



Victim Restitution

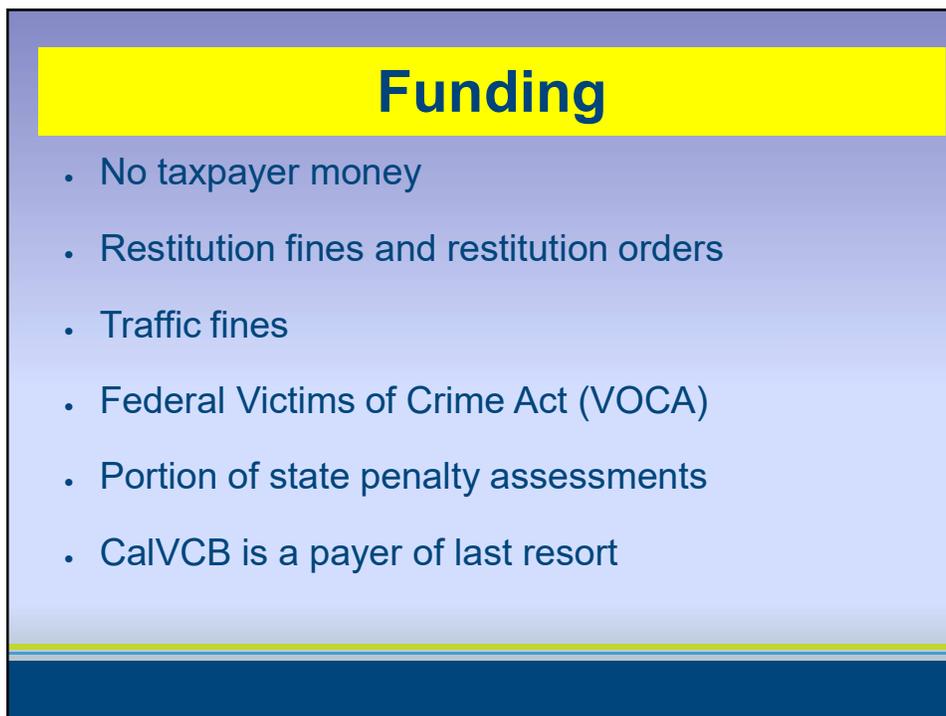
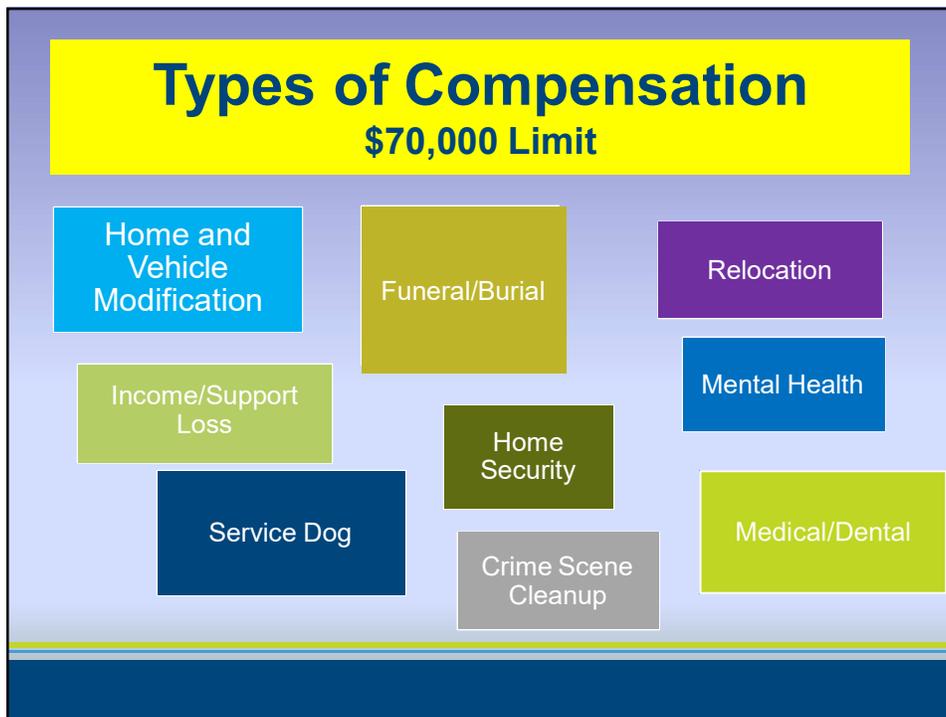
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CaIVCB Mission

Provide financial assistance to eligible victims of violent crime (and derivative victims) by reimbursing them for their crime-related expenses.

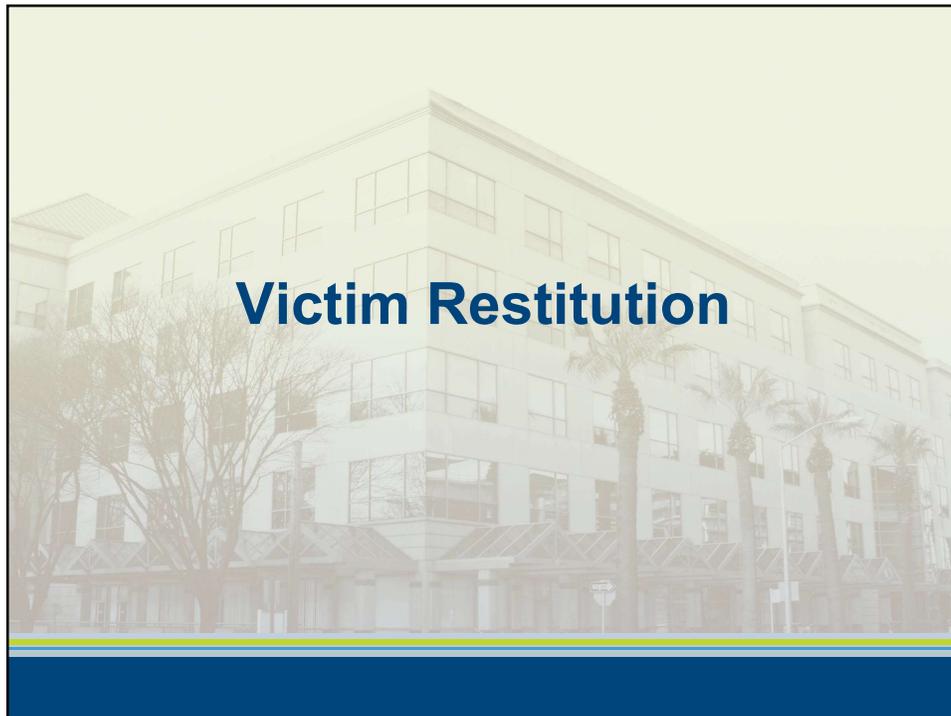


Expenses NOT Covered

- Not directly related to the qualifying crime
- Stolen or damaged personal or real property
- Pain and suffering
- Already paid by insurance or another reimbursement source

Recap

- Qualifying crime
- Expenses directly related to the qualifying crime
- File within three years (unless good cause exists for delay in applying)
- Up to \$70,000 for crime-related expenses



Constitutional Right

Victim's Bill of Rights

“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 the losses they suffer.”

California Constitution – Article 1, Section 28
June 8, 1982

Statutory Right

Penal Code section 1202.4, California added the first comprehensive restitution statute (9/27/83) to provide reimbursement for all economic losses.

Welfare & Institutions Code section 730.6, juvenile restitution statute, less comprehensive than section 1202.4 (9/29/94) (considers inability to pay, future earning potential).

Proposition 9 – Marsy’s Law

Victim’s Bill of Rights Act of 2008

California Constitution, Article 1, Section 28

November 4, 2008

Section 28(b)(13)(A)

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 seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.

Section 28(b)(13)(B)

Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.

Section 28(b)(13)(C)

All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.

AB 2295 - 2016

Amended Penal Code section 1202.4 to provide for full restitution for all losses.

No reduction or waiver for compelling and extraordinary reasons (though reduction still allowed in juvenile cases).

Burden of Proof

Offender bears the burden of proof to show that the recommendation of the probation officer or the victim's estimate of losses is inaccurate.

Economic Losses

- Physical injury
- Psychological injury
- Property damage
- Depreciation
- Income loss
- 10 percent interest from date of crime or date of sentence (at court's discretion).

Non-Economic Losses

Limited to violations of section 288, 288.5, or 288.7

Noneconomic damages are subjective, non-monetary losses including, pain and suffering, inconvenience, mental suffering, loss of consortium, injury to reputation.

People v. Smith (2011) 198 Cal.App.4th 415

Restitution Hearing

- Defendant or Minor & parents have right to notice/hearing.
- No right to jury trial and hearsay is allowed.
- Prosecutor must be present (*People v. Dehle* (2008) 166 Cal.App.4th 1380.)
- Victim's civil attorney may present evidence at the hearing. (*People v. Smith* (2011) 198 Cal.App.4th 415.)
- Victim need not be present. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539.)
- Initiate hearing before probation expires.

Limited Confrontation Right

- Defendant has no right to confront and cross-examine probation officer preparing report.
- No right to cross-examine psychotherapist.
- However, court may allow in its discretion.

Parental Responsibility

- Parent(s) and guardian(s) *rebuttably* presumed liable
- Right to notice and hearing
- Age at time of crime
- Ability to pay considered
- Does not apply to foster parents/grandparents

Restitution Non-Issues

Victim's insurance = no offset (*People v. Birkett* (1999) 21 Cal.App.4th 226.)

Pending civil litigation against defendant

Third party rights, i.e. Medi-Cal, Insurance (*People v. Hove* (1999) 76 Cal.App.4th 1266.)

Bankruptcy (*People v. Moser* (1996) 50 Cal.App.4th 130.)

Victim's release of liability – Settlement Agreements (*People v. Vasquez* (2010) 190 Cal.App.4th 1133.)

Restitution Offsets

The party seeking an offset or credit to the restitution order has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief he/she is asserting.

Evidence Code section 500

Restitution Offsets

Defendant's own insurance

Ex: Defendant commits a DUI and injures a victim. Defendant's insurance settles with victim. If the restitution requested was covered in the civil settlement then defendant is entitled to an offset.

Defendant's employer's insurance

Ex: Defendant commits a DUI while at work and injures victim. Defendant's employer's insurance settles with victim. If the restitution requested was covered in the civil settlement then defendant is entitled to an offset.

Restitution Offsets

Adult defendant's parent's insurance

Ex: Defendant commits ADW at mother's house and mother's insurance settles with victim. If Defendant was not on the policy then defendant is not entitled to an offset.

Civil Settlement

Ex: Defendant commits a failure to control a mischievous animal that caused SBI. Defendant's and landlord's home owner's insurance settled with victim for all economic and non-economic damages. Defendant cannot offset entire amount paid by insurance. Only the specific bills referenced in the settlement.

CalVCB Payment

- When CalVCB pays a victim's crime-related expenses, it is entitled to be reimbursed by the defendant.
- Court clerk must notify CalVCB within 90 days of a restitution order.

Presumption-CalVCB

Crime expenses paid by CalVCB are *presumed* to be a direct result of defendant's criminal conduct

Defendant must rebut the presumption to obtain access to sealed records submitted by CalVCB

Penal Code section 1202.4(f)(4)(A)

Proof- CaIVCB

Verification of expenses is met by providing the court with redacted and certified copies of bills identifying services and amount(s) paid

Penal Code section 1202.4(f)(4)(B)

In-Camera Review- CaIVCB

If evidence is offered by defendant to rebut the presumption, the court may release additional information to prosecutor and defense only after an in-camera review of CaIVCB's un-redacted records.

Penal Code section 1202.4(f)(4)(C)

Subpoenas

All subpoenas for CalVCB records must be *personally* served on the Board in Sacramento. A subpoena is required for all cases pre-conviction.

California Victim Compensation Board
Attention: Custodian of Records
400 R Street
Sacramento, CA 95812

Subpoena responses will be redacted for privacy.

Restitution Orders

- A sentence without an award of full restitution to a victim is invalid.
- Never expires – Adult and Juvenile
- Enforceable as a civil judgment (at any time)
- Not dischargeable in bankruptcy
- Includes family members of victim
- Court has broad discretion to order restitution as a condition of probation

Restitution Obligation

- Until paid in full:
- Defendant is *supposed* to be unable to expunge conviction
- Parolee cannot leave state, unless court permits
- Once paid in full, file Satisfaction of Judgment EJ-100.

Civil Code section 1714.1

- Max liability of parents is \$25,000.
- Max liability of parents when crime involves discharge of firearm is \$30,000 - \$60,000
- Adjusted every two years by Judicial Council.

Financial Disclosure CR-115

- Adult offenders must disclose all assets, income and liabilities from date of arrest.
- Filed with court clerk before sentencing unless otherwise directed by court.
- Copy to victim/CalVCB.

CR-110 & 111 JV-790 & 791

- Order for Restitution and Abstract of Judgment
- Never expires
- Enforceable **as** a civil judgment (but **NOT** a civil judgment)

Unclaimed Victim Restitution

Collected by Counties

- Hold for three years
- Publish notice – Once a week for two weeks
- Use by local agency for purposes of victim services, or
- Deposit into State Restitution Fund.

Recap

- Full restitution
- Set restitution hearing prior to expiration of probation
- CR 110/111 & JV 790/791
- CalVCB steps into victim's shoes



Restitution Fines & Fees

- Major funding source for CalVCB
- Probation revocation fine
- Parole revocation fine
- Post-release community supervision revocation fine
- Mandatory supervision revocation fine
- Deferred entry of judgment
- Diversion fee

Range of Fines

Misdemeanors

- Adult - \$150 to \$1,000
- Juvenile - not to exceed \$100

Felonies

- Adult - \$300 to \$10,000
- Juvenile - \$100 to \$1,000
- Court must order at least the minimum fine, *unless* compelling and extraordinary circumstances exist (does not mean inability to pay)

Fine Determination

Judges may consider:

- Defendant's ability to pay
- Future earning capacity of defendant
- Seriousness of offense
- Economic gain by defendant
- Number of victims
- Psychological harm to victim
- Inability to pay (but only if fine is more than minimum)

Inability to pay

If a defendant objects to the restitution fines due to an inability to pay the fines, due process of law requires the court to conduct an ability to pay hearing and ascertain a defendant's present ability to pay before the court imposes a restitution fine. Without such a hearing, the court must stay the restitution fine. (*People v. Duenas* (2019) 30 Cal.App.5th 1157.)

Permissive Fine Formula

Penal Code section 1202.4(b)(2)

$$\begin{array}{c}
 \$300 \quad \times \quad \begin{array}{c} \text{years} \\ \text{imposed (8)} \end{array} \quad \times \quad \begin{array}{c} \text{felony counts} \\ \text{(3)} \end{array} \\
 \hline
 = \quad \begin{array}{c} \text{Restitution} \\ \text{Fine} \\ \$7,200 \end{array}
 \end{array}$$

Recap

- Restitution fines fund THE Restitution Fund
- Court must order at least the minimum fine
- Misdemeanors \$150 - \$1,000
- Felonies \$300 - \$10,000



Restitution Order and Restitution Fine Collection

Criminal Restitution Compacts

- CRC's: County employees paid by CalVCB to track criminal cases to ensure that restitution is ordered to CalVCB.
- CRC employees in 24 counties and 1 city.
- CRC's are not custodians of record nor are they authorized to testify on CalVCB's behalf.

Collection Resources

- FTB
- CDCR
- County Collections
- Probation/District Attorney
- Courts
- Private Collection Agencies
- Probate

Franchise Tax Board

- Collects outstanding debts for courts, counties, CDCR, and state agencies.
- Deducts 15 percent from collected amounts.
- CalVCB pays the 15 percent fee so no loss to victim.

CDCR

- Authorized to deduct up to 50 percent from an inmate's trust account (except minimum of \$300)
- 10 percent fee added for collection costs
- Applicable to orders and fines
- Applicable to state *and* county prisons.

Release from Prison

- Remaining restitution orders and fines sent to FTB.
- Disbursements to victim every 6 months or when \$50 is collected.
- CDCR continues to manage offender accounts even after referral to FTB.

Probation Discharge

Once probation has terminated or defendant is no longer on parole, postrelease community supervision or mandatory supervision, a restitution fine or Board restitution order is enforceable by the Board. Counties may send debtor information to the Board (or continue collecting on their own).

Penal Code section 1214(a) & (b)

County 10 Percent Rebate

- Rebate sent to the probation department or other county agency to offset the cost of collecting restitution fines and CalVCB restitution orders. Must remit with 45 days of collection.
- Paid by CalVCB
- FY 2017-2018: \$3.9 million
- 45 day window

County Admin Fee

- Fee imposed by Board of Supervisors (or Court).
- Up to an additional 10 percent for the collection of restitution fines.
- Up to an additional 15 percent for the collection of victim (not CalVCB) restitution orders.
- Fee must reflect the actual cost of collection.
- Paid by defendant.

Public Safety Realignment aka County Prison

- Penal Code section 1170(h)
- Post Release Community Supervision
- Mandatory Supervision
- Fee imposed by Board of Supervisors
- Up to an additional 10 percent for the collection of restitution fines and restitution orders.
- SB 1054 (2016)

Probate

- Attorneys or other estate representatives are required to notify CalVCB when an heir is incarcerated or was previously incarcerated.
- CalVCB will file lien if it is owed money.
- CalVCB paid before incarcerated heir.

Recap

- County 10 percent rebate
- County admin fees 10-15 percent



Case Law Updates

Separate Fines

- Without consolidation, separately filed cases remain separate for purposes of restitution fines, even when they are jointly resolved at the plea and sentencing stages.

People v. Soria (2010) 48 Cal.4th 58

Repair Costs

- Although cost to repair victim's truck (\$2,812.94) was more than the purchase price of the vehicle (\$950), court has discretion to require defendant to pay for the repair of the vehicle so that the victim gets her vehicle back in the same condition it was before defendant vandalized it.

People v. Stanley (2012) 54 Cal.4th 734

All Court Appearances

- Derivative victim who was an MD entitled to restitution for time spent in court and away from medical practice. Doctor attended all court proceedings whether he was needed or not. \$6,250 at \$125 per hour was reasonable.

People v. Moore (2009) 177 Cal.App.4th 1229

Travel Costs

- Parent's of minor deceased victim entitled to receive reimbursement from defendant for parking, mileage, and other expenses that were incurred while attending court appearances.

People v. Crisler (2008) 165 Cal.App.4th 1503

Derivative Victims of Juvenile Offenders

- Juveniles are liable for the losses they cause to victims and derivative victims.
- Marsy's law struck down provision of W & I Code section 730.6 that mandated derivative victim restitution only if the victim died.

In re Scott (2013) 221 Cal.App.4th 515

Future Support Loss

- Future support loss of deceased's wife is proper subject of restitution order. Trial court ordered five years of future loss. Court noted that the amount of loss was imprecise and arbitrary but not sufficient to warrant reversal.

People v. Giordano (2007) 42 Cal.4th 644

Restitution to Hospital

- Ordering restitution directly to hospital in a probation case was appropriate because the decedent's family would be unduly burdened by having to open or keep open the victim's estate and by having to forward each restitution payment to the hospital.

People v. Anderson (2010) 50 Cal.4th 19

Restitution to State

- Ordering restitution directly to the state was appropriate when the state is a direct victim. Defendant committed an act of terrorist threats which caused an elementary school to close for two weeks. The state reimbursed the school district for the amount lost for average daily attendance. The court held the state was entitled to receive restitution for the amount the state reimbursed the school district.

People v. Landen (2019) 243Cal.Rptr.3rd 487 (Depublished)

Full Payment

- Defendant properly ordered to pay the amount that the victim's health plan would accept as payment in full, not the billed amount.

People v. Duong (2010) 180 Cal.App.4th 1533

Non-Economic Award

- Restitution order for non-economic damages for committing a lewd act on a child does not give rise to a jury trial right. Awards will be affirmed if, at first blush, the award does not shock the conscience or suggest passion, prejudice, or corruption on the part of the trial court.

People v. Smith (2011) 198 Cal.App.4th 415

Non-Economic Award

- Prosecution not required to present victim testimony or affidavits or expert declarations in connection with restitution hearing.
- Trial testimony, sentencing statements, and probation report are sufficient to establish losses.

People v. Lehman (2016) 247 Cal.App.4th 795

Non-Economic Award

- Restitution award of \$1,000,000 computed at \$100,000 a year times 10 years.
- Crime was 288.5
- Statute references 288
- Court: Non-economic award if conduct of defendant constitutes a violation of 288

People v. McCarthy (2016) 244 Cal.App.4th 1096

Full Restitution

- Full victim restitution is mandatory whether it is paid to the victim or to the Restitution Fund to the extent that CalVCB paid expenses on behalf the victim.

People v. Brown (2007) 147 Cal.App.4th 1213

Settlement Agreements

- While a settlement agreement 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.

People v. Bernal (2002) 101 Cal.App.4th 155

Insurance

The fortuity that the victim had insurance should not shield the defendant from a restitution order; insurance could seek reimbursement from victim.

People v. Hove (1999) 76 Cal.App.4th 1266

Terms of Probation

- Juvenile defendant ordered to pay victim's funeral costs was appropriate, as a condition of probation, even though the juvenile defendant was only adjudicated of being an accessory after the fact (from a gang-related murder).

In re I.M. (2005) 125 Cal.App.4th 1195

Graffiti Remediation

- A restitution order requiring defendant to pay a city \$18,878 in restitution for 32 incidents of graffiti was not an abuse of discretion

People v. Santori (2015) 243 Cal.App.4th 122

Residential Security

- A victim is entitled to restitution for residential security if related to a violation of Penal Code section 273.5 or if the violation is a violent felony defined under section 667.5. (Penal Code section 1202.4, subd. (f)(3)(J).)
- *Harvey* waiver, make condition of plea, or CalVCB expenses

People v. Salas (2017) 9 Cal.App.5th 736

But see *People v. Henderson* (2018) 20 Cal.App.5th 467 (residential security proper because it was an “economic loss”)

Civil Suit

- A restitution order does not resolve civil liability.
- A restitution order does not preclude the victim from pursuing a separate civil action based on the same facts as the criminal case.

People v. Vasquez (2010) 190 Cal.App.4th 1126

Time Value of Money

- A restitution order is intended to compensate the victim for its actual loss and is not intended to provide the victim a windfall.
- Requires a court to take evidence on the issue of the appropriate discount rate and calculations (considering that the victim is getting the money now, as opposed to monthly payments)

People v. Pangan (2013) 213 Cal.App.4th 574

Post-Death Losses

- Post-death expenses are not to be a part of restitution to the victim's estate (gross vehicular manslaughter – decedent is the victim, not the estate).

People v. Runyan (2012) 54 Cal.4th 849

Losses Incurred by Immediate Family

- Distinguishable from *Runyan*, funeral and burial expenses incurred by victim's mother (before mother died) were properly ordered as restitution to her estate because mother qualified as a victim (as an immediate surviving family member under 1202.4(k)(1)).

People v. Mays (2017) 15 Cal.App.5th 1232

Losses at Death

- Estate steps into the decedent's shoe to collect restitution owed to victim but which the victim could not personally receive (when crime is murder w/special circ. of financial gain).
- Life insurance proceeds, half of 401K, and proceeds from sale of home.

People v. Jessee (2013) 222 Cal.App.4th 501

Termination of Probation

- Probation is successfully terminated despite restitution that still remains to be paid to victims (because restitution order is enforceable as civil judgment).

In re Timothy N. (2013) 216 Cal.App.4th 725

Victim Paid First

- Marsy's Law requires that, even after probation terminates, a court must allocate any funds it receives from the defendant for the payment of statutory fines and fees towards the satisfaction of an outstanding restitution order in the same case.

AG Opinion No. 09-308 97 Ops. Cal. Atty. Gen. 41

Expungement

- Conviction cannot be expunged until restitution order is paid in full (even though probation can be terminated)

People v. Covington (2000) 82 Cal.App.4th 1263

Penal Code section 1170(h)

- Broad scope of restitution that can be imposed as a condition of probation (section 1203.1) cannot be imposed as a condition of mandatory supervision (section 1202.4).
- 1170(h) confinement analogous to confinement in state prison.

People v. Rahbari (2014) 232 Cal.App.4th 185

CalVCB's Presumption

- In order to rebut the presumption, the defendant must prove that his conduct played, at most, only an infinitesimal or theoretical part in bringing about the injury (medical expenses from suicide attempt following domestic violence).

People v. Lockwood (2013) 214 Cal.App.4th 91

Comparative Fault

- Need not apportion fault when the victim was *not* a substantial factor in causing the accident.

People v. Watson (2013) 220 Cal.App.4th 313

Leaving the Scene

- If only convicted of leaving the scene of an accident, restitution must be proven to be related to the leaving (increased injury) and not the collision.
- In this case the victim caused the accident.

People v. Martinez (2014) 226 Cal.App.4th 1156

Jurisdiction

- Trial court's retention of jurisdiction to determine and award victim restitution was permissible even though the defendant's probation had expired.
- Cal Supreme Court found that trial court retained subject matter jurisdiction because the defendant delayed the hearing.

People v. Ford (2013) 217 Cal.App.4th 1354

Jurisdiction

- Defendant was properly ordered to pay victim restitution after her prison sentence was fully served.
- Penal Code section 1202.46 allows determination of restitution at any time.

People v. Bufford (2007) 146 Cal.App.4th 966

No Jurisdiction

- Trial court's determination that it did not have jurisdiction to modify or impose additional restitution after defendant's probationary term had expired was correct.
- Defendant paid restitution in full/civil suit after probation expired/awarded 4.6 million/settled for 3.5 million/sought attorney's fees (via restitution hearing) of \$886,000

People v. Hilton (2014) 224 Cal.App.4th 47

Brady Issues

- CalVCB is not a member of the prosecution team.
- Use letter to inform defendant a CalVCB application may have been filed.
- CalVCB records will not be provided pre-conviction without a court order.
- SB 705 would create a procedure similar to Pitchess for defendant or DDA to obtain CalVCB records pre-conviction.

Contact Information

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