the custodian of records at (800) 777-9229.

**b. Burden of Proof**

Once payments by the Victim Compensation and Government Claims Board are established, the burden of proof shifts to the defendant to prove that the assistance provided is not a result of the defendant's criminal conduct or that the amount of assistance claimed exceeds the amount of assistance actually provided. If the defendant offers evidence to rebut the presumption that the assistance provided was caused by the defendant's criminal conduct, the court may release additional information from the Board's certified records to the defendant only after reviewing the information in camera and determining that the information is necessary for the defendant to dispute the restitution request.<sup>58</sup>

**c. Notification of VCGCB of the Restitution Order Entry**

VCGCB is to be notified whenever a restitution order is imposed by the court payable to the Board. Penal Code section 1202.4(p) mandates that the court clerk notify the Victim Compensation and Government Claims Board "within 90 days of an order of restitution being imposed if the defendant is ordered to pay restitution to the board due to the victim receiving compensation from the Restitution Fund." Furthermore, the court clerk must mail a copy of the court order to the Board via either bulk mail or electronic mail.<sup>59</sup>

**3. Economic Losses**

Penal Code section 1202.4(f)(3) provides a list of economic losses that are recoverable through victim restitution: the value of stolen or damaged property, medical expenses, mental health counseling expenses, lost wages due to injury, lost wages due to time spent assisting the police or prosecution, interest, attorney's fees and other costs of collection, relocation expenses, the cost of installing or increasing residential security, and expenses to retrofit a vehicle or residence if the victim is disabled as a result of the crime. The subdivision also provides for noneconomic losses in Penal Code section 288 cases.

The list is not exhaustive. Penal Code section 1202.4(f)(3) states that restitution is to be ordered "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, all of the following." The court held that the use of the "including, but not limited to" language is a phrase of enlargement indicating that the Legislature intended to allow the court broad discretion in determining a victim's economic loss.<sup>60</sup> Additionally, "any interpretation that limits a victim's rights to restitution 'would be in derogation of the expressed intent and purposes of Proposition 8 and the provisions adopted by the Legislature to implement this measure.' The term 'economic losses' is thus entitled to an expansive interpretation."<sup>61</sup>



## a. Value of Stolen or Damaged Property

Penal Code section 1202.4(f)(3)(A) provides for restitution to reimburse the victim for the value of stolen or damaged property. “The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.”<sup>62</sup> California courts have issued several rulings that provide guidance on valuing stolen or damaged property for restitution purposes.

### (1) Original Value

In *People v. Foster*<sup>63</sup> the victim of a burglary requested restitution of \$8,000 to replace a stolen Persian rug, which was the original cost of the rug. The court held that “absent unusual circumstances or a showing by the defendant to the contrary, the original cost of a stolen item may be treated as evidence of replacement cost for purposes of restitution.”<sup>64</sup>

### (2) Appreciated Value

In *People v. Tucker*<sup>65</sup> the defendant, who was an investment broker, embezzled by withdrawing \$7,000 from an account. An expert testified that if the defendant had not withdrawn the money from the investment account, the investment would have grown by over 100 percent in the years before the embezzlement was discovered. The court therefore ordered the defendant to pay restitution of nearly \$15,000, the appreciated value of the investment had the theft not occurred.

In *People v. Baker*<sup>66</sup> the defendant was convicted of offenses associated with the theft of cattle. Although the victim recovered the stolen cattle, the court ordered the defendant to pay restitution to the victim because evidence supported the finding that the cattle bore calves each year they were in the defendant’s possession. The court also quadrupled the amount of restitution as authorized under the Food and Agricultural Code.

### (3) Loss of Use

In *People v. Thygesen*<sup>67</sup> the defendant stole a cement mixer from a rental business. The appellate court held that the victim was entitled to the replacement cost of the cement mixer as well as the loss of rental value from the date of loss to the date at which the victim should have reasonably replaced the cement mixer.

### (4) Full Amount of Loss, Regardless of Reimbursement by Another Source

In *People v. Birkett*<sup>68</sup> the California Supreme Court held that an insurance company is not entitled to restitution for money it paid on a claim filed by its insured who was the criminal victim. However, the defendant should not

benefit from the victim's forethought to purchase insurance, and the victim is to receive the full amount of the loss, including the amount their insurance company paid to settle their claim.

## **b. Medical Expenses**

Penal Code section 1202.4(f)(3)(B) authorizes restitution to compensate the victim for medical expenses incurred as a result of the crime.

### **(1) Future Medical Expenses**

In many cases, the victim may require continuing medical treatment for injuries they sustain. In *People v. Phelps*<sup>69</sup> the court ordered the defendant to pay restitution for the future medical expenses of the victim.

### **(2) Full Amount of Bills, Regardless of Payment by Medical Insurance**

A victim is entitled to the full amount paid for medical or dental treatment, regardless of the fact that his or her medical or dental insurance may have paid for all or part of the treatment. In *People v. Hove*<sup>70</sup> the court ordered restitution of nearly \$300,000 to the victim even though the entire amount of the victim's medical expenses was paid by Medicare/Medi-Cal.<sup>71</sup>

## **c. Mental Health Counseling Expenses**

Penal Code section 1202.4(f)(3)(C) provides for restitution to reimburse the victim for mental health counseling expenses incurred as a result of the crime. Restitution was properly ordered for the mental health counseling expenses of the victim of sexual molestation, as well as the mental health counseling expenses incurred by her brother and mother.<sup>72</sup>

While most mental health counseling expenses will be for traditional mental health counseling (i.e., therapy sessions with a therapist/psychologist/psychiatrist), restitution may also be ordered for nontraditional therapy. For instance, in *People v. Keichler*<sup>73</sup> three victims of the Hmong community were injured by the defendant. The court ordered the defendant to pay restitution for Hmong Hublee spirit-calling ceremonies and herbal medicines that the court held were akin to Western medical and psychological treatment.

## **d. Lost Wages Due to Injury**

Penal Code section 1202.4(f)(3)(D) authorizes restitution for wages or profits lost due to injuries sustained as a result of the crime. If the victim is a minor, the minor's parents or guardians are entitled to wages or profits lost due to time spent caring for the minor child. Lost wages are to include both base salary and commission. Lost commission is to be established by evidence of commission earned during the 12-month period prior to the date of the crime.

**e. Lost Wages Due to Time Spent Assisting the Police or Prosecution**

Penal Code section 1202.4(f)(3)(E) provides for restitution for lost wages or profits due to time spent as a witness or time spent assisting the police or prosecution. In *People v. Friscia*,<sup>74</sup> which was decided under the former restitution statute of Penal Code section 1203.04, the court held that the victim of an embezzlement was not entitled to restitution for the time spent in reviewing accounting records to put the case together for the sheriff's department, as Penal Code section 1203.04 only specifically authorized restitution for lost wages for time spent assisting the police. However, in *In re Johnny M.*,<sup>75</sup> which was decided under the current statutes of Penal Code section 1202.4 and Welfare and Institutions Code section 730.6, the court ordered restitution to a school district for overtime it paid to maintenance and security personnel and for the salary of salaried employees such as a school's principal for time they spent away from their normal duties to clean up classrooms that had been broken into and vandalized.

**f. Noneconomic Losses in Penal Code § 288 Cases**

Penal Code section 1202.4(f)(3)(F) authorizes restitution for noneconomic losses in Penal Code section 288 cases. This is the only instance in which the court may order restitution for "pain and suffering." To date, there have been no published opinions regarding restitution of this type.

**g. Interest**

Penal Code section 1202.4(f)(3)(G) provides that a victim is entitled to interest at the rate of 10 percent per annum, from the date of the defendant's sentencing or the victim's loss, as determined by the court.

**h. Attorney's Fees and Costs of Collection**

Penal Code section 1202.4(f)(3)(H) authorizes restitution for attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

In *People v. Fulton*<sup>76</sup> the victim of a drunk driver retained a civil attorney to represent the victim in a claim against the defendant's insurance company for injuries sustained and noneconomic losses. The victim incurred attorney's fees of \$25,000 due to the contingency agreement with the civil attorney, and the court ordered the total fees as criminal restitution. It held that it was factually impossible to divide the fees up into economic and noneconomic losses.

In *People v. Maheshwari*<sup>77</sup> the court ordered restitution to a victim of embezzlement for attorney's fees of \$125,000 and investigative fees of \$41,000 incurred in a civil suit the victim filed against the defendant. In *People v. Lyon*<sup>78</sup> the court held that the victim was entitled to restitution for legal expenses incurred in opposing discovery. In *People v. Ortiz*<sup>79</sup> the court ordered restitution

to a trade organization for investigative costs incurred in investigating a counterfeiting operation.

**i. Relocation Expenses**

Penal Code section 1202.4(f)(3)(I) authorizes restitution for expenses incurred by an adult victim in relocating away from the defendant. The expenses include, but are not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. The expenses requested as restitution are to be verified by law enforcement as necessary for the victim's personal safety or by a mental health counselor as necessary for the victim's emotional well-being.

In *People v. Mearns*<sup>80</sup> the court ordered restitution to a rape victim for \$13,000, the difference between the cost of purchasing a new trailer and the sale price of her former trailer. The arresting officer testified that the victim was afraid to be in her mobile home since the time of the rape, and the condition of her old trailer was such that it could not be made safe.

**j. Expenses to Install or Increase Residential Security**

Penal Code section 1202.4(f)(3)(J) authorizes restitution for expenses incurred in installing or increasing residential security. Expenses include, but are not limited to, a home security device or system or replacing or increasing the number of locks.

**k. Expenses to Retrofit a Residence or Vehicle if Victim Is Disabled by Crime**

Penal Code section 1202.4(f)(3)(K) provides for restitution to a victim for expenses incurred in retrofitting a residence or vehicle to make the residence or vehicle accessible or operable by the victim if the victim became fully or partially disabled as a result of the crime.

**l. Other Losses**

The list of economic losses provided in Penal Code section 1202.4(f)(3) is not exhaustive.<sup>81</sup> Courts have ordered restitution to victims for additional losses, such as funeral and burial expenses, child support, and spousal support.

In *People v. Harvest*<sup>82</sup> a murder victim was a divorced parent with a child support order. As part of the restitution order, the court ordered the defendant to pay the victim's child support until the victim's children reached adulthood. Also, in *People v. Clark*,<sup>83</sup> the defendant was convicted of involuntary manslaughter and was placed on probation on the condition that he pay restitution to the victim's four minor children in the way of monthly child support payments.

## **B. Mandatory Restitution in Juvenile Cases**

Welfare and Institutions Code section 730.6 is the main statute governing restitution in cases in which victims sustain losses due to crimes committed by juvenile offenders. Welfare and Institutions Code section 730.6(a)(1) states,

It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor.

### **1. Victims Entitled to Restitution Under Welfare & Institutions Code § 730.6**

Under Welfare and Institutions Code section 730.6, individuals, immediate surviving family of the actual victim, and businesses and government entities are entitled to restitution. Welfare and Institutions Code section 730.6(j) states that “For purposes of this section, ‘victim’ shall include the immediate surviving family of the actual victim.” Section 730.6(k) states that “Nothing in this section shall prevent a court from ordering restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of an offense.”

### **2. The Victim Compensation and Government Claims Board**

As with adult cases, third parties are not entitled to restitution. The only exception is the Victim Compensation and Government Claims Board. Welfare and Institutions Code section 730.6(i) states that “The making of a restitution order pursuant to this subdivision shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to the extent that restitution is actually collected pursuant to the order. ... Restitution imposed shall be ordered to be made to the Restitution Fund to the extent that the victim, as defined in subdivision (j), has received assistance from the Victims of Crime Program pursuant to Article 5 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.”

### **3. Economic Losses**

The list of economic losses provided by Welfare and Institutions Code section 730.6 is much smaller than that provided by Penal Code section 1202.4. However, the appellate court held in *In re Johnny M.*<sup>84</sup> that the list provided is not exhaustive. The *Johnny M.* court reasoned that Welfare and Institutions Code “section 730.6 parallels Penal Code section 1202.4, which governs adult restitution. In that context, both the People of this state when they passed Proposition 8, and extensive case authority express that restitution statutes are to be interpreted broadly and liberally.”<sup>85</sup> The court held that the use of the “including, but not limited to” language is a phrase of enlargement indicating that the Legislature intended to allow the court broad discretion in determining a victim's economic loss.<sup>86</sup> Additionally, “[a]ny

interpretation that limits a victim's rights to restitution 'would be in derogation of the expressed intent and purposes of Proposition 8 and the provisions adopted by the Legislature to implement this measure.' The term 'economic losses' is thus entitled to an expansive interpretation."<sup>87</sup>

#### **4. Parental Joint and Several Liability**

Welfare and Institutions Code section 730.7 provides that a minor offender's parent(s) or guardian(s) who has joint or sole legal and physical custody and control of the minor is rebuttably jointly and severally liable for the payment of restitution, fines and penalty assessments imposed by the courts, subject to the limits provided in Civil Code sections 1714.1 and 1714.3. Welfare and Institutions Code section 730.7 "is intended to transfer the vicarious liability policy endorsed by Civil Code section 1714.1 to juvenile court proceedings, in part, so that victims of a crime committed by a minor may seek restitution from the parents without the need for a separate independent civil action."<sup>88</sup> It should be noted that foster parents are exempt from liability.<sup>89</sup>

##### **a. Notification of Minor's Parents of Possibility of Joint and Several Liability**

A minor's parents or guardians must be informed that the court may make them jointly and severally liable for the payment of restitution, restitution fines, fines, and penalty assessments a minor is ordered to pay. The parent or guardian must be informed of the potential liability or be present at the hearing in which the petition is sustained and any hearing related to restitution, fines, or penalty assessments.<sup>90</sup> If the minor's parent or guardian is not advised of the potential liability, the court may not order them to be jointly and severally liable for the payment of restitution and/or fines and penalty assessments.

Welfare and Institutions Code section 729.5 states that, in addition to any other notice required by law, the court may issue a citation to the minor's parents or guardians to appear at a hearing to impose a restitution order or fine. If the parent or guardian is issued a citation pursuant to Section 729.5 and fails to appear, the court may hold the parent or guardian jointly and severally liable for the payment of restitution.

##### **b. Monetary Liability Limits for Parents Found Jointly and Severally Liable**

Pursuant to Welfare and Institutions Code section 730.7, the monetary liability for parents found jointly and severally liable for the payment of restitution, restitution fines, and fines and penalties is as established by Civil Code sections 1714.1 and 1714.3.

Civil Code section 1714.1 establishes the monetary limits for parents found jointly and severally liable for torts committed by their minor child. The amount is reevaluated every two years and adjusted for increases in the cost of living. As of January 1, 2007, the maximum liability for a parent or guardian is \$34,700.<sup>91</sup>

Civil Code section 1714.3 establishes the monetary limits for parents found jointly and severally liable for injuries or damages to property caused by their minor child using a firearm. The limit is \$30,000 for injury, death, or damages to a single person, or \$60,000 for injuries, death, or damages of more than one person.

**c. Rebuttable Presumption of Joint and Several Liability**

Welfare and Institutions Code section 730.7 imposes a rebuttable presumption of joint and several liability for the payment of restitution on the parent or guardian of a minor ordered to pay restitution. The rebuttable presumption is subject to the court's consideration of the parent's or guardian's inability to pay. In evaluating a parent's inability to pay "the court may consider future earning capacity, present income, the number of persons dependent on that income, and the necessary obligations of the family, including, but not limited to, rent or mortgage payments, food, children's school tuition, children's clothing, medical bills, and health insurance."<sup>92</sup>

But the parent or guardian bears the burden of demonstrating an inability to pay.<sup>93</sup> Additionally, the parent or guardian bears the burden of showing by a preponderance of the evidence that the parent or guardian was either not given notice of potential liability for the payment of restitution, fines, and penalty assessments prior to the petition being sustained or that the parent or guardian was not present at the proceeding in which the petition was sustained and any hearing regarding restitution, fines, and penalty assessments.<sup>94</sup>

**d. Parents Remain Jointly and Severally Liable After the Minor Turns 18**

When the juvenile court orders a minor to pay restitution and makes the minor's parents or guardians jointly and severally liable for the payment, the minor's parents or guardians remain jointly and severally liable for the payment of restitution even after the minor reaches majority. Even if restitution is not ordered until after the minor has turned 18 years of age, the parents or guardians are still to be held jointly and severally liable for the payment of restitution, as the date of offense is the operative date for Section 730.7 purposes.<sup>95</sup>

**5. Victim Notification**

Under Welfare and Institutions Code section 730.7(b), the victim must be notified of certain information within 60 days of the ordering of restitution. The victim must be notified of the name and address of the minor ordered to pay restitution and the name and addresses of the minor's parents or guardians, the amount of restitution ordered and any terms and conditions, the offense or offenses that were sustained, the rebuttable presumption that the parent or guardian is jointly and severally liable for the payment of restitution and whether the notice and presence requirements were met, and that the victim is entitled to a certified copy of the order reflecting the required information.<sup>96</sup>

## C. Restitution Hearings

Penal Code section 1202.4(f)(1) provides that a defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. Restitution hearings are “part and parcel of the sentencing process.”<sup>97</sup> To the extent possible, the restitution order shall be prepared by the sentencing court.<sup>98</sup> The restitution hearing need not “approximate the formality of a civil trial.”<sup>99</sup>

### 1. Procedures

#### a. Rights of the Defendant

While a defendant has the right to a restitution hearing to dispute the determination of the amount of restitution, a defendant’s rights at that hearing are limited. “A defendant’s due process rights are protected when the probation report gives notice of the amount of restitution claimed, and the defendant has an opportunity to challenge the figures in the probation report at the sentencing hearing.”<sup>100</sup>

#### b. Standard of Evidence

The standard of evidence in a restitution hearing is that of a preponderance of the evidence.<sup>101</sup> A defendant’s due process rights are satisfied when the preponderance of evidence standard is applied.<sup>102</sup>

#### c. Burden of Proof

It is the defendant’s burden to show that the losses claimed by the victim exceed the losses actually incurred.<sup>103</sup>

#### d. Evidentiary Requirements

Pursuant to Penal Code section 1202.4, the evidentiary requirements for establishing a victim’s losses are minimal. The court is to base its determination of the amount of restitution “based on the amount of loss claimed by the victim or victims or any other showing to the court.”<sup>104</sup> Sentencing judges are given virtually unlimited discretion as to the kind of information they can consider and the source from whence it comes.<sup>105</sup> Documentary evidence such as bills, receipts, repair estimates, insurance payment statements, payroll stubs, business records, and similar documents relevant to the value of the stolen or damaged property, medical expenses, and wages and profits lost shall not be excluded as hearsay evidence.<sup>106</sup> Additionally, California case law expressly permits the consideration of hearsay in a probation report in setting the amount of restitution.<sup>107</sup> If the exact amount of the victim’s loss is difficult to determine, the victim may submit estimates.<sup>108</sup>



## 2. Postsentencing Restitution

The court must order any convicted defendant or minor adjudged a ward of the court to pay restitution to a victim if the victim sustained economic losses as a result of the crime. Should the court fail to order restitution, the sentence is invalid.<sup>109</sup> The Legislature enacted Penal Code section 1202.46 after the *Rowland* decision, clarifying that a sentence is invalid if the court did not order restitution in an appropriate case. In *People v. Harvest*<sup>100</sup> the court held that when restitution is not ordered at a sentencing hearing, the Double Jeopardy clause does not apply, nor do the doctrines of waiver, estoppel, or laches.<sup>111</sup> Moreover, the *Harvest* court noted that there is no express statute of limitations in the matter of victim restitution.<sup>112</sup> Therefore, the court retains jurisdiction over a case and is authorized to set or modify restitution after the defendant has been sentenced.

### a. Setting Restitution

Under Penal Code section 1202.46, the court may order restitution after a defendant has been sentenced, even if the defendant was sentenced to prison. Penal Code section 1202.46 states that

Notwithstanding Section 1170, when the economic losses of a victim cannot be ascertained at the time of sentencing pursuant to subdivision (f) of Section 1202.4, the court shall retain jurisdiction over a person subject to a restitution order for purposes of imposing or modifying restitution until such time as the losses may be determined. Nothing in this section shall be construed as prohibiting a victim, the district attorney, or a court on its own motion from requesting correction, at any time, of a sentence when the sentence is invalid due to the omission of a restitution order or fine without a finding of compelling and extraordinary reasons.

Even if the amount of restitution was known at the time of sentencing, but the restitution was not ordered, Penal Code section 1202.46 continues to apply, and the court may still order restitution after the defendant has been sentenced.<sup>113</sup> In *Moreno* the court did not order the defendant to pay restitution at sentencing, even though the Victim Compensation and Government Claims Board had paid funeral and burial expenses on behalf of the victim. The *Moreno* court, however, held that Penal Code section 1202.46 is clear that a sentence is invalid if restitution is not ordered.

### b. Modifying Restitution

Penal Code section 1202.4(f)(1) states, “the court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant.” If a motion is made for the modification of a restitution order, the victim must be notified of the motion at least 10 days prior to the hearing.<sup>114</sup>

### **3. Joint and Several Liability**

In the court's discretion, codefendants may be held jointly and severally liable for the total amount of restitution ordered to the victim. Ordering codefendants to be jointly and severally liable for the payment of restitution "increases the likelihood that the victim will be fully compensated."<sup>115</sup> Joint and several liability also bolsters the rehabilitative purpose of restitution, emphasizing "the defendant's responsibility to compensate victims of crime."<sup>116</sup>

When ordering codefendants jointly and severally liable for the payment of restitution, the trial court should order all defendants to pay restitution for the full amount of restitution owed to the victim. Ordering each defendant to pay the full amount of restitution does not create a situation in which the victim will be unjustly enriched, as "each defendant is entitled to a credit for any actual payments by the other."<sup>117</sup>

While one defendant may end up paying more than the other codefendants who were held jointly and severally liable for the payment of restitution, "a defendant can always seek contribution from codefendants."<sup>118</sup> "Although obtaining such contribution may prove difficult, we believe this concern is overshadowed by the salutary goal of compensating the victims of crime."<sup>119</sup>

#### **D. Restitution Enforcement**

Once restitution is ordered by the court, the restitution must then be collected from the offender. The court or designated agencies collect when a defendant is granted probation or is sentenced to prison. However, restitution orders are enforceable immediately, and a victim may use civil remedies to collect on the restitution order.

##### **1. Collection by the Court or Other Designated Agencies**

###### **a. Probation Cases**

###### **(1) Payments as a Condition of Probation**

Pursuant to Penal Code section 1202.4(m), "In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation."

###### **(2) Order of Distribution**

When the court orders a defendant to pay restitution to a victim, the defendant is usually ordered to pay a restitution fine, fines, penalty assessments, and other costs as well. Penal Code section 1203.1d provides an order of distribution for payments collected from the defendant. The victim

is to receive first priority for the distribution of monies collected from the defendant.

**(a) Victim**

Pursuant to Penal Code section 1203.1d(b)(1), the victims ordered restitution under Penal Code section 1202.4(f) takes priority over any payments made by a defendant, and any monies paid by the defendant either in a lump sum or in monthly payments through the designated collection agency are to be first applied to the restitution order.

**(b) State Surcharge**

Pursuant to Penal Code section 1203.1d(b)(2), after victims have been paid in full, any further payments by a defendant are to then be transmitted to the State Treasury by the collection agency for payment of the state surcharge ordered pursuant to Penal Code section 1465.7. The state surcharge imposes a 20 percent surcharge to the criminal fine used to calculate the state penalty assessment imposed pursuant to Penal Code section 1464.

**(c) Restitution Fine, Fines, and Penalty Assessments**

Pursuant to Penal Code section 1203.1d(b)(3), once the victims have been paid in full and the state surcharge satisfied, further payments by the defendant are then to be applied for payment of the restitution fine, fines, and penalty assessments ordered by the court. The defendant's payment is to be distributed proportionally between the restitution fine, fines, and penalty assessments imposed.

**(d) Other Costs**

Pursuant to Penal Code section 1203.1d(b)(4), any other reimbursable costs, such as probation costs or costs of representation by the Public Defender, are the last to receive distributions from payments made by defendants.

**(3) Revocation of Probation for Nonpayment of Restitution**

The court may revoke a defendant's probation for nonpayment of restitution. "However, probation shall not be revoked for failure of a person to make restitution ... as a condition of probation unless the court determines that the defendant has willfully failed to pay and has the ability to pay."<sup>120</sup> In *People v. Lawson*<sup>121</sup> the court properly revoked the defendant's probation and sentenced her to prison after finding that the defendant had the ability to make the required restitution payments but willfully refused to make the payments.

#### **(4) Extension of Probation Period for Continuation of Restitution Payments**

The court may extend a defendant's probation period so that outstanding restitution amounts can be paid. Penal Code section 1203.2(a) does not prohibit the court from extending a defendant's probation due to the defendant's nonwillful failure to pay restitution even if the defendant has not otherwise violated the conditions of probation.<sup>122</sup> However, a change in circumstances is required for the court to have jurisdiction to extend a defendant's probation.<sup>123</sup>

Probation may also be extended past the statutory period under Penal Code section 1203.2(e) if probation is revoked based on a violation of probation.<sup>124</sup>

In *People v. Jackson*<sup>125</sup> the court improperly extended the defendant's probation past the maximum statutory period because the trial court made no express findings regarding the defendant's ability to pay or her willful nonpayment. The court was thus unable to revoke and then reinstate the defendant's probation for a period exceeding the statutory maximum.

#### **b. Prison Cases**

##### **(1) Garnishment of Prison Wage and Trust Account Deposits**

When a defendant is sentenced to prison and is ordered to pay restitution and/or a restitution fine, the California Department of Corrections and Rehabilitation garnishes a defendant's prison wages and trust account deposits. Penal Code section 2085.5 mandates the CDCR deduct up to 50 percent of the defendant's prison wages and trust account deposits for payment of the restitution order or restitution fine. As of January 1, 2007, the CDCR began deducting the maximum amount of 50 percent. Pursuant to Penal Code section 2085.5, the CDCR also garnishes 50 percent of all trust account deposits for juvenile offenders committed to the Department of Juvenile Justice (formerly California Youth Authority) for the payment of restitution orders or restitution fines.

In the past, a victim was required to complete the CDCR 1707 form (Request for Victim Services and Restitution Collection) before the CDCR would activate the victim's account and begin garnishing the defendant's funds to pay the restitution order. As of January 1, 2007, the CDCR no longer requires that a victim complete the 1707 form, and the CDCR automatically begins collecting on behalf of victims with restitution orders. However, the CDCR continues to recommend that victims complete the 1707 form to assist the CDCR with the administrative task of finding victims so that garnished funds can be sent to them. Additionally, the CDCR 1707 form must be completed if the victim wishes to be notified of the defendant's release or request special conditions of parole.

Currently, the CDCR collects for only one victim at a time in a case with multiple victims. However, beginning in January 2008, the CDCR will begin collecting for all victims on a proportional basis.

## **(2) Payments by Defendants on Parole**

When a defendant sentenced to prison is released on parole, Penal Code section 2085.5(d)–(e) authorizes the CDCR to collect money from the parolee for payment of a restitution order or restitution fine. The parolee, however, is not obligated to make payments as the CDCR “may” collect monies from defendants, but payments are not made a condition of parole.

When a juvenile offender is committed to the CDCR Department of Juvenile Justice and the offender is released on parole, Welfare and Institutions Code section 1766.1 mandates that the offender make payments on a restitution order or a restitution fine as a condition of release. The offender is to pay the restitution order or restitution fine in full, and payments are to be made in “installments set in an amount consistent with the adult’s or minor’s ability to pay.”

### **c. Expungement and the Payment of Restitution**

Penal Code section 1203.4 enables defendants to petition for the expungement of their convictions when a defendant has fulfilled the conditions of probation. “[A] defendant has not fulfilled a restitution condition of probation unless he or she has made all court-ordered payments ‘for the entire period of probation’ and has paid his or her obligation in full.”<sup>126</sup> However, if the defendant has paid in full all restitution orders, restitution fines, and fines, but has not paid in full fees owed such as probation costs and public defender costs, the court should grant a defendant’s petition for expungement under Penal Code section 1203.4.<sup>127</sup>

## **2. Collection of Restitution by Victims**

While the court and designated agencies will collect restitution for victims, there is a good chance that restitution will not be paid in full before the court and the agencies lose jurisdiction to enforce collections. Therefore, victims may need to collect on their own using civil remedies.

Penal Code section 1214 provides that restitution orders are enforceable using civil remedies. Whenever a defendant is ordered to pay restitution, “the order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment.”<sup>128</sup> Also, “[a] victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant’s financial records, use of wage garnishment and lien

procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases."<sup>129</sup>

As Penal Code section 1214(b) states, a restitution order is enforceable as if the order were a civil judgment. The restitution order should not be converted to a civil judgment. Not only do restitution orders already carry the same effect as a civil order, but they are not subject to the 10-year collection period imposed by Code of Civil Procedure sections 683.010 et seq.<sup>130</sup>

A restitution order is enforceable immediately, and the victim may pursue collection using civil remedies in tandem with collection by the court or designated agencies.

#### **a. Order for Restitution and Abstract of Judgment (Form CR-110)**

Penal Code section 1214 states that, "upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order."<sup>131</sup> The California Judicial Council has promulgated the Order for Restitution and Abstract of Judgment form CR-110 (see Appendix for sample form), which is approved for optional use, for this purpose. The CR-110 provides the victim with a basis to pursue collection of restitution through civil remedies.

##### **(1) Liens on Real Property**

The easiest course of action victims can take in enforcing their civil remedies is to file the CR-110 with the county recorder. Recording the CR-110 provides a victim with a lien on any current or future real property owned by the defendant in the county in which the CR-110 is recorded. Rather than being recorded in the county in which the victim lives, the CR-110 should be recorded in the county in which the defendant lives and has ties. The recording fee varies by county; however, the fee is often nominal (around or below \$20).

The CR-110 may also be recorded in other states through the sister-state/foreign judgment process. The process of obtaining a sister-state/foreign judgment varies by state.

##### **(2) Liens on Personal Property**

A victim may obtain a lien on personal property by submitting a copy of the CR-110 along with a completed Notice of Judgment Lien form JL-1 (see Appendix for sample form) to the California Secretary of State. Filing this lien with the Secretary of State gives the victim a lien on personal and business property owned by the defendant. The filing fee is around \$20 to obtain this lien.

## **b. Discovering Assets**

Asset discovery is extremely important for victims in enforcing their restitution orders using civil remedies. Without knowing the assets or employment information of a defendant, it is not possible for a victim to utilize tools such as a Writ of Execution or wage garnishment.

### **(1) Defendant's Statement of Assets**

One way in which a victim can discover the assets and liabilities of a defendant is through an asset disclosure statement filed by the defendant. Penal Code section 1202.4(f)(5) requires that the defendant “prepare and file a disclosure identifying 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 for the crime for which restitution may be ordered.” The defendant is to complete the form under penalty of perjury, and “any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.”<sup>132</sup>

The California Judicial Council promulgated the Defendant’s Statement of Assets form CR-115 (see Appendix for a sample of this form) for this purpose, and use of this form is mandatory statewide. The CR-115 is to be filed by the defendant no later than the date set for the defendant’s sentencing.<sup>133</sup> Pursuant to Penal Code sections 1202.4(f)(5) and 1214(b), the victim is to be provided with a copy of the defendant’s asset disclosure statement upon request.

A defendant’s unreasonable failure to make a complete disclosure of assets may be considered by the court as a circumstance in aggravation, a factor indicating that the interests of justice would not be served by granting the defendant probation, conditionally sentencing the defendant, or imposing less than the maximum fine and sentence.<sup>134</sup>

If a defendant fails to file a CR-115, but filed a financial affidavit or financial information to determine eligibility for a public defender, the defendant “shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered.”<sup>135</sup> The affidavit or financial information shall then serve in lieu of the CR-115.<sup>136</sup>

Additionally, pursuant to Penal Code section 1202.4(f)(11), a defendant who has any unpaid balance on a restitution order or fine 120 days prior to scheduled termination from probation or parole must complete an updated CR-115. The defendant is to file the CR-115 with the court no later than 90 days prior to the defendant’s scheduled release from probation or parole. The victim is entitled to a copy of the updated CR-115.

The CR-115 contains very useful information for the victim. The defendant must provide the victim with personal information (such as date of birth, social security number, driver's license number, address), employment information (name and address of employer, periods of pay, amount of pay), cash and bank deposits, property (vehicles and boats, other personal property), assets (stocks, bonds, mutual funds, and other securities), and any debts owed by the defendant.

## **(2) Judgment Debtor Examinations**

Judgment debtor examinations are another tool available for victims to discover assets held by a defendant ordered to pay restitution. Code of Civil Procedure sections 708.110 et seq. authorizes the victim to order the defendant to appear to provide information to aid in the enforcement of the money judgment.<sup>137</sup> When a victim applies for an order for the defendant to appear at a judgment debtor examination and personally serves the order on the defendant, a secret lien automatically attaches to all personal property of a defendant for one year from the date of the order to appear.<sup>138</sup> Penal Code section 1202.4(h) authorizes the district attorney to request a judgment debtor examination "to determine the defendant's financial assets for purposes of collecting on the restitution order."

## **(3) Interrogatories**

A victim may also utilize form interrogatories (CR-200) promulgated by the California Judicial Council to seek information from the defendant regarding assets and liabilities. The CR-200 form (see Appendix for a sample of this form) interrogatories offer the victim many more questions through which to seek more specific and detailed information regarding a defendant's assets and liabilities than can be obtained through the CR-115.

### **c. Execution, Levy, Sale, and Wage Garnishment**

#### **(1) Writ of Execution**

The Writ of Execution is the most common method for a victim to collect restitution from the defendant.<sup>139</sup> The Writ of Execution enables the victim to execute the judgment by seizing cash, real property, personal property, and intangible property.

The victim completes the Writ of Execution form (EJ-130) (see Appendix for a sample of this form), files the form with the court, and then provides the Sheriff with the Writ of Execution Form along with specific instructions as to what property the victim wishes to execute the levy or sale.<sup>140</sup>



## **(2) Levy**

Once the court issues a Writ of Execution, the victim may levy on a defendant's deposit account in a financial institution.<sup>141</sup> When levying on a financial institution, the victim should also include any safe deposit contents in the description of the levy.<sup>142</sup>

## **(3) Sale**

A victim may also force the sale of real and personal property.<sup>143</sup> A forced sale of real property requires a court order, and the victim may levy against a house, condominium, mobile home, or another development which is affixed to land.<sup>144</sup> A levy on personal property owned by the defendant, such as a boat, does not require a court order to sell.<sup>145</sup>

## **(4) Wage Garnishment**

The victim may also enforce the restitution order through a wage garnishment.<sup>146</sup> The wage garnishment remains in effect until the debt is satisfied or the order is terminated.

## **E. Bankruptcy and Restitution**

Criminal restitution orders are not dischargeable in bankruptcy. The United States Supreme Court held that Title 11 of the United States Code section 523(a)(7) of the Bankruptcy Code "preserves from discharge any condition a state criminal court imposes as part of a criminal sentence" because restitution orders in criminal proceedings "focus on the State's interests in rehabilitation and punishment, rather than the victim's desire for compensation."<sup>147</sup> Additionally, because collection of restitution is a continuation of a criminal action, the automatic stay provisions of bankruptcy law do not apply.<sup>148</sup>

A restitution order imposed as a condition of probation is not dischargeable under Chapter 7 of the Bankruptcy Code.<sup>149</sup> Restitution orders imposed as a condition of probation do not create a debt or debtor/creditor relationship between the victim and the defendant.<sup>150</sup> A court may also impose a probation condition that the defendant "not attempt to discharge the restitution obligation in bankruptcy."<sup>151</sup>

Finally, bankruptcy does not block the court from ordering restitution when the defendant's civil obligations to the victim were released by a bankruptcy action before criminal charges were filed.<sup>152</sup> Also, in circumstances in which a victim incurred an obligation to a third party due to the criminal conduct of the defendant, the victim's discharge of the obligation in a bankruptcy action does not prevent the ordering of restitution.<sup>153</sup>

## V. Discretionary Restitution

Penal Code section 1202.4 mandates that the court order full restitution to reimburse victims for economic losses they suffered as a result of the defendant's criminal conduct. There are, however, cases in which victims or third parties suffer losses that cannot be ordered as restitution under Penal Code section 1202.4. The court has discretion to order restitution as a condition of probation when it is not possible to order mandatory restitution under Penal Code section 1202.4.

Trial courts have broad discretion to fashion and impose conditions of probation. Penal Code section 1203.1(j) authorizes the court to "impose reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer." The California Supreme Court held that "nothing in Proposition 8 or in Penal Code section 1203.04 [the predecessor to Penal Code section 1202.4] purports to limit or abrogate the trial court's discretion, under Penal Code section 1203.1, to order restitution as a condition of probation where the victim's loss was not the result of the crime underlying the defendant's conviction, but where the trial court finds such restitution will serve one of the purposes set out in Penal Code section 1203.1, subdivision (j)."<sup>154</sup> The test for ordering restitution as a specific condition of restitution is that the "restitution condition must be reasonably related either to the crime of which the defendant is convicted or to the goal of deterring future criminality."<sup>155</sup>

Welfare and Institutions Code section 730(b) provides a similar provision to Penal Code section 1203.1(j). It states, "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.... The court may impose and require 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."<sup>156</sup>

Courts have ordered defendants to pay restitution as a condition of probation pursuant to Penal Code section 1203.1(j) in various situations in which mandatory restitution could not be ordered.

In *People v. Carbajal*<sup>157</sup> the court ordered the defendant to pay restitution as a condition of probation for the damage to the victim's vehicle in a hit-and-run. The court held that, although the victim's losses were not the result of the crime (the crime in a hit-and-run is the running and not the hitting), the restitution was both reasonably related to the crime of leaving the scene of an accident and the goal of deterring future criminality.<sup>158</sup>

In *People v. Rugamas*<sup>159</sup> the defendant was ordered to pay restitution as a condition of probation for the cost incurred by the police department for the defendant's medical treatment after arresting officers shot the defendant with rubber bullets. The restitution was reasonably related to the crime and "would result in the defendant accepting responsibility for his conduct and hopefully ... deter further attempts by the defendant from disobeying lawful police orders."<sup>160</sup>

In *People v. Lent*<sup>161</sup> after a jury convicted the defendant of grand theft but acquitted the defendant of a related theft charge, the court ordered the defendant to pay restitution as a condition of probation to the victim of the theft of which the defendant was acquitted.

In *In re I. M.*<sup>162</sup> the court ordered the minor, a gang member present at a fatal gang shooting who aided the shooter in his attempt to escape and evade prosecution, to pay restitution of more than \$15,000 for funeral and burial expenses as a condition of probation. While the minor was not personally responsible for the victim's death and the funeral and burial expenses, the restitution order was proper because it served "a rehabilitative purpose by bringing home to the defendant the consequences of his gang membership" and was related to the minor's future criminality.<sup>163</sup>

The court may consider crimes that were charged but dismissed when ordering restitution.<sup>164</sup> The court may order restitution for related conduct that did not result in conviction.<sup>165</sup> The court may order restitution for thefts that could not be charged due to the statute of limitations.<sup>166</sup> Also, the appellate court in *Goulart* held that the victim was entitled to restitution for the uncharged offenses despite the fact that the defendant was not told he may have to pay these at the time of the plea, as restitution is not a penal consequence. The California Supreme Court specifically affirmed that uncharged offenses can be included in restitution orders.<sup>167</sup>

Note: Whenever restitution is pursued for uncharged or dismissed offenses, the prosecution has the burden of proving the defendant's culpability by a preponderance of the evidence when the defendant denies having committed the offenses.<sup>168</sup> The defendant bears the burden of showing the recommendation of the probation officer or the figures of the victim are inaccurate when disputing the amount of restitution.<sup>169</sup>

## **VI. Restitution Through Statutory Schemes**

In addition to mandatory restitution ordered pursuant to Penal Code section 1202.4 and Welfare and Institutions Code section 730.6 and discretionary restitution ordered pursuant to Penal Code section 1203.1(j) and Welfare and Institutions Code section 730(b), the court may order restitution through various statutory schemes.

### **A. Government Agencies**

Pursuant to Penal Code section 1202.4(k) and Welfare and Institutions Code section 730.6(k), governmental agencies and entities are entitled to restitution when they are the direct victim of a crime. In certain instances, however, in which the governmental agencies and entities are not direct victims, the court may order "restitution" to reimburse the agencies for costs incurred in response to the defendant's or minor's criminal conduct.

#### **1. Drug Site Clean-up**

Although certain government agencies are legally obligated to clean up drug manufacturing sites, the agencies are not considered to be victims. The Legislature created a statutory scheme by which these agencies may recoup their costs. The

exclusive avenue for the agency to recoup the costs of drug clean-up is to file a civil action pursuant to Health and Safety Code section 11470.1 or to file a recovery petition pursuant to Health and Safety Code section 11470.2 in the criminal proceeding.<sup>170</sup>

## **2. Agency Investigative Costs**

In *People v. Ozkan*<sup>171</sup> the defendant, a gas station owner, was convicted of grand theft by fraud and filing false and fraudulent tax returns after selling regular unleaded gasoline as higher-priced mid- and high-grade gasoline. The appellate court held that, although the State Board of Equalization and the State Division of Measurement Standards were not victims and were not entitled to restitution under Penal Code section 1202.4, the agencies were entitled to restitution for investigative costs of more than \$200,000 pursuant to Business and Professions Code section 12015.5.

## **3. Costs of Firefighting**

In *In re Brian N.*<sup>172</sup> the appellate court ordered the minor to pay restitution to the fire department for labor and equipment costs incurred in putting out a fire set by the minor in a vacant lot. Health and Safety Code section 13009(a) expressly allows a fire department to seek reimbursement of expenses from an individual that intentionally or negligently sets a fire.

Note: The California Supreme Court, in *People v. Martinez*,<sup>173</sup> disapproved of *In re Brian N.* to the extent that the court found that the fire department was a direct victim.

## **4. Costs of Sexual Assault Examinations**

Penal Code section 1203.1h(a) authorizes the court to order a defendant to pay restitution “to a law enforcement agency incurring the cost, the cost of any medical examinations conducted on the victim in order to determine the nature or extent of the abuse or neglect” in child abuse or neglect cases. Likewise, Penal Code section 1203.1h(b) authorizes the court to order a defendant to pay restitution “to a law enforcement agency, county, or local governmental agency incurring the cost, the cost of any medical examinations conducted on the victim for the collection and preservation of evidence” in sexual assault or attempted sexual assault (including child molestation) cases.

## **5. Costs of Emergency Response**

Penal Code section 1203.11 authorizes the court to order restitution to a public agency for the costs of an emergency response. It should be noted, however, that should the court order a defendant to pay restitution to a public agency for the costs of an emergency response, the agency seeking the reimbursement bears the responsibility of collecting the monies owed.

## **B. Pawn Shops**

When a defendant is convicted of knowingly giving “false information or false verification as to the person’s true identity or as to the person’s ownership interest in property or the person’s authority to sell property in order to receive money or other valuable consideration from a pawnbroker or secondhand dealer and who receives money or other valuable consideration” under Penal Code section 484.1, the court may order the defendant to pay restitution to the pawn shop or secondhand dealer to reimburse actual losses incurred.<sup>174</sup>

## **VII. Insurance Payments and the Effect on Restitution**

In many cases, a victim may file a claim with an insurance company for the loss or damage of personal property, or may have medical expenses covered in full or in part by medical insurance. The defendant may also have insurance coverage that may offer a settlement to a victim under the defendant’s policy terms. These payments by insurance companies may affect a restitution order.

### **A. Payments by Victim’s Insurance**

When a victim’s insurance company makes a payment on a claim filed by the victim, the victim is entitled to restitution for his or her out-of-pocket expenses (i.e., the deductible) as well as the amount paid by the insurance company. The California Supreme Court, in *People v. Birkett*<sup>175</sup> held that a victim is entitled to the full cost incurred, regardless of the fact that the victim was reimbursed by their insurance company. The *Birkett* court held that the defendant is to pay full restitution to the actual victim and that the defendant should receive “no windfall from the fortuity that the victim was otherwise reimbursed.”<sup>176</sup> The defendant “should receive no windfall because the victim had the thrift and prescience to purchase insurance, and the investment represented by the victim’s payment of insurance premiums would earn no benefit if they served to mitigate his [losses].”<sup>177</sup> The *Birkett* holding is to be followed in juvenile cases as well.<sup>178</sup>

Likewise, if a victim’s medical insurer makes payments for the victim’s treatment, the victim is entitled to not only the co-pays that he or she may have been required to pay, but also for the payments made by the insurance company to the victim’s medical providers. In *People v. Hove*<sup>179</sup> the court ordered the defendant to pay restitution of nearly \$300,000 to the victim, even though the full amounts of the victim’s medical expenses were paid by Medicare and Medi-Cal. The *Hove* court held that “the fortuity that the victim here was over age 65, and thus covered by Medicare, should not shield defendant from a restitution order which requires him to pay the full amount of the losses caused by his crime. Nor should the payment of medical bills by Medi-Cal allow defendant to escape responsibility for the losses he caused.”<sup>180</sup>

### **B. Payments by Defendant’s Insurance**

In some cases, a defendant’s insurer will make a payment to the victim. These payments may result in the defendant receiving credit for payments.

## 1. Credit for Payments

In *People v. Bernal*<sup>181</sup> the appellate court analyzed the effect of a payment by a defendant's insurer to a victim on a restitution order. "The defendant's own insurance company is different than other sources of victim reimbursement, in that (1) the defendant procured the insurance, and unlike the other third party sources, its payments to the victim are not fortuitous but precisely what defendant bargained for; (2) the defendant paid premiums to maintain the policy in force; (3) the defendant has a contractual right to have the payments made by his insurance company to the victim, on his behalf; and (4) the defendant's insurance company has no right of indemnity or subrogation against the defendant."<sup>182</sup> The *Bernal* court thus determined that a "payment to a victim by a defendant's insurance carrier qualifies as a payment 'directly from' that defendant, under Penal Code section 1202.4, subdivisions (a)(1) and (f)(2)."<sup>183</sup> Therefore, payments made by a defendant's insurance carrier must be offset against the defendant's restitution obligation to the extent that the payments are for items of loss included in the restitution order.<sup>184</sup>

However, if the defendant's insurance carrier makes a payment to a victim for expenses not included in the restitution order, the defendant does not receive an offset for that portion of the payment. In *People v. Jennings*<sup>185</sup> the defendant's insurer made a payment to the victim, and the terms of the settlement specified that 15 percent of the settlement was to be applied to medical expenses, while the remaining 85 percent of the settlement was for pain and suffering. Only the portion of the civil settlement that covered economic losses may be used to offset the amount the defendant is obligated to pay.<sup>186</sup>

## 2. A Civil Settlement Does Not Affect a Victim's Right to Restitution

A victim's signing of a civil settlement with a defendant and/or the defendant's insurer does not affect the victim's right to request restitution. In *Bernal*<sup>187</sup> the trial court refused to order restitution because the victim entered into a civil settlement with the defendant's insurance company. The appellate court held that the fact that the victim entered into a civil settlement does not preclude restitution, reasoning that "the victim would be in an untenable position if he or she had to reject a settlement offer from a 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 by the defendant."<sup>188</sup> Additionally, civil settlements do not cover areas of loss found in Penal Code section 1202.4, just as criminal restitution orders do not cover losses recoverable in civil cases, so "there is no reason that a release of civil liability should release a restitution obligation, just as a satisfied restitution obligation does not bar a civil action for further damages."<sup>189</sup> Finally, the court held that the "statutory goal of fully reimbursing the victim's losses might be undetermined if a civil settlement with a defendant's insurance carrier barred further restitution."<sup>190</sup>

Moreover, if the victim's entering a civil settlement barred further restitution, the state would be deprived of its ability to fashion a sentence that will rehabilitate the defendant and deter the defendant from future criminal activity. "While a settlement

agreement with, and release of, a defendant's insurance company may reflect a victim's willingness to accept the amount paid in full satisfaction for all civil liability, it does not reflect the willingness of the People to accept that sum in satisfaction of the defendant's rehabilitative and deterrent debt to society."<sup>191</sup>

### C. Payments by a Third Party's Insurance

If a payment is made to a victim by a third party's insurance carrier, the defendant does not receive any credit for the payment. In *People v. Hamilton*,<sup>192</sup> the defendant shot the victim, who was working at a restaurant owned by the defendant's mother. The restaurant's insurer settled with the victim. The appellate court held that the defendant was not entitled to an offset against the restitution order because the payment was not made on the defendant's behalf.<sup>193</sup> In *In re Tommy A.*<sup>194</sup> the minor took his mother's friend's car without permission, was involved in an accident, and fled the scene. The insurer of the car the minor was driving entered into settlement with the victim. The court held that the minor could not receive credit against the restitution order because the payment was made from a "source that was "completely distinct and independent" from the offender within the meaning of the *Bernal* test, and thus the payment did not qualify as "restitution directly from [the] minor" within the meaning of section 730.6(a)(1)."<sup>195</sup> However, if a defendant's family member purchased the insurance and specifically covered the defendant, the defendant is entitled to an offset against the restitution order.<sup>196</sup>

#### ENDNOTES

1. See Penal Code § 13835.
2. Penal Code § 1202.4(a)(3)(A), (b).
3. Penal Code § 1202.4(d).
4. *Id.*
5. *Id.*
6. *Id.*
7. *People v. Walker* (1991) 54 Cal.3d 1015.
8. *People v. Sorenson* (2005) 125 Cal.App.4th 612; *People v. Dickerson* (2004) 122 Cal.App.4th 1374.
9. *People v. Crandell* (2007) 40 Cal.4th 1301.
10. *People v. Enos* (2005) 128 Cal.App.4th 1046.
11. *People v. Schoeb* (2005) 132 Cal.App.4th 861.
12. *People v. Ferris* (2000) 82 Cal.App.4th 1272.
13. *People v. Kunitz* (2004) 122 Cal.App.4th 652.
14. Penal Code § 1202.4(b), (c).
15. Penal Code § 1202.4(c).
16. *People v. Tillman* (2000) 22 Cal.4th 300.
17. *People v. Hanson* (2000) 23 Cal.4th 355.
18. *People v. Sorenson* (2005) 125 Cal.App.4th 612, 622, fn. 9.
19. *Id.*
20. *People v. Andrade* (2002) 100 Cal.App.4th 351.
21. Penal Code § 1001.90(b).
22. Penal Code § 1001.90(c).
23. *Id.*
24. Penal Code § 1001.90(d).
25. *Id.*
26. *Id.*
27. Penal Code § 1214(a), (c).
28. Welfare & Institutions Code § 730.6(c), (f).

29. Welfare & Institutions Code § 730.6(d)(1).
30. Welfare & Institutions Code § 730.6(d)(2).
31. *Id.*
32. Welfare & Institutions Code § 730.6(e).
33. Welfare & Institutions Code § 730.6(b)(1), (b)(2).
34. Welfare & Institutions Code § 730.6(g).
35. Welfare & Institutions Code § 730.6(c).
36. Penal Code § 1202.4(k).
37. *People v. Hays* (1991) 234 Cal.App.3d Supp 22.
38. See *People v. Harvest* (2000) 84 Cal.App.4th 641.
39. *People v. Saint-Amans* (2005) 131 Cal.App.4th 1076.
40. *Id.* at 1086.
41. *People v. O'Casey* (2001) 88 Cal.App.4th 967.
42. *People v. Moloy* (2000) 84 Cal.App.4th 257.
43. *People v. Birkett* (1999) 21 Cal.4th 226.
44. *People v. Ortiz* (1997) 53 Cal.App.4th 791.
45. *Id.* at 796.
46. *In re Johnny M.* (2002) 100 Cal.App.4th 1128.
47. *People v. Beck* (1993) 17 Cal.App.4th 209.
48. *People v. Draut* (1999) 73 Cal.App.4th 577.
49. *People v. Boudames* (2006) 146 Cal.App.4th 45.
50. *People v. Crow* (1993) 6 Cal.4th 952.
51. See *People v. Hudson* (2003) 113 Cal.App.4th 924; *People v. Akins* (2005) 128 Cal.App.4th 1376; and *People v. Fortune* (2005) 129 Cal.App.4th 790.
52. *People v. Torres* (1997) 59 Cal.App.4th 1.
53. *People v. Burnett* (1978) 86 Cal.App.3d 320.
54. *People v. Baker* (1974) 39 Cal.App.3d 550.
55. Government Code §§ 13970–13974.
56. Government Code § 13957(a)(9)–(10).
57. See also *People v. O'Neal* (2004) 122 Cal.App.4th 817.
58. Penal Code § 1202.4(f)(4)(C).
59. Penal Code § 1202.4(n).
60. *In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1135.
61. *Id.* at 1132–1133.
62. Penal Code § 1202.4(f)(3)(A).
63. *People v. Foster* (1993) 14 Cal.App.4th 939.
64. *Id.*
65. *People v. Tucker* (1995) 37 Cal.App.4th 1.
66. *People v. Baker* (2005) 126 Cal.App.4th 463.
67. *People v. Thygesen* (1999) 69 Cal.App.4th 988.
68. *People v. Birkett* (1999) 21 Cal.4th 226.
69. *People v. Phelps* (1996) 41 Cal.App.4th 946.
70. *People v. Hove* (1999) 76 Cal.App.4th 1266.
71. Also see *People v. Birkett* (1999) 21 Cal.4th 226.
72. *People v. O'Neal* (2004) 122 Cal.App.4th 817.
73. *People v. Keichler* (2005) 129 Cal.App.4th 1039.
74. *People v. Friscia* (1993) 18 Cal.App.4th 834.
75. *In re Johnny M.* (2002) 100 Cal.App.4th 1128.
76. *People v. Fulton* (2003) 109 Cal.App.4th 876.
77. *People v. Maheshwari* (2003) 107 Cal.App.4th 1406.
78. *People v. Lyon* (1996) 49 Cal.App.4th 1521.
79. *People v. Ortiz* (1997) 53 Cal.App.4th 791.
80. *People v. Mearns* (2002) 97 Cal.App.4th 493.
81. *In re Johnny M.* (2002) 100 Cal.App.4th 1128.
82. *People v. Harvest* (2000) 84 Cal.App.4th 641.
83. *People v. Clark* (1982) 130 Cal.App.3d 371.
84. *In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1135.



85. *Id.* at 1132.
86. *Id.* at 1135.
87. *Id.* at 1132–1133.
88. *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017, 1025.
89. Welfare & Institutions Code § 730.7(d).
90. See also *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017, 1025.
91. See California Rules of Court, Appendix B.
92. Welfare & Institutions Code § 730.7(a).
93. *Id.*
94. *Id.*
95. *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017, 1027.
96. Welfare & Institutions Code § 730.7(b).
97. *People v. Cain* (2000) 82 Cal.App.4th 81, 87.
98. Penal Code § 1202.4(f)(3).
99. *People v. Hartley* (1984) 163 Cal.App.3d 126, 130.
100. *People v. Cain* (2000) 82 Cal.App.4th 81.
101. *People v. Baumann* (1985) 176 Cal.App.3d 67, 80.
102. *People v. Narron* (1987) 192 Cal.App.3d 724, 736.
103. *People v. Foster* (1993) 14 Cal.App.4th 939; *People v. Baumann* (1985) 176 Cal.App.3d 67.
104. Penal Code § 1202.4(f).
105. *People v. Baumann* (1985) 176 Cal.App.3d 67, 81.
106. Penal Code § 1203.1d(d).
107. *People v. Baumann* (1985) 176 Cal.App.3d 67, 81.
108. *People v. Goulart* (1990) 224 Cal.App.3d 71.
109. *People v. Rowland* (1997) 51 Cal.App.4th 1745.
110. *People v. Harvest* (2000) 84 Cal.App.4th 641.
111. *Id.* at 647.
112. *Id.* at 652.
113. *People v. Moreno* (2003) 108 Cal.App.4th 1.
114. Penal Code § 1202.4(f)(1).
115. *People v. Zito* (1992) 8 Cal.App.4th 736, 744.
116. *Id.* at 746.
117. *People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1535.
118. *People v. Zito* (1992) 8 Cal.App.4th 736, 745.
119. *Id.*
120. Penal Code § 1203.2(a).
121. *People v. Lawson* (1999) 69 Cal.App.4th 29, 37.
122. *People v. Cookson* (1991) 54 Cal.3d 1091, 1097.
123. *Id.* at 1095.
124. *In re Hamm* (1982) 133 Cal.App.3d 60, 66.
125. *People v. Jackson* (2005) 134 Cal.App.4th 929.
126. *People v. Covington* (2000) 82 Cal.App.4th 1263, 1271.
127. *People v. Bradus* (2007) 149 Cal.App.4th 636, 642–643.
128. Penal Code § 1214(b).
129. *Id.*
130. Penal Code § 1214(d).
131. Penal Code § 1214(b).
132. Penal Code § 1202.4(f)(5).
133. Penal Code § 1202.4(f)(7).
134. Penal Code § 1202.4(f)(9)(A)–(D).
135. Penal Code § 1202.4(f)(6).
136. *Id.*
137. Code of Civil Procedure § 708.110(a).
138. Code of Civil Procedure § 708.110(d).
139. Code of Civil Procedure § 699.510.
140. Code of Civil Procedure § 687.010.
141. Code of Civil Procedure § 700.140.

142. Code of Civil Procedure § 700.150.
143. Code of Civil Procedure § 704.740.
144. Code of Civil Procedure § 704.740(a).
145. Code of Civil Procedure § 704.750.
146. Code of Civil Procedure § 706.010.
147. *Kelly v. Robinson* (1986) 479 U.S. 36, 50, 53.
148. *In re Gruntz* (9th Cir. 2000) 202 F.3d 1074, 1084–1087; 11 U.S.C. § 362(b)(1).
149. *Kelly v. Robinson* (1986) 479 U.S. 36, 50–53; 11 U.S.C. § 523(a)(7). See also *In re Warfel* (Bankr. 9th Cir. 2001) 268 B.R. 205, 209–213.
150. *People v. Washburn* (1979) 97 Cal.App.3d 621, 626.
151. *People v. Warnes* (1992) 10 Cal.App.4th Supp. 35, 38.
152. *People v. Moser* (1996) 50 Cal.App.4th 130.
153. *People v. Dalvito* (1997) 56 Cal.App.4th 557.
154. *People v. Carbajal* (1995) 10 Cal.4th 1114, 1122.
155. *Id.* at 1123.
156. Welfare & Institutions Code § 730(b).
157. *People v. Carbajal* (1995) 10 Cal.4th 1114.
158. *Id.* at 1124.
159. *People v. Rugamas* (2001) 93 Cal.App.4th 518.
160. *Id.* at 522.
161. *People v. Lent* (1975) 15 Cal.3d 481.
162. *In re I.M.* (2005) 125 Cal.App.4th 1195.
163. *Id.* at 1210.
164. *People v. Baumann* (1985) 176 Cal.App.3d 67, 78.
165. *People v. Miller* (1967) 256 Cal.App.2d 348, 355.
166. *People v. Goulart* (1990) 224 Cal.App.3d 71, 79.
167. *People v. Birkett* (1999) 21 Cal.4th 226, 235.
168. *People v. Baumann* (1985) 176 Cal.App.3d 67, 80.
169. *Id.* at 80–81.
170. *People v. Martinez* (2005) 36 Cal.4th 384. See also *People v. Narron* (1987) 192 Cal.App.3d 724.
171. *People v. Ozkan* (2004) 124 Cal.App.4th 1072.
172. *In re Brian N.* (2004) 120 Cal.App.4th 591.
173. *People v. Martinez* (2005) 36 Cal.4th 384.
174. Penal Code § 484.1(b).
175. *People v. Birkett* (1999) 21 Cal.4th 226.
176. *Id.* at 246.
177. *Id.* at 247, fn. 19.
178. *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1389–1390.
179. *People v. Hove* (1999) 76 Cal.App.4th 1266.
180. *Id.* at 1272.
181. *People v. Bernal* (2002) 101 Cal.App.4th 155.
182. *Id.* at 168.
183. *Id.* at 158.
184. *Id.* at 168.
185. *People v. Jennings* (2005) 128 Cal.App.4th 42.
186. *Id.* at 58.
187. *People v. Bernal* (2002) 101 Cal.App.4th 155.
188. *Id.* at 160–161.
189. *Id.* at 163.
190. *Id.*
191. *Id.* at 162.
192. *People v. Hamilton* (2003) 114 Cal.App.4th 932.
193. *Id.* at 941–943.
194. *In re Tommy A.* (2005) 131 Cal.App.4th 1580.
195. *Id.* at 1590.
196. *People v. Jennings* (2005) 128 Cal.App.4th 42, 57.

## Addendum to Chapter 8

### Additional Case Law on Restitution for the Loss of Economic Support and Valuation of Stolen Property

*Editor's Note: The only thing constant in the field of law is that the law always changes. The material that follows is a reprint of an article from the January/February 2008 issue of CDAA's periodical Did You Know, authored by Assistant District Attorney Jerry Coleman of the San Francisco District Attorney's Office. The article explicates two significant cases impacting restitution to victims of crime that were handed down after the chapter on restitution law was completed by Deputy District Attorney Joanne Evoy of the San Diego District Attorney's Office. In balancing the demands of a contractual publication deadline with the considerable value of this information to prosecutors and others who serve victims, and given the complexities of the editorial process, we felt it necessary to include this article as an addendum to her otherwise comprehensive chapter.*

Two year-end California decisions (the biggest one being a 6–1 supreme court opinion) have handed California crime victims seeking restitution well-deserved Christmas presents.<sup>1</sup> In *People v. Giordano*,<sup>2</sup> the Cal Supremes affirmed a trial court's direct criminal restitution award to a surviving spouse of her lost economic support incurred due to the criminal act that resulted in her spouse's death. And in *People v. Prosser*,<sup>3</sup> the Fourth District Court of Appeal held that a victim's undocumented estimate of stolen property value was sufficient to shift the burden to a criminal defendant to rebut at a restitution hearing. While crime victims may now rejoice in their newly realized gains (substantively and procedurally), California prosecutors may have to assume the roles of civil tort lawyers and insurance investigators to assist their victims in maximizing their recoveries.

#### ***Giordano*: Loss of Economic Support**

A criminal defendant brutally beats his victim to within an inch of his life. The victim endures a many-weeks'-long hospital stay and loses thousands in wages. How do we calculate his losses for criminal restitution purposes? That's **easy**: every prosecutor knows the rule of Penal Code section 1202.4(f)(3)(D), “[W]ages or profits lost due to injury incurred by the victim ....”<sup>4</sup> But move the fickle finger of fate one inch: the victim dies that same horrific night, the defendant is convicted of murder; and the victim's surviving spouse wants the criminal trial court to order direct restitution to cover her loss of support—**for years to come**—as a result of her spouse-breadwinner's murder. Should we prosecutors in a criminal forum champion her cause? And if we don't just refer her to our tort-lawyering brothers-in-law, how do we figure her true economic losses?

That was close to the scenario in *Giordano*. There, the defendant drove under the influence of alcohol, and hit and killed a man on a motorcycle. He pleaded guilty to vehicular manslaughter and was sentenced to prison based upon an agreed disposition. Some months later, the decedent's surviving spouse requested a section 1202.4(a)(3)(B) restitution hearing. At that hearing, the spouse, represented by counsel, sought restitution to cover expenses since her husband was her primary source of support, earning about \$35,000 a year as a roofer. Both she and her deceased husband's employer testified. The Riverside trial court awarded criminal restitution in the amount of \$167,711.65, calculated as decedent's average annual earnings over the three years prior to death, multiplied by five years. The defendant appealed, claiming that the Penal Code did not allow direct restitution to the surviving spouse of a deceased victim based upon loss of future earnings. After the trial court's order was affirmed by the court of appeal, the supreme court granted review to determine if the criminal restitution scheme in California (Article I, section 28 of the Constitution, and Penal Code section

1202.4) authorized restitution to compensate the spouse of a deceased victim for future economic losses, and if so, how trial courts should measure the surviving victim's economic loss.

If you read no other restitution opinion this year,<sup>5</sup> you should devour *Giordano*, because it gives a full history of California's restitution law. Then it moves to setting down some modern principles of that law, in the context of this seminal issue. First, it clearly announces that a criminal "victim" for restitution purposes includes the "immediate surviving family of the actual victim." (Penal Code § 1202.4(k).) Next, it reminds us all (especially defense attorneys always trying to minimize their clients' financial exposure) that California's statutory restitution scheme guarantees victims a restitution order sufficient to **fully** reimburse them for **every** and **any** economic loss. (Penal Code § 1202.4(a)(1) and (f)(3).)<sup>6</sup> The opinion even enumerates the 11 categories of restitution noted in Penal Code section 1202.4(f)(3), and reminds us all that that list is **nonexclusive**.

The only defense point accepted by the supreme court is that the surviving spouse does not simply step into the decedent's shoes to recover **his** future losses; rather, she has to incur loss **herself** to recover direct criminal restitution. But the court vehemently disagrees with the defense that this surviving spouse has not suffered an economic loss. The opinion cites a wealth of civil wrongful death opinions and civil jury instructions to support the principle that a surviving spouse incurs economic loss upon the death of his or her spouse. (See, e.g., Code of Civil Procedure section 377.60; *Syah v. Johnson* (1966) 247 Cal.App.2d 534, 546–547; BAJI No. 14.50.) As the court noted in *Giordano*,

a spouse's loss of support *is* similar to the categories of loss that are enumerated in Penal Code section 1202.4, subdivision (f). Broadly, the loss of support incurred by a spouse is, like the enumerated categories of loss, an economic loss incurred as the result of a criminal act. More specifically, it is akin to the categories of loss that require restitution for "[w]ages or profits lost" due to injury, time spent as a witness, or time spent assisting the police or prosecution. (Penal Code, section 1202.4, subd. (f)(3)(D), (E).) Like a victim who loses wages or other income, upon the death of a spouse, a surviving spouse loses the economic support that he or she otherwise would have received.<sup>7</sup>

The next major point of restitution law elucidated by the high court is to allow restitution to look **forward**. In other words, to restore the surviving victim to an economic status quo, the trial court's restitution order need not be limited to monies lost prior to the restitution hearing. (See, e.g., *People v. Phelps* (1996) 41 Cal.App.4th 946, 950 [medical expenses paid after sentencing may be included in restitution order].)

Then the opinion tackles the thornier policy implications of its ultimate holding, dealing with the somewhat reasonable-sounding defense contention that to allow a surviving spouse's lost economic support as criminal restitution would convert criminal sentencing hearings into civil trials. The court's answer is one only the highest judicial authority in the state could make—a strongly worded punt:

The Legislature did not, however, exclude a surviving spouse's lost economic support from restitution orders, and it is not for us to judge the wisdom of the Legislature's policy decisions. Accordingly, we do not address these policy considerations.<sup>8</sup>

The final issue addressed by *Giordano* is how to calculate this newly noted restitution loss. The supreme court found the trial court's actual calculation "imprecise," yet not an abuse of discretion. Then the high court set forth rules for future such hearings. Trial courts have broad discretion to

calculate such restitution, but their methods must be rationally designed to determine the survivor's economic loss. The record at the restitution hearing must be clearly made, the evidence clearly presented and analyzed, and the court's final calculation method clearly stated, so as to justify the amount ordered. The opinion rejects a final defense attempt to minimize the amount of restitution, by seeking to cap it at the \$70,000 maximum over a five-year period allowed by the state's restitution fund to reimburse derivative victims. (See Government Code § 13957.5(a)(4), (b).) The supreme court found no reason to import into the Penal Code restitution scheme of section 1202.4 these restrictions governing restitution fund payments for loss of support. So what then are the factors for courts to consider in setting the amount?

First, the supreme court noted that the party seeking restitution (that's us, on behalf of the surviving victim, unless he or she is lucky enough to have his or her own civil attorney) bears the burden of providing an adequate factual basis for the claim sought. Then, looking to wrongful death case law and jury instructions, we should consider such factors (admittedly, as the opinion suggests, not an exhaustive list) as: (1) the earning history of the deceased spouse, (2) the age of the survivor and decedent, and (3) the degree to which the decedent's income provided support to the survivor's household. The *Giordano* trial court's reliance upon the case of *People v. Harvest*<sup>9</sup> [defendant ordered to pay former wife of deceased victim \$23,160 for loss of child support decedent had been ordered to pay, but only for five years] made its five years of husband wages somewhat arbitrary, but not reversible. The opinion suggests that in a case where the decedent was relatively young when killed, the loss of support could be calculated over a longer period of time.<sup>10</sup>

### ***Prosser: Calculating the Value of Stolen Property***

Orange County real estate broker Diane Darlene Prosser had a unique approach to both evaluating her homes and upping her commission: she entered them using their lockboxes, **and stole hundreds of dollars worth of jewelry inside!**<sup>11</sup> Convicted by plea to 12 felony counts (nine of them first degree burglary) and sentenced to a two-year prison term, she appealed the trial court's restitution orders of \$162,120 and \$12,600<sup>12</sup> for two of the victims. The trial court held multiple restitution hearings, inviting the victims to present documentation as to the value of their stolen jewelry and watches, or at least the catalog prices of the items that could be obtained at watch dealers or brokers. The victims tried to accommodate the court, but found many jewelers unwilling to give written estimates for items never seen by them. Also much of the jewelry had been given to the victims years before as gifts. The trial court ultimately acknowledged their difficulties, discounted the claimed values considerably, but still awarded the five and six figures noted.

The defendant objected to the amounts set by the court as based merely on the unfounded opinions of the victims, which she claimed to be no more than guesses. The Fourth District Court of Appeal affirmed the awards, noting that victim statements of the value of their stolen property is prima facie evidence of value for restitution purposes. (See, e.g., *People v. Keichler* (2005) 129 Cal.App.4th 1039, 1048; Evidence Code § 813.) Once that prima facie case has been made, the defendant then bears the burden to demonstrate that the amount of loss so claimed is wrong. And the appellate opinion gave good policy reasons for its ruling: it is the thief—who has last possession of the property—who should rebut the value given by the victim (who in turn no longer possesses the property and may have no receipts or appraisals for gifts). If the thief is similarly ill-disposed to provide a value, having disposed of her ill-gotten loot, then the equities between victim and thief favor the former.

Having held that the victim's uncorroborated statement of value is enough to shift the burden, the *Prosser* court then found that this defendant neither challenged these victims' estimates on cross, nor provided her own rebuttal evidence (such as receipts from the donors of the property). She therefore received due process at the restitution hearings, which are not held to the strict rules of trial evidence. (See, e.g., *People v. Foster* (1993) 14 Cal.App.4th 939, 947–948.) Since the trial court used a rational method to make the victim whole, and was not arbitrary or capricious, its order could stand (even though it did not reflect the exact amount of the loss). The bottom line on this real estate deal was that the victims were not made entirely whole, and the defendant leaves her OC digs and moves into a lovely one-bedroom charmer in Corona (at the California Institution for Women).

## Conclusion

Restitution continues to be a major, highly technical area of evolving criminal law, where the victims frequently get all the breaks (as they should), the defendants get the short end of the stick (as they should), and where we prosecutors get dumped on to ensure the proper and accurate vindication of this constitutional right. It therefore behooves us, early on, to advise our survivors of deceased victims to start collecting their family budgets and spouse's W-4s, and to advise our stolen property victims to look for receipts, appraisals, or surf the Net for price quotes of similar items. And in your spare time, put down the John Grisham novel and start studying wrongful death treatises.

## ENDNOTES

1. Technically speaking, the court of appeal decision was filed December 4, so it is more of a Hanukah present, but political correctness demands that the entire holiday season of Christmas/Hanukah/Kwanzaa/Eid/Diwali be respected. And even more technically speaking, the supreme court decision was filed November 26, so for it, crime victims should more truly be Thanksgiving.
2. *People v. Giordano* (2007) 42 Cal.4th 644.
3. *People v. Prosser* (2007) 157 Cal.App.4th 682.
4. Of course, don't forget the victim's hospital bill, even if covered by insurance. See, for example, my Did You Know article in the May/June 2007 issue (vol. 13, no. 3): "Restitution and Plea Bargains: Brevity Ain't the Soul of Wit."
5. Can you say, "malpractice?"
6. Are we starting to get the idea here that our restitution statute, section 1202.4, contains a veritable gold mine of nuggets for us to hand our judges so that they can fling them at the defendants' heads? I may be the Forty-Niner shouting "Eureka" here, but we can all read this statute and enhance our victims' financial well-being.
7. *Giordano, supra*, 42 Cal.4th at 661.
8. *Id.* at 622. Prosecutors burdened by this major new role we must shoulder at restitution hearings can possibly gain some ironic help from the lone dissenting opinion of Justice Kennard, on this very policy point: "Determining the value of lost economic support resulting from a spouse's death requires a determination of the life expectancy of the claimant surviving spouse [citation], a determination of the probability that the decedent would have remained married to the claimant spouse [citation], a determination of how many more years the decedent likely would have worked until retirement and what amount the decedent would have earned in each of those years [citations], a determination of the amount of the decedent's earnings that would have been devoted to the claimant spouse's economic support [citation], and a determination of the correct discount rate by which to reduce the estimated future economic support to a current lump-sum value [citations]." Many of these calculations typically involve expert testimony to assist the trier of fact.
9. *People v. Harvest* (2000) 84 Cal.App.4th 641.
10. One interesting, but unanswered question: If the surviving victim is a minor, should loss of support be calculated until the age of majority?
11. Prosser had good taste: The three stolen watches were one Rolex, one Cartier, and one Patek Philippe.
12. The trial court had an apparent aversion to the numbers 3, 4, 5, 7, 8, and 9.

## Chapter 9

### Victims' Rights After Conviction or Commitment

Victims of crime continue to be afforded rights after the defendant has been sentenced. Many of these rights pertain to attendance at parole hearings. Others have to do with notification about release from custody.

Many victims, especially those of violent crimes, are vitally interested in knowing not just about the defendant's release, but about the conditions of the defendant's probation or parole. It is important to work closely with probation and parole authorities to make that information available to victims.

#### I. **Welfare & Institutions Code § 1767—Release on Parole; Notice to Victim or Next of Kin; Request; Appearance and Statement; Duty of Board; Amendment of Section**

(a) Upon request, written notice of any hearing to consider the release on parole of any person under the control of the Youth Authority for the commission of a crime or committed to the authority as a person described in Section 602 shall be sent by the Department of the Youth Authority at least 30 days before the hearing to any victim of a crime committed by the person, or to the next of kin of the victim if the victim has died or is a minor. The requesting party shall keep the board apprised of his or her current mailing address.

(b) Any one of the following persons may appear, personally or by counsel, at the hearing:

(1) The victim of the offense and one support person of his or her choosing.

(2) In the event that the victim is unable to attend the proceeding, two support persons designated by the victim may attend to provide information about the impact of the crime on the victim.

(3) If the victim is no longer living, two members of the victim's immediate family may attend.

(4) If none of those persons appear personally at the hearing, any one of them may submit a statement recorded on videotape for the board's consideration at the hearing. Those persons shall also have the right to submit a written statement to the board at least 10 days prior to the scheduled hearing for the board's consideration at the hearing.

(c) The board, in deciding whether to release the person on parole, shall consider the statements of victims, next of kin, or statements made on their behalf pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole. The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

(d) A representative designated by the victim or the victim's next of kin shall be either that person's legal counsel or a family or household member of the victim, for the purposes of this section.

(e) Support persons may only provide information about the impact of the crime on the victim and provide physical and emotional support to the victim or the victim's family.

(f) Nothing in this section shall prevent the board from excluding a victim or his or her support person or persons from a hearing. The board may allow the presence of other support persons under particular circumstances surrounding the proceeding.

*(Added by Initiative Measure, approved by the people, June 8, 1982. Amended by Stats.1993, c. 560 (A.B.935), § 2; Stats.2000, c. 481 (S.B.1943), § 6.)*

## **II. Penal Code § 646.92—Notice to Victims; Release or Escape From Prison of Person Convicted of Stalking or Felony Domestic Violence**

(a) The Department of Corrections, county sheriff, or director of the local department of corrections shall give notice not less than 15 days prior to the release from the state prison or a county jail of any person who is convicted of violating Section 646.9 or convicted of a felony offense involving domestic violence, as defined in Section 6211 of the Family Code, or any change in the parole status or relevant change in the parole location of the convicted person, or if the convicted person absconds from supervision while on parole, to any person the court identifies as a victim of the offense, a family member of the victim, or a witness to the offense by telephone and certified mail at his or her last known address, upon request. A victim, family member, or witness shall keep the Department of Corrections or county sheriff informed of his or her current mailing address and telephone number to be entitled to receive notice. A victim may designate another person for the purpose of receiving notification. The Department of Corrections, county sheriff, or director of the local department of corrections, shall make reasonable attempts to locate a person who has requested notification but whose address and telephone number are incorrect or not current. However, the duty to keep the Department of Corrections or county sheriff informed of a current mailing address and telephone number shall remain with the victim.

Following notification by the department pursuant to Section 3058.61, in the event the victim had not originally requested notification under this section, the sheriff or the chief of police, as appropriate, shall make an attempt to advise the victim or, if the victim is a minor, the parent or guardian of the victim, of the victim's right to notification under this section.

(b) All information relating to any person who receives notice under this section shall remain confidential and shall not be made available to the person convicted of violating this section.

(c) For purposes of this section, "release" includes a release from the state prison or a county jail because time has been served, a release from the state prison or a county jail to parole or probation supervision, or an escape from an institution or reentry facility.



(d) The Department of Corrections or county sheriff shall give notice of an escape from an institution or reentry facility of any person convicted of violating Section 646.9 or convicted of a felony offense involving domestic violence, as defined in Section 6211 of the Family Code, to the notice recipients described in subdivision (a).

(e) Substantial compliance satisfies the notification requirements of subdivision (a).

*(Added by Stats.1995, c. 438 (A.B.985), § 3. Amended by Stats.2000, c. 561 (S.B.580), § 1.)*

### **III. Penal Code § 679.02(a)(5), (6) & (11)—Rights of Victims and Witnesses**

(a) The following are hereby established as the statutory rights of victims and witnesses of crimes:

(5) Upon request by the victim or the next of kin of the victim if the victim has died, to be notified of any parole eligibility hearing and of the right to appear, either personally as provided by Section 3043 of this code, or by other means as provided by Sections 3043.2 and 3043.25 of this code, to reasonably express his or her views, and to have his or her statements considered, as provided by Section 3043 of this code and by Section 1767 of the Welfare and Institutions Code.

(6) Upon request by the victim or the next of kin of the victim if the crime was a homicide, to be notified of an inmate's placement in a reentry or work furlough program, or notified of the inmate's escape as provided by Section 11155.

(11) To be notified, if applicable, in accordance with Sections 679.03 and 3058.8 if the defendant is to be placed on parole.

*(Added by Stats.1986, c. 1427, § 1. Amended by Stats.1988, c. 33, § 1; Stats.1988, c. 137, § 1; Stats.1995, c. 411 (S.B.221), § 2; Stats.1997, c. 902 (A.B.152), § 1; Stats.1998, c. 928 (A.B.1927), § 2.)*

### **IV. Penal Code § 679.03—Right to Notice of Scheduled Execution; Immediate Family of Victim**

(a) With respect to the conviction of a defendant involving a violent offense, as defined in subdivision (b) of Section 12021.1, the county district attorney, probation department, and victim-witness coordinator shall confer and establish an annual policy within existing resources to decide which one of their agencies shall inform each witness involved in the conviction who was threatened by the defendant following the defendant's arrest and each victim or next of kin of the victim of that offense of the right to request and receive a notice pursuant to Section 3058.8 or 3605. If no agreement is reached, the presiding judge shall designate the appropriate county agency or department to provide this notification.

(b) The Department of Corrections shall supply a form to the agency designated pursuant to subdivision (a) in order to enable persons specified in subdivision (a) to request and receive notification from the department of the release, escape, scheduled execution, or death of

the violent offender. That agency shall give the form to the victim, witness, or next of kin of the victim for completion, explain to that person or persons the right to be so notified, and forward the completed form to the department. The department or the Board of Prison Terms is responsible for notifying all victims, witnesses, or next of kin of victims who request to be notified of a violent offender's release or scheduled execution, as provided by Sections 3058.8 and 3605.

(c) All information relating to any person receiving notice pursuant to subdivision (b) shall remain confidential and is not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Title 7 of Division 1 of the Government Code).

*(Added by Stats.1988, c. 137, § 2. Amended by Stats.1989, c. 624, § 1; Stats.1996, c. 885 (A.B.2328), § 1; Stats.1997, c. 100 (A.B.566), § 1.)*

**V. Penal Code § 3043—Statements of Victim, Victim's Next of Kin, or Immediate Family; Public Safety Determination**

(a) Upon request, notice of any hearing to review or consider the parole suitability or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of Prison Terms at least 30 days before the hearing to any victim of a crime committed by the prisoner, or to the next of kin of the victim if the victim has died. The requesting party shall keep the board apprised of his or her current mailing address.

(b) The victim, next of kin, two members of the victim's immediate family, or two representatives designated for a particular hearing by the victim or, in the event the victim is deceased or incapacitated, by the next of kin in writing prior to the hearing have the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his, her, or their views concerning the crime and the person responsible, except that any statement provided by a representative designated by the victim or next of kin shall be limited to comments concerning the effect of the crime on the victim.

(c) A representative designated by the victim or the victim's next of kin for purposes of this section must be either a family or household member of the victim. The board may not permit a representative designated by the victim or the victim's next of kin to provide testimony at a hearing, or to submit a statement to be included in the hearing as provided in Section 3043. 2, if the victim, next of kin, or a member of the victim's immediate family is present at the hearing, or if the victim, next of kin, or a member of the victim's immediate family has submitted a statement as described in Section 3043.2.

(d) Nothing in this section is intended to allow the board to permit a victim's representative to attend a particular hearing if the victim, next of kin, or a member of the victim's immediate family is present at any hearing covered in this section, or if the victim, next of kin, or member of the victim's immediate family has submitted a written, audiotaped, or videotaped statement.

(e) The board, in deciding whether to release the person on parole, shall consider the statements of the victim or victims, next of kin, immediate family members of the victim, and the designated representatives of the victim or next of kin, if applicable, made pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

In those cases where there are more than two immediate family members of the victim who wish to attend any hearing covered in this section, the board may, in its discretion, allow attendance of additional immediate family members or limit attendance to the following order of preference: spouse, children, parents, siblings, grandchildren, and grandparents.

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

*(Added by Initiative Measure, approved by the people, June 8, 1982. Amended by Stats.1988, c. 33, § 2; Stats.1990, c. 278 (A.B.2803), § 1; Stats.2004, c. 289 (S.B.1516), § 1.)*

#### **VI. Penal Code § 3043.1—Attendance of Other Persons at Hearing**

Notwithstanding any other provision of law, a victim, his or her next of kin, or any immediate family member of the victim who appears at any hearing to review or consider the parole suitability or the setting of a parole date for any prisoner pursuant to Section 3043 shall be entitled to the attendance of one person of his or her own choosing at the hearing for support. The person so chosen shall not participate in the hearing nor make comments while in attendance.

*(Added by Stats.1990, c. 278 (A.B.2803), § 2.)*

#### **VII. Penal Code § 3043.2—Written, Audiotaped, or Videotaped Statement in Lieu of Appearance**

(a)(1) In lieu of personal appearance at any hearing to review the parole suitability or the setting of a parole date, the Board of Prison Terms shall permit the victim, his or her next of kin, immediate family members, or two representatives designated for a particular hearing by the victim or next of kin in writing prior to the hearing to file with the board a written, audiotaped, or videotaped statement, or statement stored on a CD Rom, DVD, or any other recording medium accepted by a court pursuant to Section 1191.15 or by the board, expressing his or her views concerning the crime and the person responsible. The statement may be personal messages from the person to the board made at any time or may be a statement made pursuant to Section 1191.16, or a combination of both, except that any statement provided by a representative designated by the victim or next of kin shall be limited to comments concerning the effect of the crime on the victim.

(2) A representative designated by the victim or the victim's next of kin for purposes of this section must be either a family or household member of the victim.

(3) The board shall consider any statement filed prior to reaching a decision, and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

(b) Whenever an audio or video statement or a statement stored on a CD Rom, DVD, or other medium is filed with the board, a written transcript of the statement shall also be provided by the person filing the statement.

(c) Nothing in this section shall be construed to prohibit the prosecutor from representing to the board the views of the victim, his or her immediate family members, or next of kin.

(d) In the event the board permits an audio or video statement or statement stored on a CD Rom, DVD, or other medium to be filed, the board shall not be responsible for providing any equipment or resources needed to assist the victim in preparing the statement.

*(Added by Stats.1990, c. 278 (A.B.2803), § 3. Amended by Stats.1997, c. 902 (A.B.152), § 3; Stats.2004, c. 1 (A.B.2), § 3, eff. Jan. 21, 2004; Stats.2004, c. 289 (S.B.1516), § 2.)*

#### **VIII. Penal Code § 3043.25—Right to Video Conference Appearance Before Parole Board**

Any victim, next of kin, members of the victim's immediate family, or representatives designated for a particular hearing by the victim or next of kin in writing prior to the hearing who have the right to appear at a hearing to review parole suitability or the setting of a parole date, either personally as provided in Section 3043, or by a written, audiotaped, or videotaped statement as provided in Section 3043.2, and any prosecutor who has the right to appear pursuant to Section 3041.7, shall also have the right to appear by means of videoconferencing, if videoconferencing is available at the hearing site. For the purposes of this section, "videoconferencing" means the live transmission of audio and video signals by any means from one physical location to another.

*(Added by Stats.1997, c. 902 (A.B.152), § 4. Amended by Stats.2004, c. 289 (S.B.1516), § 3.)*

#### **IX. Penal Code § 3058.7—Release of Person Convicted of Violent Felony; Notification of any Person Deemed Appropriate by Sheriff or Chief of Police; Liability**

(a) Whenever any sheriff or chief of police is notified of the pending release of a convicted violent felon pursuant to Section 3058.6, that sheriff or chief of police may notify any person designated by the sheriff or chief of police as an appropriate recipient of this notice.

(b) A law enforcement official authorized to provide notice pursuant to this section, and the public agency or entity employing the law enforcement official, shall not be liable for providing or failing to provide notice pursuant to this section.

*(Added by Stats.1995, c. 936 (S.B.561), § 1.)*

**X. Penal Code § 3058.8—Release of Person Convicted of Violent Offense Notification of Victims or Witnesses**

(a) At the time a notification is sent pursuant to subdivision (a) of Section 3058.6, the Board of Parole Hearings or the Department of Corrections and Rehabilitation, or the designated agency responsible for notification, as the case may be, shall also send a notice to persons described in Section 679.03 who have requested a notice informing those persons of the fact that the person who committed the violent offense is scheduled to be released from the Department of Corrections and Rehabilitation or from the State Department of Mental Health, including, but not limited to, conditional release, and specifying the proposed date of release. Notice of the community in which the person is scheduled to reside shall also be given if it is (1) in the county of residence of a witness, victim, or family member of a victim who has requested notification, or (2) within 100 miles of the actual residence of a witness, victim, or family member of a victim who has requested notification. If, after providing the witness, victim, or next of kin with the notice, there is any change in the release date or the community in which the person is to reside, the board or department shall provide the witness, victim, or next of kin with the revised information.

(b) In order to be entitled to receive the notice set forth in this section, the requesting party shall keep the department or board informed of his or her current mailing address.

(c) The board or department, when sending out notices regarding an offender's release on parole, shall use the information provided by the requesting party in the form completed pursuant to subdivision (b) of Section 679.03, unless that information is no longer current. If the information is no longer current, the department shall make a reasonable attempt to contact the person and to notify him or her of the impending release.

*(Added by Stats.1988, c. 137, § 4. Amended by Stats.1996, c. 885 (A.B.2328), § 2; Stats.1997, c. 101 (A.B.139), § 1; Stats.2007, c. 571 (A.B.1172), § 2.)*

**XI. Penal Code § 3605—Right to Notice of Scheduled Execution; Immediate Family**

(a) The warden of the state prison where the execution is to take place shall be present at the execution and shall, subject to any applicable requirement or definition set forth in subdivision (b), invite the presence of the Attorney General, the members of the immediate family of the victim or victims of the defendant, and at least 12 reputable citizens, to be selected by the warden. The warden shall, at the request of the defendant, permit those ministers of the Gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with those peace officers or any other Department of Corrections employee as he or she may think expedient, to witness the execution. But no other persons than those specified in this section may be present at the execution, nor may any person under 18 years of age be allowed to witness the execution.

(b)(1) For purposes of an invitation required by subdivision (a) to members of the immediate family of the victim or victims of the defendant, the warden of the state prison where the execution is to take place shall make the invitation only if a member of the immediate family

of the victim or victims of the defendant so requests in writing. In the event that a written request is made, the warden of the state prison where the execution is to take place shall automatically make the invitation 30 days prior to the date of an imminent execution or as close to this date as practicable.

(2) For purposes of this section, “immediate family” means those persons who are related by blood, adoption, or marriage, within the second degree of consanguinity or affinity.

(c) No physician or any other person invited pursuant to this section, whether or not employed by the Department of Corrections, shall be compelled to attend the execution, and any physician’s attendance shall be voluntary. A physician’s or any other person’s refusal to attend the execution shall not be used in any disciplinary action or negative job performance citation.

*(Added by Stats.1941, c. 106, p. 1117, § 15. Amended by Stats.1986, c. 248, § 167; Stats.1997, c. 100 (A.B.566), § 2; Stats.2001, c. 71 (S.B.129), § 1.)*

## **XII. Penal Code § 11155—Notice of Release or Escape of Prisoner**

(a) As soon as placement of an inmate in any reentry or work furlough program is planned, but in no case less than 60 days prior to that placement, the Department of Corrections shall send written notice, if notice has been requested, to all of the following: (1) the chief of police of the city, if any, in which the inmate will reside, if known, or in which placement will be made, (2) the sheriff of the county in which the inmate will reside, if known, or in which placement will be made, and (3) the victim, if any, of the crime for which the inmate was convicted or the next of kin of the victim if the crime was a homicide, if the victim or the next of kin has submitted a request for notice with the department. Information regarding victims or next of kin requesting the notice, and the notice, shall be confidential and not available to the inmate.

(b) In the event of an escape of an inmate from any facility under the jurisdiction of the Department of Corrections, the department shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city, and the sheriff of the county, in which the inmate resided immediately prior to the inmate’s arrest and conviction, and, if previously requested, to the victim, if any, of the crime for which the inmate was convicted, or to the next of kin of the victim if the crime was a homicide. If the inmate is recaptured, the department shall send written notice thereof to the persons designated in this subdivision within 30 days after regaining custody of the inmate.

(c) Except as provided in subdivision (d), the Department of Corrections shall send the notices required by this section to the last address provided to the department by the requesting party. It is the responsibility of the requesting party to provide the department with a current address.

(d) Whenever the department sends the notice required by this section to a victim, it shall do so by return-receipt mail. In the event the victim does not reside at the last address provided

to the department, the department shall make a diligent, good faith effort to learn the whereabouts of the victim in order to comply with these notification requirements.

*(Added by Stats.1982, c. 1048, p. 3808, § 1. Amended by Stats.1990, c. 1692 (A.B.4237), § 2.)*

**XIII. Welfare & Institutions Code § 6609.1—Notification of Unconditional Release of Sexually Violent Predator**

(a)(1) When the State Department of Mental Health makes a recommendation to the court for community outpatient treatment for any person committed as a sexually violent predator, or when a person who is committed as a sexually violent predator pursuant to this article has petitioned a court pursuant to Section 6608 for conditional release under supervision and treatment in the community pursuant to a conditional release program, or has petitioned a court pursuant to Section 6608 for subsequent unconditional discharge, and the department is notified, or is aware, of the filing of the petition, and when a community placement location is recommended or proposed, the department shall notify the sheriff or chief of police, or both, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

(A) The community in which the person may be released for community outpatient treatment.

(B) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The department shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The department shall also notify the Department of Justice.

(3) The notice shall be given when the department or its designee makes a recommendation under subdivision (e) of Section 6608 or proposes a placement location without making a recommendation, or when any other person proposes a placement location to the court and the department or its designee is made aware of the proposal.

(4) The notice shall be given at least 30 days prior to the department's submission of its recommendation to the court in those cases in which the department recommended community outpatient treatment under Section 6607, or in which the department or its designee is recommending or proposing a placement location, or in the case of a petition or placement proposal by someone other than the department or its designee, within 48 hours after becoming aware of the petition or placement proposal.

(5) The notice shall state that it is being made under this section and include all of the following information concerning each person committed as a sexually violent predator who

is proposed or is petitioning to receive outpatient care in a conditional release program in that city or county:

(A) The name, proposed placement address, date of commitment, county from which committed, proposed date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 3 1/8 X 3 1/8 inches in size, or clear copies of the fingerprints and photograph.

(B) The date, place, and time of the court hearing at which the location of placement is to be considered and a proof of service attesting to the notice's mailing in accordance with this subdivision.

(C) A list of agencies that are being provided this notice and the addresses to which the notices are being sent.

(b) Those agencies receiving the notice referred to in paragraphs (1) and (2) of subdivision (a) may provide written comment to the department and the court regarding the impending release, placement, location, and conditions of release. All community agency comments shall be combined and consolidated. The written comment shall be filed with the court at the time that the comment is provided to the department. The written comment shall identify differences between the comment filed with the court and that provided to the department, if any. In addition, a single agency in the community of the specific proposed or recommended placement address may suggest appropriate, alternative locations for placement within that community. A copy of the suggested alternative placement location shall be filed with the court at the time that the suggested placement location is provided to the department. The State Department of Mental Health shall issue a written statement to the commenting agencies and to the court within 10 days of receiving the written comments with a determination as to whether to adjust the release location or general terms and conditions, and explaining the basis for its decision. In lieu of responding to the individual community agencies or individuals, the department's statement responding to the community comment shall be in the form of a public statement.

(c) The agencies' comments and department's statements shall be considered by the court which shall, based on those comments and statements, approve, modify, or reject the department's recommendation or proposal regarding the community or specific address to which the person is scheduled to be released or the conditions that shall apply to the release if the court finds that the department's recommendation or proposal is not appropriate.

(d)(1) When the State Department of Mental Health makes a recommendation to pursue recommitment, makes a recommendation not to pursue recommitment, or seeks a judicial review of commitment status pursuant to subdivision (f) of Section 6605, of any person committed as a sexually violent predator, it shall provide written notice of that action to the sheriff or chief of police, or both, and to the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.



(B) The community in which the person will probably be released, if recommending not to pursue recommitment.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The State Department of Mental Health shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The State Department of Mental Health shall also notify the Department of Justice. The notice shall be made at least 15 days prior to the department's submission of its recommendation to the court.

(3) Those agencies receiving the notice referred to in this subdivision shall have 15 days from receipt of the notice to provide written comment to the department regarding the impending release. At the time that the written comment is made to the department, a copy of the written comment shall be filed with the court by the agency or agencies making the comment. Those comments shall be considered by the department, which may modify its decision regarding the community in which the person is scheduled to be released, based on those comments.

(e)(1) If the court orders the release of a sexually violent predator, the court shall notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation. The Department of Corrections and Rehabilitation shall notify the Department of Justice, the State Department of Mental Health, the sheriff or chief of police or both, and the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person is to be released.

(B) The community in which the person maintained his or her last legal residence as defined in Section 3003 of the Penal Code.

(2) The Department of Corrections and Rehabilitation shall make the notifications required by this subdivision regardless of whether the person released will be serving a term of parole after release by the court.

(f) If the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 300) of Chapter 8 of Title 1 of Part 3 of the Penal Code, to allow adequate time for the Department of Corrections and Rehabilitation to make appropriate parole arrangements upon release of the person, the person shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation, whichever is sooner. To facilitate timely parole arrangements, notification to the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation of the pending release shall be made by telephone or facsimile and, to the extent possible, notice of the possible release shall be made in advance of the proceeding or decision determining whether to release the person.

(g) The notice required by this section shall be made whether or not a request has been made pursuant to Section 6609.

(h) The time limits imposed by this section are not applicable when the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30 days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable.

(i) In the case of any subsequent community placement or change of community placement of a conditionally released sexually violent predator, notice required by this section shall be given under the same terms and standards as apply to the initial placement, except in the case of an emergency where the sexually violent predator must be moved to protect the public safety or the safety of the sexually violent predator. In the case of an emergency, the notice shall be given as soon as practicable, and the affected communities may comment on the placement as described in subdivision (b).

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

*(Added by Stats.1996, c. 462 (A.B.3130), § 8, eff. Sept. 13, 1996. Amended by Stats.1998, c. 19 (S.B.536), § 6, eff. April 14, 1998; Stats.1998, c. 961 (S.B.1976), § 9, eff. Sept. 29, 1998; Stats.1999, c. 83 (S.B.966), § 201; Stats.2002, c. 139 (A.B.1967), § 1; Stats.2004, c. 425 (A.B.2450), § 1; Stats.2007, c. 571 (A.B.1172), § 4.)*

#### **XIV. Welfare & Institutions Code § 6609.3—Notification to Persons Described in Penal Code § 679.03; Mailing Address Update Requirement; Reimbursement of Costs**

(a) At the time a notice is sent pursuant to subdivisions (a) and (b) of Section 6609.1, the sheriff, chief of police, or district attorney notified of the release shall also send a notice to persons described in Section 679.03 of the Penal Code who have requested a notice, informing those persons of the fact that the person who committed the sexually violent offense may be released together with information identifying the court that will consider the conditional release, recommendation regarding recommitment, or review of commitment status pursuant to subdivision (f) of Section 6605a. When a person is approved by the court to be conditionally released, notice of the community in which the person is scheduled to reside shall also be given only if it is (1) in the county of residence of a witness, victim, or family member of a victim who has requested notice, or (2) within 100 miles of the actual residence of a witness, victim, or family member of a victim who has requested notice. If, after providing the witness, victim, or next of kin with the notice, there is any change in the release date or the community in which the person is to reside, the sheriff, chief of police, or the district attorney shall provide the witness, victim, or next of kin with the revised information.

(b) At the time a notice is sent pursuant to subdivision (c) of Section 6609.1 the Department of Corrections shall also send a notice to persons described in Section 679.03 of the Penal

Code who have requested a notice informing those persons of the fact that the person who committed the sexually violent offense has been released.

(c) In order to be entitled to receive the notice set forth in this section, the requesting party shall keep the sheriff, chief of police, and district attorney who were notified under Section 679.03 of the Penal Code, informed of his or her current mailing address.

*(Added by Stats.1996, c. 462 (A.B.3130), § 10, eff. Sept. 13, 1996. Amended by Stats.1998, c. 19 (S.B.536), § 8, eff. April 14, 1998; Stats.1998, c. 961 (S.B.1976), § 11, eff. Sept. 29, 1998.)*

## **XV. Penal Code § 1603—Available After Confinement Period; Conditions**

(a) Any person subject to subdivision (a) of Section 1601 may be placed on outpatient status if all of the following conditions are satisfied:

(1) The director of the state hospital or other treatment facility to which the person has been committed advises the committing court and the prosecutor that the defendant would no longer be a danger to the health and safety of others, including himself or herself, while under supervision and treatment in the community, and will benefit from that status.

(2) The community program director advises the court that the defendant will benefit from that status, and identifies an appropriate program of supervision and treatment.

(3) The prosecutor shall provide notice of the hearing date and pending release to the victim or next of kin of the victim of the offense for which the person was committed where a request for the notice has been filed with the court, and after a hearing in court, the court specifically approves the recommendation and plan for outpatient status pursuant to Section 1604. The burden shall be on the victim or next of kin to the victim to keep the court apprised of the party's current mailing address.

In any case in which the victim or next of kin to the victim has filed a request for notice with the director of the state hospital or other treatment facility, he or she shall be notified by the director at the inception of any program in which the committed person would be allowed any type of day release unattended by the staff of the facility.

(b) The community program director shall prepare and submit the evaluation and the treatment plan specified in paragraph (2) of subdivision (a) to the court within 30 calendar days after notification by the court to do so.

(c) Any evaluations and recommendations pursuant to paragraphs (1) and (2) of subdivision (a) shall include review and consideration of complete, available information regarding the circumstances of the criminal offense and the person's prior criminal history.

*(Added by Stats.1980, c. 547, § 17. Amended by Stats.1982, c. 1232, p. 4543, § 1; Stats.1984, c. 1488, § 7; Stats.1985, c. 1232, § 11, eff. Sept. 30, 1985; Stats.1987, c. 1343, § 3; Stats.1993, c. 1141 (S.B.476), § 4; Stats.1994, c. 1086 (S.B.1487), § 4; Stats.2004, c. 628 (A.B.1504), § 1.)*

## XVI. Frequently Asked Questions:

**1. Must the jail or prison officials notify the victim before the defendant's release from custody?**

Victims of a violent offense are entitled to notification before the defendant's release from prison.<sup>1</sup> Victims of stalking or felony domestic violence may request to be notified of the defendant's release from jail or prison.<sup>2</sup>

**2. If the victim or victim's family wishes to make a statement at the defendant's parole suitability hearing, do they have to personally attend the hearing?**

No. The victim or the victim's family, if the victim is deceased, have the right to attend the hearing, but they may choose to send a representative or submit a written or taped statement.<sup>3</sup> The victim may also participate in the hearing via teleconference if possible.<sup>4</sup>

### ENDNOTES

1. Penal Code § 3058.8.
2. Penal Code § 646.92.
3. Penal Code §§ 3043, 3043.2.
4. Penal Code § 3043.25.

## Chapter 10

### Restraining Orders

The Domestic Violence Restraining Order is one the most common of the protective orders. The main purpose of the order is to protect the one who seeks the order, and to prevent the restrained person from contacting the protected person. A temporary restraining order is obtained first, and then application is made to the court for a restraining order for a longer term.

Law enforcement officers usually recommend restraining orders in domestic violence situations. Then if they receive calls for law enforcement assistance, they can respond and arrest the restrained person for violation of the order.

In many domestic violence situations, the restraining order can be very effective in separating the parties and putting everyone on notice that if the restraining order is violated, there may be criminal consequences.

However, one of the most important things to remember in domestic violence situations is that the restraining order may actually serve to escalate the risk of violence to the protected person. All victims should ask themselves this question before obtaining a restraining order: How will the restrained person likely react to being served with this order? If the response is that the restrained person will likely act out violently, then a distancing and/or disengagement approach on the victim's part, rather than a restraining order, may be more effective. These options must be discussed with the person seeking the order, especially in domestic violence situations. The decision to seek a restraining order rests ultimately with the person who wishes protection.

With those cautions in mind, if a restraining order is still desired, there are several steps the victim can take to make the application easier. Please check your court's Web site for directions on obtaining the order, or:

#### **Step 1**

Anticipate spending at least 4-6 hours in court.

#### **Step 2**

Plan on attending clinics prior to filing the court documents. They will assist in filling out the forms and they will provide resources and referrals.

#### **Step 3**

You will need the following forms: DV-100, DV-110, DV-105, and DV-140. DV-120 is the respondent's packet and can be obtained by the issuing court.

#### **Step 4**

Obtaining these forms prior to court will help speed up the process. The forms may be located on the superior court website. The forms are also available at the court facilities.

## Frequently Asked Questions

- 1. What information do I need for the person I am trying to get a restraining order against?**  
You will need a full name, date of birth, and a current address for service.
- 2. Who can serve the restraining order?**  
You can have it done by the Sheriff's Office or do personal service by someone not involved in the restraining order. Make sure the personal service paperwork is filled out properly.
- 3. How long will the restraining order last if granted?**  
Usually they are three years; however, it is up to the judge.
- 4. What if I have a restraining order and it is expiring in a month?**  
Go back to court and have it reinstated for another three years, at least one month in advance.
- 5. Once the restraining order is in place, what do I do if the respondent violates the order?**  
Call the police and report each violation of the restraining order, and document and save all evidence (i.e., letters, calls, emails, etc.)
- 6. If the person I am filing an order against and I have never had an intimate relationship, can it be a domestic violence order?**  
No, that would be a civil restraining order, and it takes different paperwork.
- 7. If I need help filing out the paperwork for the restraining order, who can help me?**  
A lot of non-profit agencies will help with the paperwork: YWCA, Family Justice Center, volunteer lawyer programs, and Center for Community Solutions, etc.
- 8. Do I have to give my address on the restraining order or can I list it as confidential?**  
You can check with the courts; however, they usually will let you remain confidential or use an address that the respondent already knows, such as parents address or work address.

## Chapter 11

### The Hertzberg-Leslie Witness Protection Act

#### I. Penal Code § 14020—Witness Relocation and Assistance Program

There is hereby established the Witness Relocation and Assistance Program.

*(Added by Stats.1997, c. 507 (A.B.856), § 1. Amended by Stats.2007, c. 455 (S.B.594), § 1.)*

#### II. Penal Code § 14021—Definitions

As used in this title:

(a) “Witness” means any person who has been summoned, or is reasonably expected to be summoned, to testify in a criminal matter, including grand jury proceedings, for the people whether or not formal legal proceedings have been filed. Active or passive participation in the criminal matter does not disqualify an individual from being a witness. “Witness” may also apply to family, friends, or associates of the witness who are deemed by local or state prosecutors to be endangered.

(b) “Credible evidence” means evidence leading a reasonable person to believe that substantial reliability should be attached to the evidence.

(c) “Protection” means formal admission into a witness protection program established by this title memorialized by a written agreement between local or state prosecutors and the witness.

*(Added by Stats.1997, c. 507 (A.B.856), § 1. Amended by Stats.2002, c. 210 (S.B.1739), § 3.)*

#### III. Penal Code § 14022—Administration of Program; Attorney General

The program shall be administered by the Attorney General. In any criminal proceeding within this state, when the action is brought by local or state prosecutors, where credible evidence exists of a substantial danger that a witness may suffer intimidation or retaliatory violence, the Attorney General may reimburse state and local agencies for the costs of providing witness protection services.

*(Added by Stats. 1997, c. 507 (A.B.856), § 1. Amended by Stats.2002, c. 210 (S.B.1739), § 4.)*

#### **IV. Penal Code § 14023—Prioritization**

The Attorney General shall give priority to matters involving organized crime, gang activities, drug trafficking, human trafficking, and cases involving a high degree of risk to the witness. Special regard shall also be given to the elderly, the young, battered, victims of domestic violence, the infirm, the handicapped, and victims of hate incidents.

*(Added by Stats.1997, c. 507 (A.B.856), § 1. Amended by Stats.2005, c. 240 (A.B.22), § 12.)*

#### **V. Penal Code § 14024—Reimbursable Expenses**

The Attorney General shall coordinate the efforts of state and local agencies to secure witness protection, relocation, and assistance services and then reimburse those state and local agencies for the costs of the services that he or she determines to be necessary to protect a witness from bodily injury, assure the witness's safe transition into a new environment, and otherwise to assure the health, safety, and welfare of the witness. The Attorney General may reimburse the state or local agencies that provide witnesses with any of the following:

- (a) Armed protection or escort by law enforcement officials or security personnel before, during, or subsequent to, legal proceedings.
- (b) Physical relocation to an alternate residence.
- (c) Housing expense.
- (d) Appropriate documents to establish a new identity.
- (e) Transportation or storage of personal possessions.
- (f) Basic living expenses, including, but not limited to, food, transportation, utility costs, and health care.
- (g) Basic living expenses, including, but not limited to, food, transportation, utility costs, and health care.
- (h) Other services as needed and approved by the Attorney General.

*(Added by Stats.1997, c. 507 (A.B.856), § 1. Amended by Stats.2007, c. 455 (S.B.594), § 2.)*

#### **VI. Penal Code § 14025—Witness Responsibilities**

The witness protection agreement shall be in writing, and shall specify the responsibilities of the protected person that establish the conditions for local or state prosecutors providing protection. The protected person shall agree to all of the following:

- (a) If a witness or potential witness, to testify in and provide information to all appropriate law enforcement officials concerning all appropriate proceedings.



- (b) To refrain from committing any crime.
- (c) To take all necessary steps to avoid detection by others of the facts concerning the protection provided to that person under this title.
- (d) To comply with legal obligations and civil judgments against that person.
- (e) To cooperate with all reasonable requests of officers and employees of this state who are providing protection under this title.
- (f) To designate another person to act as agent for the service of process.
- (g) To make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation.
- (h) To disclose any probation or parole responsibilities, and if the person is on probation or parole.
- (i) To regularly inform the appropriate program official of his or her activities and current address.

*(Added by Stats.1997, c. 507 (A.B.856), § 1. Amended by Stats.2002, c. 210 (S.B.1739), § 5.)*

#### **VII. Penal Code § 14025.5—Liability**

The State of California, the counties and cities within the state, and their respective officers and employees shall not be liable for any condition in the witness protection agreement that cannot reasonably be met due to a witness committing a crime during participation in the program.

*(Added by Stats.1997, c. 507 (A.B.856), § 1. Amended by Stats.2002, c. 210 (S.B.1739), § 6.)*

#### **VIII. Penal Code § 14026—Budget Allowances**

Funds available to implement this title may be used for any of the following:

- (a) To protect witnesses where credible evidence exists that they may be in substantial danger of intimidation or retaliatory violence because of their testimony.
- (b) To provide temporary and permanent relocation of witnesses and provide for their transition and well-being into a safe and secure environment.
- (c) To pay the costs of administering the program.

*(Added by Stats.1997, c. 507 (A.B.856), § 1.)*

**IX. Penal Code § 14026.5—Legislative Intent**

For the purposes of this title, notwithstanding Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, a witness, as defined in subdivision (a) of Section 14021, selected by local or state prosecutors to receive services under the program established pursuant to this title because he or she has been or may be victimized due to the testimony he or she will give, shall be deemed a victim.

*(Added by Stats.1997, c. 507 (A.B.856), § 1. Amended by Stats.2002, c. 210 (S.B.1739), § 7.)*

**X. Penal Code § 14027—Attorney General Guidelines**

The Attorney General shall issue appropriate guidelines and may adopt regulations to implement this title. These guidelines shall include:

(a) A process whereby state and local agencies shall apply for reimbursement of the costs of providing witness protection services.

(b) A 25-percent match that shall be required of local agencies. The Attorney General may also establish a process through which to waive the required local match when appropriate.

*(Added by Stats.1997, c. 507 (A.B.856), § 1. Amended by Stats. 2007, c. 176 (S.B.82), § 65, eff. Aug. 24, 2007.)*

**XI. Penal Code § 14028—Immunity**

The State of California, the counties and cities within the state, and their respective officers and employees shall have immunity from civil liability for any decision declining or revoking protection to a witness under this title.

*(Added by Stats.1997, c. 507 (A.B.856), § 1.)*

**XII. Penal Code § 14029—Confidentiality**

All information relating to any witness participating in the program established pursuant to this title shall remain confidential and is not subject to disclosure pursuant to the California Public Records Act (chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and, if a change of name has been approved by the program, the order to show cause is not subject to the publication requirement of Section 1277 of the Code of Civil Procedure.

*(Added by Stats.1997, c. 507 (A.B.856), § 1. Amended by Stats.2000, c. 688 (A.B.1669), § 19.)*

### **XIII. Penal Code § 14030—Federal Liaison**

(a) The Attorney General shall establish a liaison with the United States Marshal's office in order to facilitate the legal processes over which the federal government has sole authority, including, but not limited to, those processes included in Section 14024. The liaison shall coordinate all requests for federal assistance relating to witness protection as established by this title.

(b) The Attorney General shall pursue all federal sources that may be available for implementing this program. For that purpose, the Attorney General shall establish a liaison with the United States Department of Justice.

(c) The Attorney General with the California Victim Compensation and Government Claims Board shall establish procedures to maximize federal funds for witness protection services.

*(Added by Stats.1997, c. 507 (A.B.856), § 1. Amended by Stats.2006, c. 538 (S.B.1852), § 533.)*

### **XIV. Penal Code § 14031—Annual Report**

Commencing one year after the effective date of this title, the Attorney General shall make an annual report to the Legislature no later than January 1 on the fiscal and operational status of the program. This report shall include the amount of funding sought by each county, the amount of funding provided to each county, and the amount of the county match.

*(Added by Stats.1997, c. 507 (A.B.856), § 1. Amended by Stats.2007, c. 176 (S.B.82), § 66, eff. Aug. 24, 2007.)*

### **XV. Penal Code § 14032—Administrative Costs**

The administrative costs of the Attorney General for the purposes of administering this title shall be limited to 5 percent of all costs incurred pursuant to this title.

*(Added by Stats.1997), c. 507 (A.B. 856), § 1.)*

### **XVI. Penal Code § 14033—Governor's Budget**

(a) The Governor's budget shall specify the estimated amount in the Restitution Fund that is in excess of the amount needed to pay claims pursuant to Sections 13960 to 13965, inclusive, of the Government Code, to pay administrative costs for increasing restitution funds, and to maintain a prudent reserve.

(b) It is the intent of the Legislature that, notwithstanding Government Code Section 13967, in the annual Budget Act, funds be appropriated to the Attorney General from those funds that are in excess of the amount specified pursuant to subdivision (a) for the purposes of this title.

*(Added by Stats.1997, c. 507 (A.B.856), § 1.)*

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## Chapter 12

### Public Records Act

#### I. Introduction

Anyone may request to review or receive a copy of a public record under the California Public Records Act (CPRA).<sup>1</sup> Originally enacted in 1968, the CPRA was patterned after the federal Freedom of Information Act.<sup>2</sup> The premise of the CPRA is that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”<sup>3</sup> Consequently, the CPRA is liberally construed in favor of releasing public records, while the assertion of CPRA exemptions is narrowly construed.<sup>4</sup> However, “the public’s right to disclosure of public records is not absolute,” especially when balanced against an individual’s right to privacy.<sup>5</sup>

#### II. What Are Public Records?

Government Code section 6252(e), defines “public records” as including “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” “This definition is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed.”<sup>6</sup> The form of the record is not material; photographs, audio and videocassette tapes, computer data, and paper documents are all defined as a “writing.”<sup>7</sup>

#### III. Who Can Review a Public Record?

Anyone, including a crime victim or a defendant, has a largely equal right to review a public record under the CPRA.<sup>8</sup> As well, an agency cannot generally limit access to records based on the purpose for which the record is requested.<sup>9</sup> “Idle curiosity” is justification enough for any CPRA request.<sup>10</sup>

#### IV. Must the CPRA Request Be in Writing?

There is no requirement that a CPRA request be made in writing.<sup>11</sup>

#### V. How Quickly Must the Agency Respond to the CPRA Request?

Government Code section 6253 sets forth the time limits for a CPRA response, and in subdivision (c) provides that an agency must respond within 10 calendar days after receipt of a CPRA request. However, section 6253(c) provides for an extension of time for up to 14 additional calendar days in “unusual circumstances.” Those circumstances are listed in:

- subdivision (c)(1) [“The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request”];

- subdivision (c)(2) [“The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request”];
- subdivision (c)(3) [“The need for consultation ... with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein”];
- subdivision (c)(4) [“The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data].

## **VI. What if the Requestor Does Not Know Exactly What They Want?**

Under Government Code section 6253.1(a)(1), a public agency must, “[a]ssist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.”

## **VII. What Records Are Exempt from Disclosure?**

While a member of the public may request any record, the CPRA has created numerous exemptions that an agency may assert to bar release of certain documents.<sup>12</sup> Government Code sections 6276 et seq. contain a list of all CPRA exemptions.

The following discussion concerns those types of records most commonly sought by crime victims. Included under each type of record is a brief discussion of whether or not such documents are subject to an exemption barring their release.

## **VIII. Preliminary Drafts of Agency Memoranda**

Government Code section 6254(a) contains an exemption from disclosure of “Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business.” However, this exemption can only be employed if “the public interest in withholding those records clearly outweighs the public interest in disclosure.”<sup>13</sup>

## **IX. Personnel or Medical Records**

Government Code section 6254(c) exempts from release, “Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.” This exemption includes the medical file of a victim or their personnel files if they are a government employee.<sup>14</sup> Note that these records still might be released in response to a subpoena duces tecum for use in judicial proceedings.

## **X. Police Reports**

Government Code section 6254(f) exempts from release records of complaints made to law enforcement, law enforcement investigative files, law enforcement intelligence information, or

security files, even after the investigation has been completed.<sup>15</sup> Further, disclosure is not required for that portion of an investigative file that reflects the analysis or conclusions of the investigating officer.<sup>16</sup>

## **XI. Rap Sheets**

Government Code section 6254(k) exempts from release “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law.” Included within this exemption is Penal Code sections 11140 et seq. that prohibit the release of a person’s criminal history, unless specifically ordered to do so by a court. This exempts the following types of documents from disclosure: CII records, rap sheets, and FBI rap sheets. Probation reports become exempt from disclosure 60 days after judgment is pronounced under Penal Code section 1203.05.<sup>17</sup>

This prohibition also includes a defendant’s local criminal history, which is data maintained on a computer system by a law enforcement agency, such as a specific police department or prosecutor’s office. The release of that information is prohibited by Penal Code sections 13300 et seq. Under that statute, a local law enforcement agency cannot release, in response to a PRA request, “the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.”<sup>18</sup> It is a misdemeanor for any employee to release such information.<sup>19</sup> Merely removing a defendant’s name and furnishing only a case number is also a violation of the statute.<sup>20</sup>

## **XII. Probation Reports**

A victim, or anyone else, may review a probation report for 60 days from the date judgment is pronounced or probation granted.<sup>21</sup> After that time, they become exempt from disclosure and cannot be reviewed without a court order.<sup>22</sup>

However, the victim, or victim’s next-of-kin if the victim has died, is entitled to review the sentencing recommendation portion of a probation report prior to sentencing. The probation department is required to notify victims of the availability of this information, but the district attorney’s office is required to provide the information.<sup>23</sup>

## **XIII. What About a Victim’s Access to Police Reports?**

While generally police reports are exempt from release in response to a CPRA request, victims of certain crimes are always entitled to a certain limited amount of information. Government Code section 6254(f) provides:

[S]tate and local law enforcement agencies **shall disclose** the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery,

carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951 [injury or death caused by operation of vehicle], unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. (*Emphasis added.*)

#### XIV. What About CPRA Requests for Victim Information?

##### A. Protected from Release

Law enforcement agencies are required to reveal certain information about the people they arrest and their victims. Under Government Code section 6254(f)(1), arresting agencies must release an arrestee's name, occupation and physical description, the date, time, and circumstances surrounding the arrest, the date, and time of booking, the amount of bail, any outstanding warrants or holds, where the person is being held, and the date and manner of release. However, law enforcement agencies have discretion, under the CPRA, to deny the release of mug shots.<sup>24</sup> Additionally, information concerning arrests and crimes which must be released pursuant to Government Code section 6254(f)(1) and (2) is limited to persons currently in the criminal justice system.<sup>25</sup>

##### B. Usually Disclosed

Agencies are also required by Government Code section 6254(f)(2) to disclose information about the crime an individual was arrested for including, "the time, date, and location of occurrence, the time and date of the report, **the name and age of the victim**, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved." (*Emphasis added.*)

##### C. Victims of Certain Offenses May Prevent Disclosure

The victims of certain offenses **may request** that their names not be released in response to a CPRA request. Specifically Government Code section 6254(f)(2) states in the relevant part:

The name of a victim of any crime defined by Section 220 [Assault with Intent to Commit Rape], 261 [Rape], 261.5 [Statutory Rape], 262 [Spousal Rape], 264 [Rape], 264.1 [Rape by Foreign Object], 273a [Willful Harm or Injury to a Child], 273d [Corporal Punishment of a Child], 273.5 [Spousal Battery], 286 [Sodomy], 288 Lewd or Lascivious Act on a Child], 288a [Oral Copulation], 289 [Forcible Act of Sexual Penetration], 422.6 [Interference with Civil Rights], 422.7 [Interference with Civil Rights], 422.75 [Hate Crimes], or 646.9 [Stalking] of the Penal Code **may be withheld at the victim's request**, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor,



in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph. (*Emphasis added.*)

#### **D. Disclosure of a Victim's Residence Address May Be Prevented**

Normally, a victim of offenses not listed in Government Code section 6254(f)(2), cannot bar the release of their name or age. Usually, however, a victim's address is not subject to disclosure in response to a CPRA, but Government Code section 6254(f)(3) does require release of a victim or arrestee's address to individuals who declare under penalty of perjury that their request is being made for scholarly, journalistic, political, or governmental purposes, or for investigation purposes by a licensed private investigator.

Additionally, addresses for victims and witnesses shall not be disclosed to the defendant<sup>26</sup> and addresses for victims of the crimes listed in Government Code section 6254(f)(2) (above) shall remain confidential.<sup>27</sup>

#### **E. What About Victim Information Contained in Court Files?**

The disclosure of court records is not governed by the Public Records Act.<sup>28</sup> Court records are made public records by other statutes and by case law.<sup>29</sup> Therefore, absent a court order, nothing prohibits anyone from reviewing a court file.

Examples of "public" court records include: the complaint or information; certified copies of prior convictions;<sup>30</sup> reporter's transcripts; all motions filed by counsel; and grand jury transcripts, 10 days after filing of the indictment (unless sealed under Penal Code § 938.1(b).)<sup>31</sup> The media may have a right to challenge court orders sealing records under Code of Civil Procedure section 1008(a).<sup>32</sup>

#### **F. What About Disclosure of Victim Address Information to a Defense Attorney?**

Under criminal discovery, 30 days prior to trial, the prosecution must disclose the whereabouts of its witnesses to the defense.<sup>33</sup> However, the defense attorney is barred from disclosing that information to his client, the client's family members, or anyone else with the exception of individuals employed by the defense to assist in the preparation of its case.<sup>34</sup> It is a misdemeanor to violate this proscription.<sup>35</sup>

In certain limited situations, where the prosecution can make a showing that a witness is in danger, a trial court may deny the defense pretrial access to victim or witness information.<sup>36</sup> A witness, however, may not testify anonymously.<sup>37</sup> This disclosure of victim information to a defendant's attorney does not waive any underlying CPRA exemption that would bar release of those same materials to a member of the public in response to a PRA request.<sup>38</sup>

### **XV. Government Code § 6254(f)**

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled

by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9 or 647.6 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of

the Penal Code set forth in this subdivision may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

*(Added by Stats.1981, c. 684, p. 2484, § 1.5, eff. Sept. 23, 1981, operative Jan. 1, 1982. Amended by Stats.1982, c. 83, p. 242, § 1, eff. March 1, 1982; Stats.1982, c. 1492, p. 5778, § 2; Stats.1982, c. 1594, p. 6299, § 2, eff. Sept. 30, 1982; Stats.1983, c. 200, § 1, eff. July 12, 1983; Stats.1983, c. 621, § 1; Stats.1983, c. 955, § 1; Stats.1983, c. 1315, § 1; Stats.1984, c. 1516, § 1, eff. Sept. 28, 1984; Stats.1985, c. 103, § 1; Stats.1985, c. 1218, § 1; Stats.1986, c. 185, § 2; Stats.1987, c. 634, § 1, eff. Sept. 14, 1987; Stats.1987, c. 635, § 1; Stats.1988, c. 870, § 1; Stats.1988, c. 1371, § 2; Stats.1989, c. 191, § 1; Stats.1990, c. 1106 (S.B.2106), § 2; Stats.1991, c. 278 (A.B.99), § 1.2, eff. July 30, 1991; Stats.1991, c. 607 (S.B.98), § 4; Stats.1992, c. 3 (A.B.1681), § 1, eff. Feb. 10, 1992; Stats.1992, c. 72 (A.B.1525), § 2, eff. May 28, 1992; Stats.1992, c. 1128 (A.B.1672), § 2, operative July 1, 1993; Stats.1993, c. 606 (A.B.166), § 1, eff. Oct. 1, 1993; Stats.1993, c. 610 (A.B.6), § 1, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 1, eff. Oct. 1, 1993; Stats.1993, c. 1265 (S.B.798), § 14; Stats.1994, c. 82 (A.B.2547), § 1; Stats.1994, c. 1263 (A.B.1328), § 1.5; Stats.1995, c. 438 (A.B.985), § 1; Stats.1995, c. 777 (A.B.958), § 2; Stats.1995, c. 778 (S.B.1059), § 1.5; Stats.1995, c. 778 (S.B.1059), § 1.5, operative July 1, 1996; Stats.1996, c. 1075 (S.B.1444), § 11; Stats.1997, c. 623 (A.B.1126), § 1; Stats.1998, c. 485 (A.B.2803), § 83; Stats.1998, c. 13 (A.B.487), § 1; Stats.1998, c. 110 (A.B.1795), § 1; Stats.2000, c. 184 (A.B.1349), § 1; Stats.2001, c. 159 (S.B.662), § 105; Stats.2002, c. 175 (S.B.1643), § 1; Stats.2003, c. 230 (A.B.1762), § 1, eff. Aug. 11, 2003; Stats.2004, c. 8 (A.B.1209), § 1, eff. Jan. 22, 2004; Stats.2004, c. 183 (A.B.3082), § 134; Stats.2004, c. 228 (S.B.1103), § 2, eff. Aug. 16, 2004; Stats.2004, c. 882 (A.B.2445), § 1; Stats.2004, c. 937 (A.B.1933), § 2.5; Stats.2005, c. 22 (S.B.1108), § 71; Stats.2005, c. 476 (A.B.1495), § 1, eff. Oct. 4, 2005; Stats.2005, c. 670 (S.B.922), § 1.5, eff. Oct. 7, 2005; Stats.2006, c. 538 (S.B.1852), § 232; Stats.2007, c. 577 (A.B.1750), § 1, eff. Oct. 13, 2007; Stats.2007, c. 578 (S.B.449), § 1.5.)*

## ENDNOTES

1. Government Code §§ 6250 et seq.
2. 5 U.S.C. §§ 552 et seq.
3. Government Code § 6250.
4. *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476, fn. 4–5; see Cal. Const., art. I, § 3(b)(2).
5. *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1017; Cal. Const., art. I, § 3(b)(3).
6. *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774.
7. Government Code § 6252(g).
8. *Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1125.
9. Government Code § 6257.5.
10. *Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1125; *County of Los Angeles v. Superior Court (Axelrad)* (2000) 82 Cal.App.4th 819, 826.
11. *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1392. [“The California Public Records Act plainly does not require a written request.”]
12. Government Code §§ 6254, 6254.5 & 6255.
13. *Id.*
14. *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 347. [“[O]ne does not lose his right to privacy upon accepting public employment, [but] the very fact that he [or she] is engaged in the public’s business strips him of some anonymity.”]
15. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1071; *Williams v. Superior Court* (1993) 5 Cal.4th 337, 355.
16. Government Code § 6254(f); *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 176–177.
17. See *McGuire v. Superior Court* (1993) 12 Cal.App.4th 1685.
18. Penal Code § 13300(a)(1).
19. Penal Code § 13302.
20. 89 Ops.Cal.Atty.Gen. 204, 215 (2006).
21. Penal Code § 1203.05(a).
22. Penal Code § 1203.05(c). See *McGuire v. Superior Court* (1993) 12 Cal.App.4th 1685 [probation reports are court records and therefore not subject to a PRA request].
23. Penal Code § 1203d.
24. 86 Ops.Cal.Atty.Gen. 132, 135–136 (2003).
25. *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588, 595.
26. Penal Code § 841.5.
27. See also Government Code §§ 6205 et seq. [protecting confidentiality of addresses for victims of domestic violence and stalking who apply to the Secretary of State for protection of their personal records].
28. Government Code § 6260.
29. Code of Civil Procedure § 1904; *Estate of Hearst* (1977) 67 Cal.App.3d 777, 782; *Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258, 262–263 [the court must release master list of jurors’ names but not responses to juror qualification questionnaire].
30. *People v. Howard* (1925) 72 Cal.App. 561, 563–564.
31. See *McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162, 1178; *Press-Enterprise v. Superior Court* (1994) 22 Cal.App.4th 498, 505, fn. 5; *Craemer v. Superior Court* (1968) 265 Cal.App.2d 216, 220–223.
32. *Wilson v. Science Applications International Corp.* (1997) 52 Cal.App.4th 1025, 1030–1033; *Gilbert v. National Enquirer, Inc.* (1996) 43 Cal.App.4th 1135, 1149.
33. Penal Code §§ 1054.1(a) and 1054.7.
34. Penal Code § 1054.2(a)(1) & (2).
35. Penal Code § 1054.2(a)(3).
36. *Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1134.
37. *Id.* at 1151–1152.
38. Government Code § 6254.5(b).

## Chapter 13

### Directory of Resources

#### **California Department of Corrections & Rehabilitation**

Office of Victim & Survivor Rights & Services

P.O. Box 942883

Sacramento, CA 94283-0001

(877) 256-OVSS [6877]

Web site: [http://www.cdcr.ca.gov/Victim\\_Services/index.html](http://www.cdcr.ca.gov/Victim_Services/index.html)

*Victims should contact the Office of Victim & Survivor Rights & Services to be notified of and have an opportunity to participate in an inmate's parole hearing, as well as to receive information about an adult or juvenile inmate's release, escape, death, placement into a reentry facility, or restitution order.*

#### **California Victim Compensation & Government Claims Board**

Victim Compensation Program

P.O. Box 3036

Sacramento, CA 95812-3036

(800) 777-9229

Hearing impaired, please call the California Relay Service at (800) 735-2929

E-mail: [customerservice@vcgcb.ca.gov](mailto:customerservice@vcgcb.ca.gov)

Web site: <http://www.vcgcb.ca.gov/victims/default.aspx>

#### **California Witness Protection Program**

Bureau of Investigation

Attorney General's Office, Division of Law Enforcement

1102 Q Street

Sacramento, CA 95814

(916) 319-9070

(916) 319-9433 Fax

Web site: <http://ag.ca.gov/cbi/content/protection.php>

#### **Victims of Crime Resource Center**

McGeorge School of Law

3200 Fifth Avenue

Sacramento, CA 95817

(800) VICTIMS [842-8467]

(916) 739-7395 Fax

E-mail: [victims2@pacific.edu](mailto:victims2@pacific.edu)

Web site: <http://www.1800victims.org/>

**National Center for Victims of Crime**

2000 M Street NW, Suite 480

Washington, DC 20036

(800) 394-2255

E-mail: [gethelp@ncvc.org](mailto:gethelp@ncvc.org)

Web site: [http://www.ncvc.org/ncvc/main.aspx?dbID=dash\\_Home](http://www.ncvc.org/ncvc/main.aspx?dbID=dash_Home)

**Office of Victims Services**

California Attorney General's Office

P.O. Box 944255 Sacramento, CA 94244-2550

(877) 433-9069

Web site: <http://ag.ca.gov/victimservices/>

**Office for Victims of Crime**

U.S. Department of Justice

810 Seventh Street NW., Eighth Floor

Washington, DC 20531

(202) 307-5983

(202) 514-6383 Fax

Web site: <http://www.ojp.usdoj.gov/ovcl/welcome.html>

**LOCAL VICTIM ASSISTANCE BY COUNTY**

**Alameda County District Attorney's Office**

(510) 272-6180

Web site: [www.alcoda.org/victimwitness](http://www.alcoda.org/victimwitness)

**Alpine County District Attorney's Office**

(530) 694-2971

E-mail: [swark@alpinecountyca.com](mailto:swark@alpinecountyca.com)

Web site: [www.alpinecountyca.gov/departments/district\\_attorney/victim\\_witness\\_assistance\\_program](http://www.alpinecountyca.gov/departments/district_attorney/victim_witness_assistance_program)

**Amador County District Attorney's Office**

(209) 223-6474

E-mail: [hward@co.amador.ca.us](mailto:hward@co.amador.ca.us)

Web site: [www.co.amador.ca.us/depts/da/victim/index.cfm](http://www.co.amador.ca.us/depts/da/victim/index.cfm)

**Butte County Probation**

(530) 538-7340

E-mail address: [Victimassistance@buttecounty.net](mailto:Victimassistance@buttecounty.net)

Web site: [www.buttecounty.net/probation](http://www.buttecounty.net/probation)

**Calaveras County District Attorney's Office**

(209) 754-6565

E-mail: [belben@co.calaveras.ca.us](mailto:belben@co.calaveras.ca.us)

Web-site: [www.co.calaveras.ca.us/departments/da/da\\_divisions.asp](http://www.co.calaveras.ca.us/departments/da/da_divisions.asp)

**Colusa County District Attorney's Office**

(530) 458-0449

E-mail: [ccolsa@countyofcolusa.org](mailto:ccolsa@countyofcolusa.org)

**Contra Costa County Victim Witness Assistance**

(925) 646-2474

(925) 646-2566 Fax

E-mail: [edowell@contracostada.org](mailto:edowell@contracostada.org)

Web site: [www.co.contra-costa.ca.us/depart/da/Victim\\_Witness\\_Assistance\\_Program.htm](http://www.co.contra-costa.ca.us/depart/da/Victim_Witness_Assistance_Program.htm)

**Del Norte County District Attorney's Office**

(707) 464-7273

E-mail: [victimwitness@dnco.org](mailto:victimwitness@dnco.org)

**El Dorado County District Attorney's Office**

(530) 621-6414

E-mail: [smeyer@co.el-dorado.ca.us](mailto:smeyer@co.el-dorado.ca.us)

Web site: [www.co.el-dorado.ca.us/eldoda/victim.html](http://www.co.el-dorado.ca.us/eldoda/victim.html)

**Fresno County Probation**

(559) 488-3425

Web site: [www.co.fresno.ca.us/3430/home.html](http://www.co.fresno.ca.us/3430/home.html)

**Glenn County District Attorney's Office**

(530) 934-6510

**Humboldt County District Attorney's Office**

(707) 445-7417

Web site: [www.co.humboldt.ca.us/distatty](http://www.co.humboldt.ca.us/distatty)

**Imperial County Probation**

(760) 336-3930

E-mail: [victimwitness@imerialcounty.net](mailto:victimwitness@imerialcounty.net)

**Inyo County District Attorney**

(760) 878-0282

**Kern County Probation**

(661) 868-4535

E-mail: [perezg@co.kern.ca.us](mailto:perezg@co.kern.ca.us)

**Kings County Probation**

(559) 582-3211 x 2640

**Lake County District Attorney's Office**

(707) 262-4282

Web site: [www.co.lake.ca.us/Government/DepartmentDirectory/District\\_Attorney/Victim-Witness\\_Division.htm](http://www.co.lake.ca.us/Government/DepartmentDirectory/District_Attorney/Victim-Witness_Division.htm)

**Lassen County District Attorney's Office**

(530) 251-8281

Web site: [www.co.lassen.ca.us/govt/dept/victim\\_witness/default.asp](http://www.co.lassen.ca.us/govt/dept/victim_witness/default.asp)

**Los Angeles County District Attorney's Office**

(800) 380-3811

Web site: [da.co.la.ca.us/vwap/roster.htm](http://da.co.la.ca.us/vwap/roster.htm)

**Los Angeles City Attorney**

Telephone #: (213) 978-2097

Web site: [www.cityofla.org/atty/index.htm](http://www.cityofla.org/atty/index.htm)

**Madera County Action Committee, Inc.**

(559) 661-1000 or 1-800-355-8989

Web site: [www.maderacap.org/victim.html](http://www.maderacap.org/victim.html)

**Marin County District Attorney's Office**

(415) 499-6450

Web site: [www.co.marin.ca.us/depts/dal/main/dist/VWMain.cfm](http://www.co.marin.ca.us/depts/dal/main/dist/VWMain.cfm)

**Mariposa County District Attorney's Office**

(209) 742-7441

E-mail: [vicwit@mariposacounty.org](mailto:vicwit@mariposacounty.org)

**Mendocino County District Attorney's Office**

(707) 463-4218

E-mail: [tostea@co.mendocino.ca.us](mailto:tostea@co.mendocino.ca.us)

**Merced County District Attorney's Office**

(209) 385-7381

Web site: [www.co.merced.ca.us/da/vw\\_index.htm](http://www.co.merced.ca.us/da/vw_index.htm)

**Modoc County District Attorney's Office**

(530) 233-3311

E-mail: [luvina\\_albright@modoccounty.us](mailto:luvina_albright@modoccounty.us)

**Mono County District Attorney's Office**

(760) 924-1710

E-mail: [tdonnelly@mono.ca.gov](mailto:tdonnelly@mono.ca.gov)



**Monterey County District Attorney's Office**

(831) 755-5072

Web site: [www.co.monterey.ca.us/da](http://www.co.monterey.ca.us/da)

**Napa County Volunteer Center**

(707) 252-6222

Web site: [www.volunteernapa.org](http://www.volunteernapa.org)

**Nevada County Probation**

Telephone #: (530) 265-1246

Web site: [new.mynevadacounty.com/dal](http://new.mynevadacounty.com/dal)

**Orange County Community Service Programs, Inc**

(949) 975-0244

Web site: [www.cspinc.org/victimassist.html](http://www.cspinc.org/victimassist.html)

**Placer County District Attorney's Office**

(530) 889-7021

Web site: [www.placer.ca.gov/Departments/DA/DAUnits/Victim\\_WitnessAssistance.aspx](http://www.placer.ca.gov/Departments/DA/DAUnits/Victim_WitnessAssistance.aspx)

**Plumas County Probation**

(530) 283-6285

E-mail: [victimwitness@countyofplumas.com](mailto:victimwitness@countyofplumas.com)

**Riverside County District Attorney's Office**

(951) 955-5450

Web site: [www.rivcoda.org/VW/home.html](http://www.rivcoda.org/VW/home.html)

**Sacramento County District Attorney's Office**

(916) 874-5701

Web site: [www.sacda.org/VW/index.htm](http://www.sacda.org/VW/index.htm)

**San Benito County Victim Witness Center**

(831) 634-1397

**San Bernardino County District Attorney's Office**

(909) 387-6540

Web site: [www.sbcounty.gov/da](http://www.sbcounty.gov/da)

**San Diego County District Attorney's Office**

(619) 531-4041

Web site: [www.sdcda.org/helping/index.php](http://www.sdcda.org/helping/index.php)

**San Francisco County District Attorney's Office**

(415) 553-9044

Web site: [www.sfdistrictattorney.org](http://www.sfdistrictattorney.org)

**San Joaquin County District Attorney's Office**

(209) 468-2500

Web site: [www.sjgov.org/DA/](http://www.sjgov.org/DA/)

**San Luis Obispo County District Attorney's Office**

(805) 781-5821 or (866) 781-5821

(805) 781-5828 Fax

E-mail: [victimwitness@co.slo.ca.us](mailto:victimwitness@co.slo.ca.us)

Web site: [www.slocounty.ca.gov/DA/Victim\\_Witness.htm](http://www.slocounty.ca.gov/DA/Victim_Witness.htm)

**San Mateo County District Attorney's Office**

(650) 599-7479

Web site: [www.co.sanmateo.ca.us/smc/department/da/home/0,2151,14094689\\_651458399,00.html](http://www.co.sanmateo.ca.us/smc/department/da/home/0,2151,14094689_651458399,00.html)

**Santa Barbara County District Attorney's Office**

(805) 568-2400

Web site: [www.countyofsb.org/da/VictimWitness/VWprogram.asp](http://www.countyofsb.org/da/VictimWitness/VWprogram.asp)

**Santa Clara County's Silicon Valley Conference for Community and Justice (SVCCJ)**

(408) 295-2656

Web site: [www.victim.org](http://www.victim.org)

**Santa Cruz County District Attorney's Office**

(831) 454-2010

Web site: [sccounty01.co.santa-cruz.ca.us/DAlnternet/victim.asp](http://sccounty01.co.santa-cruz.ca.us/DAlnternet/victim.asp)

**Shasta County District Attorney's Office**

(530) 225-5220

Web site: [da.co.shasta.ca.us/vicwit.shtml](http://da.co.shasta.ca.us/vicwit.shtml)

**Sierra County Probation**

(530) 993-4617

E-mail: [sierravw@digitalpath.net](mailto:sierravw@digitalpath.net)

**Siskiyou County District Attorney's Office**

(530) 842-8229

Web site: [www.co.siskiyou.ca.us/da/victim.htm](http://www.co.siskiyou.ca.us/da/victim.htm)

**Solano County District Attorney's Office**

(707) 784-6844 or (707) 553-5400

Web site: [www.solanocounty.com](http://www.solanocounty.com)

**Sonoma County District Attorney's Office**

(707) 565-8250

Web site: [www.sonoma-county.org/da/victim/index.htm](http://www.sonoma-county.org/da/victim/index.htm)

**Stanislaus County District Attorney's Office**

(209) 525-5541

Web site: [www.stanislaus-da.org/VictimServices/victim-services.shtm](http://www.stanislaus-da.org/VictimServices/victim-services.shtm)

**Sutter County District Attorney's Office**

(530) 822-7345

**Tehama County District Attorney's Office**

(530) 527-4296

**Trinity County Probation**

(530) 623-1204

**Tulare County District Attorney's Office**

(559) 733-6754

Web site: [www.da-tulareco.org/victim\\_witness.htm](http://www.da-tulareco.org/victim_witness.htm)

**Tuolumne County District Attorney's Office**

(209) 588-5440

**Ventura County District Attorney's Office**

(805) 654-3622

Web site: [da.countyofventura.org/special\\_prosecutions/victim\\_services/crime\\_victim\\_assistance.htm](http://da.countyofventura.org/special_prosecutions/victim_services/crime_victim_assistance.htm)

**Yolo County District Attorney's Office**

(530) 666-8187

Web site: [www.yolocounty.org/Index.aspx?page=792](http://www.yolocounty.org/Index.aspx?page=792)

**Yuba County Probation**

(530) 741-6275

## OTHER RESOURCES

### Project Safe at Home

Project Safe at Home is a free, confidential mail-forwarding program administered by the California Secretary of State's Office that helps victims escape abusive partners. The Safe at Home Program currently serves over 2,400 survivors of domestic violence and stalking. The program allows victims to suppress their DMV and other records, complete a confidential name change and register to vote secure in the knowledge that their home address will not be made available to the public. A person can sign up with a domestic violence shelter, reproductive health care facility, victim advocate, etc. The enrolling agency will work with that person to acquire evidence (police reports, medical records, restraining orders, etc.).

- SAFE AT HOME allows state and local agencies to coordinate with the Secretary of State to protect a program participant's real address.
- SAFE AT HOME staff is ready to help. For example, sometimes a new employer or bank or landlord will question the legitimacy of a substitute address. SAFE AT HOME staff provides assurances far beyond those of any post office box service.
- SAFE AT HOME allows an adult or guardian of a minor or incapacitated person to designate the Secretary of State as his or her agent for service of process and mail receipt. The program rules are the same for all participants.
- SAFE AT HOME provides confidential address protection in public records and vital records. While previously filed birth, death, and marriage certificates remain public, all new documents can be protected.
- Individuals can sign up with an enrolling agency, such as domestic violence shelters or reproductive health care facilities. An enrolling agency works with victims on the evidence of abuse or threats required for enrollment. Many local police, therapists, and even schools can refer individuals to an enrolling agency.
- SAFE AT HOME keeps voter registration confidential through a simple registration or re-registration process. Program participants will automatically receive "absentee voter status" so they can vote by mail.
- Program participants can have their voter registration information kept entirely confidential from campaigns, pollsters, and the media by completing a confidential voter registration affidavit at the time of enrollment for the first time or re-registering at the Registrar of Voters/County Clerks offices. Once registered, SAFE AT HOME participants automatically receive "absent voter status" so they can vote by mail. Absent voter privileges are revoked once the participant's four-year term expires or is cancelled.

For more information on Project Safe At Home, visit their Web site at [www.sos.ca.gov/safeathome](http://www.sos.ca.gov/safeathome).

## VictimLaw

The National Center for Victims of Crime administers VictimLaw, a comprehensive, on-line database of state, federal, and tribal victims' rights laws, developed with funding from the Office of Victims of Crime, Office of Justice Programs, U.S. Department of Justice. VictimLaw is a unique and groundbreaking resources, offering user-friendly access to regularly updated information that includes more than 15,000 victims' rights statutes (state and federal), tribal laws, constitutional amendments, court rules, and administrative code provisions, and case summaries of related court decisions that meets the needs of a wide variety of users with different levels of substantive and technological expertise.

Users can search under each of the following rights:

- the right to attend,
- the right to compensation,
- the right to enforcement,
- the right to a speedy trial,
- the right to be heard,
- the right to be informed,
- the right to protection,
- the right to restitution, and
- the right to the return of property.

VictimLaw offers four ways to search:

- by topic,
- by legal term,
- by jurisdiction, and
- by citation.

The database can be accessed at this Web site: <http://www.victimlaw.info/victimlaw/>

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## APPENDIX

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# Application For Crime Victim Compensation

## Solicitud Para Beneficios de Compensación Para Las Víctimas



Claim Number: \_\_\_\_\_

Please complete sections 1-12 to the best of your ability / Complete por favor las secciones 1-12 a lo mejor de su habilidad:

### Section 1 Personal Information / Información Personal

#### Crime Victim Information / Información de la Víctima:

( Person who was injured / La persona que sostuvo la herida )

First Name / Primer Nombre:	Middle / Inicial:	Last / Apellido:		
Mailing Address / Domicilio:	Apt / Unidad:	City / Ciudad:	State / Estado:	Zip / Zona:
Home Telephone / Teléfono del día: ( )	Work Telephone / Teléfono del trabajo: ( )	Cell / Celular: ( )		
Date of Birth / Fecha de nacimiento: Month / Mes    Day / Día    Year / Año	Social Security / Seguro Social:	E-Mail / Correo electrónico:		
Gender / Género: <input type="checkbox"/> M <input type="checkbox"/> F	If victim is deceased, date of death / Fecha de fallecimiento si ha fallecido: Month / Mes    Day / Día    Year / Año			
From the date of the crime to the present, has the <b>victim</b> been in prison, on probation, or on parole because of a felony? ¿Desde el crimen, la <b>víctima</b> ha estado en la prisión, en libertad vigilada, o en libertad condicional por una felonía?				<input type="checkbox"/> Yes / Sí <input type="checkbox"/> No

#### Applicant Information / Información del Apicante:

(Fill in this section if the victim is a minor, incapacitated, or deceased / Llene esta sección si la víctima es un menor, incapacitado, o difunto)

First Name / Primer Nombre:	Middle / Inicial:	Last / Apellido:		
Mailing Address / Domicilio:	Apt / Unidad:	City / Ciudad:	State / Estado:	Zip / Zona:
Home Telephone / Teléfono del día: ( )	Work Telephone / Teléfono del trabajo: ( )	Cell / Celular: ( )		
Date of Birth / Fecha de nacimiento: Month / Mes    Day / Día    Year / Año	Social Security / Seguro Social:	E-Mail / Correo electrónico:		
Gender / Género: <input type="checkbox"/> M <input type="checkbox"/> F	Your relationship to victim / Su relación a la víctima:			
From the date of the crime to the present, has the <b>applicant</b> been in prison, on probation, or on parole because of a felony? ¿Desde el crimen, la <b>apicante</b> ha estado en la prisión, en libertad vigilada, o en libertad condicional por una felonía?				<input type="checkbox"/> Yes / Sí <input type="checkbox"/> No

### Section 2 Representative Information / Información del Representante

List your Victim Witness Assistance Center, attorney, or other representative, if you have one. A representative is not required in order to apply. / Víctima Testigo Centro de Asistencia, abogado, u otro, si tiene un representante. Un representante no es requerido para aplicar.

First Name / Primer Nombre:	Last / Apellido:	Telephone / Teléfono: ( )
Mailing Address / Domicilio:	City / Ciudad:	State / Estado: Zip / Zona:
Relationship to victim / Relación a la víctima:	Representative's signature / Firma del representante:	Date / Fecha:

Victim Witness Center Name and No / Víctima Testigo Centro de Asistencia:

**For Attorneys Only / Soló Para Abogados:** Are you requesting payment pursuant to Government Code Section 13957.7(g)?  Yes  No  
State Bar No :                      Federal Tax ID:

### Section 3 Emergency Award / Solicitud de Emergencia

Emergency awards may be requested if you have a financial hardship and/or an immediate need. If you request an emergency award, you must attach a letter explaining your financial hardship and/or immediate need. If you do not attach a letter of explanation, your application may not be treated as an emergency award. Do you want to request an emergency award?  
La solicitud de emergencia se pueden solicitar si usted tiene una dificultad financiera y/o una necesidad inmediata. Si usted solicita la solicitud de emergencia, usted debe incluir una carta que explica su dificultad financiera y/o la necesidad inmediata. Si usted no incluye la carta de explicación, su aplicación no se puede tratar como una solicitud de emergencia. ¿Quiere usted solicitar una solicitud de la emergencia?

Yes / Sí  No

## Section 4 Crime Information / Información Sobre el Crimen

Name of law enforcement agency the crime was reported to / Nombre de la agencia policial, CPS, o agencia a quién se le reportó el crimen: (includes child protective services)		
Date of crime / Fecha del crimen:	Date crime was reported / Fecha del crimen que fue reportado:	Crime Report No / Número Reporte de Crimen:
Location of crime / Lugar del crimen:		Type of crime / Tipo de Crimen:
Describe Injuries / Describa las lesiones:		

Person(s) who committed the crime (suspect), if known / Persona(s) que cometió el crimen (sospechoso), si es conocido:

First Name / Primer Nombre:	Middle / Inicial:	Last / Apellido:
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## Section 5 Information About Your Expenses / Información Sobre Sus Pérdidas

✓ Check the crime related expenses/losses for which you are seeking compensation from the Victim Compensation Program. You must attempt to recover your losses from any/all other source(s). / Marque los gastos/pérdidas por los cuales está buscando compensación del Programa de Compensación a la Víctima. Debe tratar de recuperar sus pérdidas de cualquier y todo otro recurso(s).

<input type="checkbox"/> Medical or dental expenses Gastos médicos o dentales	<input type="checkbox"/> Funeral and/or burial expenses Gastos de funeral y/o entierro
<input type="checkbox"/> Mental health treatment or counseling Asesoramiento o tratamiento para la salud mental	<input type="checkbox"/> Crime scene clean-up (homicide only) Limpieza del lugar del crimen (solo para homicidios)
<input type="checkbox"/> Lost income, if you missed work because of the crime Pérdida de ingresos, si resulta fuera del trabajo por el crimen	<input type="checkbox"/> Home security improvements Mejoras en el sistema de seguridad del hogar
<input type="checkbox"/> Loss of support, for dependents of a deceased or disabled victim Ayuda para dependientes de una víctima fallecida o incapacitada	<input type="checkbox"/> Moving or relocation expenses Gastos de mudanza o traslado
<input type="checkbox"/> Home or vehicle modifications for a disabled victim Modificaciones (casa/vehículo) para una víctima incapacitada	<input type="checkbox"/> Job retraining for a disabled victim Entrenamiento de trabajo a causa del crimen

If you do not yet have any crime related expenses and don't expect any soon, please complete the application, check the box below, and mail it in; however it may not be processed until you submit expenses. Si usted no tiene gastos todavía y no espera ningún gasto pronto, completar la aplicación por favor, marque la caja, y mandarla; aunque no sera procesada hasta que usted someta sus gastos.

If you have no expenses now, but expect to have expenses in the near future, check the box below and we will immediately process your application / Si usted no tiene gastos ahora pero espera contraer gastos en el futuro, marque la caja y procesaremos su aplicación.

<input type="checkbox"/> I do not have expenses at this time. Yo no tengo gastos en este momento.	<input type="checkbox"/> I will have expenses soon, please let me know if I qualify for compensation. Tendré los gastos pronto, permítame saber si califico para la compensación.
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If you have expenses now, list hospitals, counselors, funeral homes, or other bills.

Si usted tiene gastos ahora, liste los hospitales, los consejeros, las funerarias, u otras cuentas.

(Please attach copies of any crime related bills / Por favor mandar copias de cuentas relacionadas del crimen junto de esta solicitud)

Name / Nombre:	Street Address / Domicilio:	City / Ciudad:	State / Estado:	Zip / Zona:	Telephone / Teléfono: ( )

## Section 6 Insurance Information / Información de Reembolso (Recuperación)

✓ Please check all available sources that could be applied to your claim. List insurance contact information below or on an additional sheet. / Por favor marque todas las fuentes disponibles que podría ser aplicada a su reclamo. Si marco alguna caja indique la información en la siguientes líneas. Si necesita más lugar puede adjuntar otra oja.

<input type="checkbox"/> Health Salud	<input type="checkbox"/> Medi-Cal	<input type="checkbox"/> Medicare	<input type="checkbox"/> Auto	<input type="checkbox"/> Workers' Compensation Compensación Laboral	<input type="checkbox"/> Homeowners/Renters Dueño de casa/alquilador	<input type="checkbox"/> None Ninguno	<input type="checkbox"/> Other Otro: _____
Insurance Company Name / Nombre de compañía de seguro:							
Mailing Address / Domicilio:			City / Ciudad:		State / Estado:	Zip / Zona:	
Policy Number / Número de Póliza:				Telephone / Teléfono: ( )			
Name of Insured / Nombre del asegurado:				Social Security of Insured / Seguro Social del asegurado:			

Have you filed an insurance claim related to this crime?

¿Ha entablado una acción de seguro relacionado a éste crimen?

Yes / Sí  No  Undecided / No me he decidido

## Section 7 Civil Suit Information / Información de una Demanda Civil

Have you filed a civil suit related to this crime?

¿Ha entablado una demanda civil relacionado a éste crimen?

Yes / Sí  No  Undecided / No me he decidido

Attorney's Name / Nombre del abogado:		Telephone / Teléfono: ( )	
Mailing Address / Domicilio:	City / Ciudad:	State / Estado:	Zip / Zona:

## Section 8 Victim's Employer Information / Información del Empleador de la Víctima

Employer's Business Name / Nombre de la empresa del empleador:

### Contact Person / Persona para contactar:

Name / Nombre:	Street Address / Domicilio:	City / Ciudad:	State / Estado:	Zip / Zona:	Telephone / Teléfono: ( )
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Is or was the victim self-employed? / ¿La víctima está/estaba autoempleada?

Yes / Sí  No

Did the victim miss work as a result of crime-related injuries?

¿La víctima perdió tiempo de su trabajo debido a lesiones causadas por el crimen?

Yes / Sí  No

Did the crime occur while the victim was on the job or at the workplace?

¿El crimen ocurrió durante del trabajo o lugar del trabajo?

Yes / Sí  No

## Section 9 How did you find out about the Program? / ¿Cómo se enteró del Programa?

<input type="checkbox"/> Law Enforcement Policía	<input type="checkbox"/> Children's Protective Services Servicios de Protección a Menores	<input type="checkbox"/> Mental Health Provider Proveedor de la Salud Mental
<input type="checkbox"/> District Attorney Fiscal del Distrito	<input type="checkbox"/> Adult Protective Services Servicios de Protección para Adultos	<input type="checkbox"/> Victim Witness Assistance Center Centro de Asistencia a Víctima Testigo
<input type="checkbox"/> Medical Provider Proveedor medico	<input type="checkbox"/> Media (TV, Radio, Newspaper, etc.) Medio de prensa/TV, radio, periódico, etc.	<input type="checkbox"/> Other / Otro: _____

## Section 10 Federal Reporting Information / Información de Reportaje Federal

The following **voluntary** information is used for statistical purposes only to comply with federal regulations:

La siguiente información **voluntaria** se usa solo para estadísticas y solamente para cumplir con las normas federales:

Is the victim disabled? / ¿La víctima está incapacitada?

Yes / Sí  No

Was the victim disabled prior to the date of the crime?

¿La víctima estaba incapacitada antes de la fecha del crimen?

Yes / Sí  No

Ethnicity of victim :

Etnicidad de la víctima :

<input type="checkbox"/> African American / Afro Americana
<input type="checkbox"/> Caucasian / Caucásica
<input type="checkbox"/> Native American / Americano Nativo

<input type="checkbox"/> Asian, Pacific Islander / Islas de Pacífico, Asia
<input type="checkbox"/> Hispanic / Hispáno
<input type="checkbox"/> Other / Otra: _____

\* Please sign and date sections 11-12 on page 4 and mail to / Favor de poner la fecha y firmar secciones 11-12 en pagina 4 y envíe:

**Victim Compensation & Government Claims Board**  
PO Box 3036  
Sacramento, CA 95812-3036

or deliver to your local

**Victim Witness Assistance Center**  
o entrega a su  
**Centro local del Víctima y Testigo**

For more information call / Para más información, llame:

**1.800.777.9229**  
**www.victimcompensation.ca.gov**

Hearing impaired, please call the California Relay Service (711)  
Si tiene problemas para escuchar puede llamar al servicio de Retransmisión de California (711)

*Helping California Crime Victims Since 1965*

This page must be signed and dated / Firme y ponga la fecha en la página

## Section 11 Information Release / Divulgación de Información

(Board Use Only) Claim No.

Name:

I give permission to any hospital, clinic, doctor, dentist, or mental health provider; any funeral director or similar person; any employer; any police or governmental agency, including the Department of Justice, the State Franchise Tax Board, and the Federal Internal Revenue Service; any insurance company; or any other person or agency to provide information relating to this application, including medical, mental health, and felony conviction records to the Victim Compensation Program or its representatives. I understand the information will be used to determine compensation benefits, and only information needed to make a decision about compensation will be requested by the Victim Compensation Program.

I understand a photocopy or FAX (facsimile) of this signed form is as valid as the original, and my signature gives permission for the release of all information specified in this permission form.

I understand the Victim Compensation Program or its representatives may pursue restitution from the convicted offender in this matter to recover monies paid to me on my behalf by the Program and that by filing this application I have authorized the program to use information contained in this application and subsequent claim files to pursue restitution from the convicted offender.

I agree that the Victim Compensation Program or its representatives may provide information about this application to any representative named on this application, governmental agency, or any medical, dental, mental health, or funeral and/or burial provider of services, and may pay the provider directly if payment of these services is approved.

I declare under penalty of perjury under the laws of the State of California (*Penal Code Sections 72, 118, and 129*) that I have read all the questions and the completed application, and to the best of my information and belief, all my answers are true, correct, and complete. I further understand if I have provided any information that is false, intentionally incomplete, or misleading, I may be found liable under *Government Code Section 12651* for filing a false claim and/or found guilty of a misdemeanor or felony, punishable by six months or more in the county jail, up to four years in state prison, and/or fined up to ten thousand dollars (\$10,000).

Le doy permiso a cualquier hospital, clínica, doctor, dentista, o proveedor de salud mental; a cualquier director de funeraria o persona similar; cualquier empleador; cualquier agencia del gobierno o policial, incluyendo el Dept. de Justicia, la Junta Estatal de Impuestos, y el Servicio de Impuestos Internos (IRS); cualquier compañía de seguro; o cualquier otra persona o agencia para que divulgue información relacionada con esta solicitud, incluyendo cualquier registro médico, de salud mental, y de condenas de felonías, al Programa de Compensación a la Víctima o sus representantes. Entiendo que la información se usará para determinar beneficios compensatorios, y el Programa solamente solicitará la información necesaria para decidir si compensar a la persona.

Entiendo que una fotocopia o FAX de este formulario firmado es tan válida como la original, y que mi firma da permiso para divulgar toda la información especificada en este formulario de autorización.

Entiendo que el Programa de Compensación a la Víctima o sus representantes puede tratar de conseguir restitución por parte del ofensor condenado en este caso para recuperar dinero que el programa haya pagado en mi nombre, y que al presentar esta solicitud he autorizado al programa para usar la información contenida en esta solicitud y otros reclamos posteriores con el fin de obtener restitución del ofensor condenado.

Estoy de acuerdo con que el Programa de Compensación a la Víctima o sus representantes le provean información sobre esta solicitud a cualquier representante nombrado en la misma, agencia gubernamental, o cualquier proveedor de servicios médicos, dentales, funerales o de entierro, y le podrán pagar al proveedor directamente si se fuera a aprobar pago de estos servicios.

Declaro bajo pena de perjurio bajo las leyes del Estado de California (*Código Penal Secciones 72, 118, y 129*) que he leído todas las preguntas y la solicitud completada, y que según mi leal saber e información, todas mis respuestas son verdícas, correctas, y completas. También entiendo que si he incluido cualquier información que sea falsa, incompleta intencionalmente, o engañosa, me podrían encontrar responsable bajo el *Código del Gobierno Sección 12651* por presentar un reclamo falso y/o encontrarme culpable de un crimen menor o mayor, castigable por seis meses o más en la cárcel del condado, hasta cuatro años en la prisión estatal, y/o ser multado hasta diez mil dólares (\$10,000).

Signed / Firma:

Date / Fecha:

(Parent or guardian must sign if victim is a minor or incapacitated.) / (Debe firmar el padre o guardián si la víctima es un menor o está incapacitada.)

## Section 12 My Promise to the Program / Mi Promesa al Programa

As required by California law, I will contact and repay the Victim Compensation Program if I receive any payments from the offender, a civil lawsuit, an insurance policy, or any other government or private agency to cover expenses for which I have already received payment from this Program. I understand I may be responsible for repaying the Victim Compensation Program any amount for which it is later determined that I was not eligible. I will notify the Victim Compensation Program if I hire an attorney to represent me in any action related to this crime or if I pursue any action on my own.

Any money I receive from the Victim Compensation Program for moving/relocation expenses, improving home security, or for modifying a home or vehicle for a disabled victim will be used only for those purposes. If I am a victim of domestic violence receiving moving/relocation expenses, I will not tell the offender my home address nor allow the offender on the premises at any time, or I will seek a restraining order against the offender.

In the event that I am compensated for any pecuniary loss by the Victim Compensation Program and the State of California subsequently receives compensation for the same loss on my behalf from the perpetrator (including any monies received through a restitution order) or from any other source, I hereby assign to the Victim Compensation and Government Claims Board any and all rights to such duplicate compensation.

Como lo requiere la ley de California, me pondré en contacto con el Programa de Compensación a la Víctima y le reembolsaré sus gastos si fuera a recibir cualquier pago de parte del ofensor, una demanda civil, póliza de seguro, o cualquier otra agencia del gobierno o privada en pago de los gastos por los cuales ya recibí pago por parte de este Programa. Entiendo que podría ser responsable de reembolsarle al Programa de Compensación a la Víctima cualquier cantidad que me hayan dado si se fuera a determinar posteriormente que no calificaba para dicha cantidad. Notificaré al Programa de Compensación a la Víctima si contrato a un abogado para representarme en cualquier acción relacionada con este crimen, o si fuera a llevar a cabo una acción por mi cuenta.

Cualquier dinero que reciba del Programa de Compensación a la Víctima para gastos de mudanza/traslado, mejorar el sistema de seguridad en el hogar, o para modificar una casa o vehículo para una víctima incapacitada se usará solamente para eso. Si soy víctima de violencia doméstica recibiendo dinero para mudarme/trasladarme, no le daré al ofensor mi domicilio, ni le permitiré que entre en mi propiedad en ningún momento, sino, pediré una orden de restricción en contra de él/ella.

En caso de que sea compensada alguna pérdida pecuniaria por el Programa de la Compensación de Víctimas y el Estado de California recibe subsiguientemente compensación para la misma pérdida en mi beneficio del perpetrado (inclusivo cualquier dinero recibido por una orden de la restitución) o de cualquier otra fuente, yo por el presente asigno el Programa de Víctimas y Testigos y Reclamos del Gobierno abordar cualquier y todo bien a tal compensación del duplicado.

Signed / Firma:

Date / Fecha:

(Parent or guardian must sign if victim is a minor or incapacitated.) / (Debe firmar el padre o guardián si la víctima es un menor o está incapacitada.)

Printed Name / Nombre Escrito:

California Victim Compensation Program Application

[Print Form](#)

[Reset Form](#)

VCGCB-101SE (Rev. 04/06)

Page 4

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(f), 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 at 10 percent of the restitution owed (Pen. Code, § 1203.1(f))
  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**

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(d).**

**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

[Empty box for name and address]

b.  Driver's license no. and state:

Unknown

c.  Social security no

Unknown

d.  Date of birth:

Unknown

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT OR ATTORNEY)

ON INFORMATION AND BELIEF

**ABSTRACT OF JUDGMENT**

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

[SEAL]

**NOTICE TO COUNTY RECORDER**

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

## JL FILING INSTRUCTIONS

**Please type or laser-print information on this form. Be sure information provided is legible. Read all instructions and follow them completely. Complete the form very carefully as mistakes may have important legal consequences. Do not insert anything in the open space in the upper right portion of this form as it is reserved for filing office use. Do not staple or otherwise mutilate the barcode in the upper left corner of the document, this will render the barcode ineffective.**

To provide the requester with an acknowledgment of filing, the original and a duplicate copy of the notice must be presented for filing. This Notice of Judgment Lien must be filed according to provisions of Section 697.510 of the Code of Civil Procedure.

- Section A:** To assist filing office communication with the filer, information in this section should be provided.
- Section B:** Enter name and mailing address of requester in this section. This is required information.
- ITEM 1a or 1b:** Enter the exact legal name of the organization or the name of the individual that is the debtor appearing on the court judgment. Use the judgment lien addendum to add additional judgment debtor names.
- ITEMS 1c:** Enter the last known mailing address of the judgment debtor.
- ITEM 2a or 2b:** Enter the exact legal name of the organization or the name of the individual that is the creditor appearing on the court judgment. Use the judgment lien addendum for additional judgment creditor names.
- ITEMS 2c:** Enter the last known mailing address of the judgment creditor.
- ITEM 3A-E:** Enter information from the court judgment.
- ITEM 3F:** Enter the amount of the court judgment adjusted for interest and payments to the date of the notice.
- ITEM 3G:** The date of the statement will normally be the date the notice is executed.
- ITEM 4:** The signature of either the judgment creditor or the judgment creditor's attorney is required. (Section 697.550, Code of Civil Procedure)
- If the individual signing the statement signs on behalf of a law firm, which is the attorney of record, the name of the law firm should be entered BENEATH, not above, the signature. If the signature is for a judgment creditor, which is an entity, the name of the entity should be entered BENEATH, not above, the signature of the person signing for the judgment creditor.

The Judgment Lien must be submitted with a filing fee of ten dollars (\$10.00) if the original document is two pages or less and twenty dollars (\$20.00) if the original document is three pages or more. Please send a check made payable to the **Secretary of State**. DOCUMENTS NOT ACCOMPANIED BY THE FILING FEE WILL NOT BE PROCESSED.

When properly completed, send **payment**, and the **original** and a **duplicate copy** of the notice to:

**Secretary of State  
P.O. Box 942835  
Sacramento, CA 94235-0001**

## JUDGMENT LIEN ADDENDUM INSTRUCTIONS

**This form is to be used for listing additional judgment debtors and/or creditors to the NOTICE OF JUDGMENT LIEN.**

Please type or laser-print information on this form. Be sure information provided is legible. Read all instructions and follow them completely. Complete the form very carefully as mistakes may have important legal consequences. **Attach this ADDENDUM to the completed NOTICE OF JUDGMENT LIEN.**

**ITEM 5:** Provide the name of the judgment debtor shown in Item 1 of the original NOTICE OF JUDGMENT LIEN. Provide only one name by completing either 5a or 5b, as applicable.

**ITEMS 6, 7, 8:** To add additional debtor names to the judgment lien record, enter the appropriate information in Item 6, 7 or 8, as needed. For each of these items, enter either an organization name or an individual name, not both.

Provide the complete mailing address for each judgment debtor.

**ITEMS 9, 10:** To add additional creditor names to the judgment lien record, enter the appropriate information in Item 9 or 10, as needed. For each of these items, enter either an organization name or an individual name, not both.

Provide the complete mailing address for each judgment creditor.



**NOTICE OF JUDGMENT LIEN**

FOLLOW INSTRUCTIONS CAREFULLY (front and back of form)

A. NAME & PHONE OF FILER'S CONTACT (optional)
B. SEND ACKNOWLEDGMENT TO: (NAME AND ADDRESS)

THIS SPACE FOR FILING OFFICE USE ONLY

**1. JUDGMENT DEBTOR'S EXACT LEGAL NAME** –Insert only one name, either 1a or 1b. Do not abbreviate or combine names.

1a. ORGANIZATION'S NAME

1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY

**2. JUDGMENT CREDITOR'S NAME**– Do not abbreviate or combine names.

2a. ORGANIZATION'S NAME

2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY

**3. ALL PROPERTY SUBJECT TO ENFORCEMENT OF A MONEY JUDGMENT AGAINST THE JUDGMENT DEBTOR TO WHICH A JUDGMENT LIEN ON PERSONAL PROPERTY MAY ATTACH UNDER SECTION 697.530 OF THE CODE OF CIVIL PROCEDURE IS SUBJECT TO THIS JUDGMENT LIEN.**

- A. Title of court where judgment was entered: \_\_\_\_\_
- B. Title of the action: \_\_\_\_\_
- C. Number of this action: \_\_\_\_\_
- D. Date judgment was entered: \_\_\_\_\_
- E. Date of subsequent renewals of judgment (if any): \_\_\_\_\_
- F. Amount required to satisfy judgment at date of this notice: \$ \_\_\_\_\_
- G. Date of this notice: \_\_\_\_\_

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

\_\_\_\_\_  
SIGNATURE – SEE INSTRUCTION NO. 4

Dated: \_\_\_\_\_  
(If not indicated, use same as date in item 3G.)

FOR: \_\_\_\_\_

FILING OFFICE COPY

NOTICE OF JUDGMENT LIEN (FORM JL1) (Rev. 6/01)  
Approved by the Secretary of State

**JUDGMENT LIEN ADDENDUM**

FOLLOW INSTRUCTIONS CAREFULLY (FRONT AND BACK OF FORM)

**5. NAME OF JUDGMENT DEBTOR: (NAME OF FIRST DEBTOR ON RELATED JUDGMENT LIEN)**

5a. ORGANIZATION'S NAME			
5b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

**6. ADDITIONAL JUDGMENT DEBTOR – insert only one name (6a or 6b):**

6a. ORGANIZATION'S NAME				
6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
6c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

**7. ADDITIONAL JUDGMENT DEBTOR – insert only one name (7a or 7b):**

7a. ORGANIZATION'S NAME				
7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

**8. ADDITIONAL JUDGMENT DEBTOR – insert only one name (8a or 8b):**

8a. ORGANIZATION'S NAME				
8b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
8c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

**9. ADDITIONAL JUDGMENT CREDITOR – insert only one name (9a or 9b):**

9a. ORGANIZATION'S NAME				
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
9c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

**10. ADDITIONAL JUDGMENT CREDITOR – insert only one name (10a or 10b):**

10a. ORGANIZATION'S NAME				
10b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

(1) FILING OFFICER COPY – JUDGMENT LIEN ADDENDUM FORM (REV. 6/01)

CA Secretary of State

NAME OF VICTIM ON WHOSE BEHALF RESTITUTION IS ORDERED	<b>FOR COURT USE ONLY</b>
NAME OF COURT STREET ADDRESS MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<b>PEOPLE OF THE STATE OF CALIFORNIA</b> vs.	
DEFENDANT:	
<b>DEFENDANT'S STATEMENT OF ASSETS</b>	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:                | f. Driver license number:    |
| b. AKA:                    | State of issuance:           |
| c. Date of birth:          | g. Home address:             |
| d. Social security number: | h. Home telephone no.:       |
| e. Marital status:         | 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):*

	<u>Name and address of financial institution</u>	<u>Account number</u>	<u>Individual or joint?</u>	<u>Balance</u>
a.				\$
b.				\$
c.				\$

**PROPERTY**

11. List all automobiles, other vehicles, and boats owned in your name or jointly:
- |    | <u>Make and year</u> | <u>Value</u> | <u>Legal owner if different from registered owner</u> | <u>Amount owed</u> |
|----|----------------------|--------------|---|--------------------|
| 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:

	<u>Address of real estate</u>	<u>Fair market value</u>	<u>Amount owed</u>
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):

	<u>Description</u>	<u>Value</u>	<u>Address where property is located</u>
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)
----------------------	-------------

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

**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.

**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?





PLAINTIFF:	CASE NUMBER:
DEFENDANT:	

— Items continued from page 1—

21.  **Additional judgment debtor** (name and last known address):

\_\_\_\_\_

22.  **Notice of sale** has been requested by (name and address):

\_\_\_\_\_

23.  **Joint debtor** was declared bound by the judgment (CCP 989–994)

a. on (date):

a. on (date):

b. name and address of joint debtor:

b. name and address of joint debtor:

\_\_\_\_\_

c.  additional costs against certain joint debtors (itemize):

\_\_\_\_\_

24.  (Writ of Possession or Writ of Sale) **Judgment** was entered for the following:

a.  Possession of real property: The complaint was filed on (date):

(Check (1) or (2)):

(1)  The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46.  
The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.

(2)  The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.

(a) \$ \_\_\_\_\_ was the daily rental value on the date the complaint was filed.

(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify):

b.  Possession of personal property.

If delivery cannot be had, then for the value (itemize in 9e) specified in the judgment or supplemental order.

c.  Sale of personal property.

d.  Sale of real property.


e. Description of property:

#### NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (Form EJ-150).  
WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

► A Claim of Right to Possession form accompanies this writ (unless the Summons was served in compliance with CCP 415.46).

<p>CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR) OFFICE OF VICTIM AND SURVIVOR SERVICES Fax Number: (916) 445-3737    Toll Free Number: (877) 256-OVSS (6877) <a href="http://www.cdcr.ca.gov/Victims/index.html">http://www.cdcr.ca.gov/Victims/index.html</a></p>	
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*It is your right to be notified of the status of an offender, including: scheduled release date from state prison, scheduled life parole hearing, escape, or death. No notice will be given when an inmate is moved from one facility to another.*

**PLEASE SUBMIT THIS FORM AFTER THE OFFENDER IS SENTENCED TO STATE PRISON.**

- I am requesting notification of release regarding an offender and applying for special conditions of parole.
- I am requesting notification of release, applying for special conditions of parole, AND collection of restitution.
- I am requesting ONLY assistance with collection of Court Ordered restitution.

**A. INMATE INFORMATION**

Inmate's Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
(FIRST) (MIDDLE) (LAST)

CDCR Number (Prison Number): \_\_\_\_\_ Date Sentenced to State Prison: \_\_\_\_\_

Court Case Number: \_\_\_\_\_ County of Commitment: \_\_\_\_\_

**B. CURRENT ADDRESS**

I understand that it is **MY** responsibility to keep CDCR updated regarding my current address and phone number so that notification can be made. Request for notification will be forwarded to the appropriate institution for confidential processing and will not be made available to the inmate or the inmate's attorney.

Applicant Name: \_\_\_\_\_  
(FIRST) (MIDDLE) (LAST)

Address: \_\_\_\_\_  
(STREET) (CITY) (STATE) (ZIP CODE)

Mailing Address (If different): \_\_\_\_\_  
(STREET or P.O. BOX) (CITY) (STATE) (ZIP CODE)

Telephone Number (Day): ( ) (Evening): ( )

**C. REQUEST FOR SPECIAL CONDITIONS OF PAROLE**

*Note: The Parole Authority considers all requests for special conditions of parole at the time of the inmate's release. Not all requests for special conditions are granted.*

I am:

<input type="checkbox"/> Victim (direct victim of offender)	<input type="checkbox"/> Family member of victim	Relationship: _____
<input type="checkbox"/> Parent/Guardian of victim	<input type="checkbox"/> Witness	<input type="checkbox"/> Concerned citizen

I would like to request the following special conditions of parole:

<input type="checkbox"/> No contact with victim (also applies while incarcerated)	<input type="checkbox"/> Parole offender to another county	<input type="checkbox"/> Parole offender 35 miles from victim's <b>residence</b> address (cannot be a P.O. Box)
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*If you would like to provide additional information explaining your request, please attach a separate sheet of paper.*

**D. REQUEST FOR DIRECT ORDER OF RESTITUTION COLLECTION**

Please collect on a Direct Order of Restitution payable to (print name or business specified in the Court Order, and title if requesting for a business): \_\_\_\_\_ Amount: \_\_\_\_\_

*Note: If you are in possession of the Court Order, attaching a copy to this form may accelerate this process.*

**E. SIGNATURE OF APPLICANT**

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

**PRIVACY STATEMENT**

**AGENCY STATEMENT:** The California Department of Corrections and Rehabilitation (CDCR), Request For Victim Services and Restitution Collection, CDCR 1707.

**OFFICE RESPONSIBLE FOR FORM:** Office of Victim and Survivor Services (OVSS), P.O. Box 942883, Sacramento, CA 94283-0001. The telephone number is 1-877-256-OVSS (6877) or (916) 322-6676.

**AUTHORITY:** Penal Code Sections 679.03, 2085.5, and 3058.8.

**PROVIDING INFORMATION:** The information requested is necessary to process your request for victim services and/or restitution collection and is voluntary. Failure to provide any of the information requested may prevent OVSS from processing your request(s). All information will remain confidential and accessed by the OVSS staff. Information provided for restitution collection will be transferred to the Board of Control for disbursement of restitution collected by CDCR.

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Fold Here  
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Return Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE POST  
OFFICE WILL  
NOT DELIVER  
WITHOUT A  
STAMP

**CONFIDENTIAL**

California Department of Corrections and Rehabilitation  
Office of Victim and Survivor Services  
P.O. Box 942883  
Sacramento, CA 94283-0001

**APPLICATION FOR EMERGENCY PROTECTIVE ORDER (CLETS)**

**EPO-001**

(Name): \_\_\_\_\_ has provided the information in items 1-5.

LAW ENFORCEMENT CASE NUMBER:

1. PERSONS TO BE PROTECTED (insert names of all persons to be protected by this order):

2. PERSON TO BE RESTRAINED (name):

Sex:  M  F Ht.: \_\_\_\_\_ Wt.: \_\_\_\_\_ Hair color: \_\_\_\_\_ Eye color: \_\_\_\_\_ Race: \_\_\_\_\_ Age: \_\_\_\_\_ Date of birth: \_\_\_\_\_

3. The events that cause the protected person to fear immediate and present danger of domestic violence, child abuse, child abduction, elder or dependent adult abuse (other than solely financial abuse), or stalking are (give facts and dates; specify weapons):

4.  The person to be protected lives with the person to be restrained and requests an order that the restrained person move out immediately from the address in item 9.

5. a.  The person to be protected has minor children in common with the person to be restrained, and a temporary custody order is requested because of the facts alleged in item 3. A custody order  does  does not exist.

b.  The person to be protected is a minor child in immediate danger of being abducted by the person to be restrained because of the facts alleged in item 3.

6.  A child welfare worker or probation officer has advised the undersigned that a juvenile court petition  has already been filed.  will be filed.  will NOT be filed.

7.  Adult Protective Services has been notified.

8. Judicial officer (name): \_\_\_\_\_ was contacted on (date): \_\_\_\_\_ at (time): \_\_\_\_\_

The judicial officer granted the **Emergency Protective Order** that follows.

By:

(PRINT NAME OF LAW ENFORCEMENT OFFICER)

(SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency:

Telephone No.:

Badge No.:

**EMERGENCY PROTECTIVE ORDER (See reverse for important notices.)**

9. **To restrained person (name):** \_\_\_\_\_

a.  You must not contact, molest, harass, attack, strike, threaten, sexually assault, batter, telephone, send any messages to, follow, stalk, destroy any personal property of, disturb the peace of, or take any action to obtain the address or location of each person named in item 1.

b.  You must  stay away at least \_\_\_\_\_ yards from each person named in item 1.  
 stay away at least \_\_\_\_\_ yards from  move out immediately from

(address): \_\_\_\_\_

10.  (Name): \_\_\_\_\_ is given temporary care and control of the following minor children of the parties (names and ages): \_\_\_\_\_

11. Reasonable grounds for the issuance of this order exist and an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, elder or dependent adult abuse, or stalking.

12. **THIS EMERGENCY PROTECTIVE ORDER WILL EXPIRE AT 5:00 P.M. ON:** \_\_\_\_\_

INSERT DATE OF FIFTH COURT DAY OR SEVENTH CALENDAR DAY, WHICHEVER IS EARLIER; DO NOT COUNT DAY THE ORDER IS GRANTED

13. **To protected person:** If you need protection for a longer period of time, you must request restraining orders at (court name and address): \_\_\_\_\_

**PROOF OF SERVICE**

14. Person served (name): \_\_\_\_\_

15. I personally delivered copies to the person served as follows: Date: \_\_\_\_\_ Time: \_\_\_\_\_

Address: \_\_\_\_\_

16. At the time of service I was at least 18 years of age and not a party to this cause.  I am a California sheriff or marshal.

17. My name, address, and telephone number are (this does not have to be server's home telephone number or address): \_\_\_\_\_

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

Date:

(TYPE OR PRINT NAME OF SERVER)

(SIGNATURE OF SERVER)

Page 1 of 2

Form Adopted for Mandatory Use  
Judicial Council of California  
EPO-001 (Rev. January 1, 2007)  
Approved by DOJ

**EMERGENCY PROTECTIVE ORDER (CLETS-EPO)  
(Domestic Violence, Child Abuse, Elder or Dependent  
Adult Abuse, or Stalking)**

Family Code, § 6200 et seq.  
Penal Code, § 646.91  
www.courtinfo.ca.gov

ONE copy to court, ONE copy to restrained person, ONE copy to protected person, ONE copy to issuing agency

American LegalNet, Inc  
www.FormsWorkflow.com

## EMERGENCY PROTECTIVE ORDER WARNINGS AND INFORMATION

EPO-001

**VIOLATION OF THIS ORDER IS A MISDEMEANOR PUNISHABLE BY A \$1,000 FINE, ONE YEAR IN JAIL, OR BOTH, OR MAY BE PUNISHABLE AS A FELONY. PERSONS SUBJECT TO A RESTRAINING ORDER ARE PROHIBITED FROM OWNING, POSSESSING, PURCHASING, RECEIVING, OR ATTEMPTING TO PURCHASE OR RECEIVE A FIREARM (PENAL CODE SECTION 12021(g)). SUCH CONDUCT IS SUBJECT TO A \$1,000 FINE AND IMPRISONMENT OR BOTH. THIS ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS IN THE STATE OF CALIFORNIA WHO ARE AWARE OF OR SHOWN A COPY OF THE ORDER. UNDER PENAL CODE SECTION 13710(b), "THE TERMS AND CONDITIONS OF THE PROTECTION ORDER REMAIN ENFORCEABLE, NOTWITHSTANDING THE ACTS OF THE PARTIES, AND MAY BE CHANGED ONLY BY ORDER OF THE COURT."**

**To the restrained person:** This order will last until the date and time in item 12 on the reverse. The protected person may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with this order. The attorney should be consulted promptly so that the attorney may assist you in responding to the order.

**A la persona bajo restricción judicial:** Esta orden durará hasta la fecha y hora indicadas en el punto 12 al dorso. La persona protegida puede, sin embargo, obtener una orden de entredicho (restricción judicial) más permanente de la corte. Usted puede consultar a un abogado en conexión con cualquier asunto relacionado con esta orden. Debe consultar al abogado sin pérdida de tiempo para que él o ella le pueda ayudar a responder a la orden.

**To the protected person:** This order will last only until the date and time noted in item 12 on the reverse. If you wish to seek continuing protection, you will have to apply for an order from the court at the address in item 13, or you should apply to the court in the county where you live if it is a different county and the violence is likely to occur there. You may apply for a protective order free of charge. In the case of an endangered child, you may also apply for a more permanent order at the address in item 13, or if there is a juvenile dependency action pending you may apply for a more permanent order under section 213.5 of the Welfare and Institutions Code. In the case of a child being abducted, you may apply for a *Child Custody Order* from the court at the address in item 13. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application. You do not have to have an attorney to get the protective order.

**A la persona protegida:** Esta orden durará sólo hasta la fecha y hora indicadas en el punto 12 al dorso. Si usted desea que la protección continúe, tendrá que solicitar una orden de la corte en la dirección indicada en el artículo 13, o tendrá que hacer la solicitud ante la corte del condado donde usted vive, si se trata de un condado diferente y es probable que la violencia ocurra allí. La solicitud de la orden de protección es gratis. En el caso de que un niño o una niña se encuentre en peligro, puede solicitar una orden más permanente en la dirección indicada en el artículo 13 o, si hay una acción legal pendiente de tutela juvenil, puede solicitar una orden más permanente conforme a la sección 213.5 del código titulado en inglés **Welfare and Institutions Code**. En el caso del secuestro de un niño o una niña, usted puede solicitar de la corte una orden para la guarda del niño o de la niña (*Child Custody Order*), en la dirección indicada en el artículo 13 de este formulario. Puede consultar a un abogado en conexión con cualquier asunto relacionado con las solicitudes de órdenes de la corte que usted presente en el futuro. Debe consultar a un abogado sin pérdida de tiempo para que él o ella le pueda ayudar a presentar su solicitud. Para obtener la orden de protección no es necesario que un abogado le represente.

**To law enforcement:** Penal Code section 13710(c) provides that, upon request, law enforcement shall serve the party to be restrained at the scene of a domestic violence incident or at any time the restrained party is in custody. The officer who requested the emergency protective order, while on duty, shall carry copies of the order. The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance. The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse. A law enforcement officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A law enforcement officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

**If a child is in danger of being abducted:** This order will last only until the date and time noted in item 12 on the reverse. You may apply for a child custody order from the court.

**En el caso de peligro de secuestro de un niño o de una niña:** Esta orden será válida sólo hasta la hora y fecha indicadas en el punto 12 al dorso. Usted puede solicitar de la corte una orden para la guarda del niño o de la niña (*Child Custody Order*).

*This emergency protective order is effective when made. This order shall expire on the date and time specified in item 12 on the reverse. The provisions of this emergency protective order take precedence in enforcement over provisions of other existing protective orders between the same protected and restrained persons to the extent the provisions of this order are more restrictive. In other words, the provisions in this emergency protective order take precedence over the provisions in any other protective order, including a criminal protective order, if (1) the person to be protected is already protected by the other protective order, (2) the person to be restrained is subject to that other order, and (3) the provisions in this emergency order are more restrictive than the provisions in that other order. The provisions in another existing protective order remain in effect and take precedence if they are more restrictive than the provisions in this emergency protective order.*