

***MARSY'S LAW AND SEXUAL ASSAULT:
Practice Pointers and Potential Pitfalls
for the Prosecutor***

SART Summit

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I.
VICTIMS' RIGHTS REPRESENTATION
MARSY'S LAW: VICTIMS' BILL OF RIGHTS

A. HISTORY OF MARSY'S LAW

On November 4, 2008, California voters passed Proposition 9, known as Marsy's Law. Marsy's Law was named after Marsy Nicholas, a University of California Santa Barbara student who was violently murdered in 1983. Dr. Henry Nicholas, Marsy's brother and co-founder of Broadcom, along with Orange County District Attorney Todd Spitzer, were instrumental in fighting to insure this legislation passed. Marsy's Law has been codified under Penal Code section 679.206 and was added as an amendment to the California Constitution under Article I, section 28.

B. VICTIMS' RIGHTS UNDER MARSY'S LAW

Marsy's Law, *via* Penal Code § 679.026 mandates that crime victims be issued a pamphlet outlining their seventeen (17) California Constitutional Rights listed below:

1. To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.
2. To be reasonably protected from the defendant and persons acting on behalf of the defendant.
3. To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.
4. To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.
5. To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

6. To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.
7. To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.
8. To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.
9. To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.
10. To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
11. To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.
12. To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
13. To restitution.
 - (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.
 - (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.
 - (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.

14. To the prompt return of property when no longer needed as evidence.
15. To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.
16. To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.
17. To be informed of the rights enumerated in paragraphs (1) through (16). A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the above rights in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.

C. WHO IS A VICTIM UNDER MARSY'S LAW?

Pursuant to Article I, Section 28(e), "a 'victim' is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term 'victim' does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim."

D. ATTORNEY'S AUTHORITY UNDER MARSY'S LAW

Pursuant to Article I, Section 28(c), "[a] victim, **the retained attorney of a victim**, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request." (Emphasis added.)

E. THE REPRESENTATION OF VICTIMS UNDER MARSY'S LAW

1. Working with Law Enforcement
2. Working with the Prosecutor's Office
3. Working with the assigned prosecutor
4. Working with the Court

- a. File your brief with the Court, defense counsel and Prosecutor's Office
- b. Submit your victim-impact statement to the Prosecutor's Office for their file

5. Parole Hearings

F. WORKING WITH THE MARSY'S LAW ATTORNEY AS DEFENSE COUNSEL

1. 1377/1378 Resolutions
2. 1202.4 Issues
3. Bail Issues
4. Diversion Issues
5. Sentencing/Creative Sentencing

G. COMPENSATION FOR MARSY' LAW REPRESENTATION

1. Hourly Rate
2. Flat Rate
3. *Pro bono*
4. 1202.4(f)(3)(F) and (H)

II. ATTACHMENTS AND REFERENCES

A. COPY OF MARSY'S LAW

See **Attachment A**

B. COPY OF PENAL CODE 1202.4 - Victim Restitution

See **Attachment B**

C. FILING YOUR INITIAL BRIEFS UNDER MARSY'S LAW

1. Declaration of Attorney
2. Assertion of Rights

D. RESTITUTION AND RESTITUTION HEARINGS

1. Key cases

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

People v. Cain (2000) 82 Cal.App.4th 81

2. Key references

CEB, *California Criminal Law Practice and Procedure*, PART VIII, "Victim Restitution" written by Antonio R. Sarabia II

State Bar of California, Annual Meeting, Long Beach, CA, September 18, 2011, *Victim Restitution and Civil Cases*, presented by Antonio R. Sarabia II and Michael L. Fell

Orange County Lawyer Magazine, November 2013, "Understanding and Utilizing Marsy's Law" co-authored by Michael L. Fell and Professor Elizabeth Jones

ATTACHMENT A

MARSHY'S LAW

CALIFORNIA CONSTITUTION

ARTICLE 1, § 28

(a) The People of the State of California find and declare all of the following:

(1) Criminal activity has a serious impact on the citizens of California. The rights of victims of crime and their families in criminal prosecutions are a subject of grave statewide concern.

(2) Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare of the people of California. The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system fully protecting those rights and ensuring that crime victims are treated with respect and dignity, is a matter of high public importance. California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity.

(3) The rights of victims pervade the criminal justice system. These rights include personally held and enforceable rights described in paragraphs (1) through (17) of subdivision (b).

(4) The rights of victims also include broader shared collective rights that are held in common with all of the People of the State of California and that are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials. These rights encompass the expectation shared with all of the people of California that persons who commit felonious acts causing injury to innocent victims will be appropriately and thoroughly investigated, appropriately detained in custody, brought before the courts of California even if arrested outside the State, tried by the courts in a timely manner, sentenced, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

(5) Victims of crime have a collectively shared right to expect that persons convicted of committing criminal acts are sufficiently punished in both the manner and the length of the sentences imposed by the courts of the State of California. This right includes the right to expect that the punitive and deterrent effect of custodial

sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States Constitution or by the laws of this State to be granted to any person incarcerated in a penal or other custodial facility in this State as a punishment or correction for the commission of a crime.

(6) Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end.

(7) Finally, the People find and declare that the right to public safety extends to public and private primary, elementary, junior high, and senior high school, and community college, California State University, University of California, and private college and university campuses, where students and staff have the right to be safe and secure in their persons.

(8) To accomplish the goals it is necessary that the laws of California relating to the criminal justice process be amended in order to protect the legitimate rights of victims of crime.

(b) In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:

[VICTIMS' BILL OF RIGHTS]

- (1) TO BE TREATED WITH FAIRNESS AND RESPECT FOR HIS OR HER PRIVACY AND DIGNITY, AND TO BE FREE FROM INTIMIDATION, HARASSMENT, AND ABUSE, THROUGHOUT THE CRIMINAL OR JUVENILE JUSTICE PROCESS.**
- (2) TO BE REASONABLY PROTECTED FROM THE DEFENDANT AND PERSONS ACTING ON BEHALF OF THE DEFENDANT.**
- (3) TO HAVE THE SAFETY OF THE VICTIM AND THE VICTIM'S FAMILY CONSIDERED IN FIXING THE AMOUNT OF BAIL AND RELEASE CONDITIONS FOR THE DEFENDANT.**
- (4) TO PREVENT THE DISCLOSURE OF CONFIDENTIAL INFORMATION OR RECORDS TO THE DEFENDANT, THE DEFENDANT'S ATTORNEY, OR ANY OTHER PERSON ACTING ON BEHALF OF THE DEFENDANT, WHICH**

COULD BE USED TO LOCATE OR HARASS THE VICTIM OR THE VICTIM'S FAMILY OR WHICH DISCLOSE CONFIDENTIAL COMMUNICATIONS MADE IN THE COURSE OF MEDICAL OR COUNSELING TREATMENT, OR WHICH ARE OTHERWISE PRIVILEGED OR CONFIDENTIAL BY LAW.

- (5) TO REFUSE AN INTERVIEW, DEPOSITION, OR DISCOVERY REQUEST BY THE DEFENDANT, THE DEFENDANT'S ATTORNEY, OR ANY OTHER PERSON ACTING ON BEHALF OF THE DEFENDANT, AND TO SET REASONABLE CONDITIONS ON THE CONDUCT OF ANY SUCH INTERVIEW TO WHICH THE VICTIM CONSENTS.**
- (6) TO REASONABLE NOTICE OF AND TO REASONABLY CONFER WITH THE PROSECUTING AGENCY, UPON REQUEST, REGARDING, THE ARREST OF THE DEFENDANT IF KNOWN BY THE PROSECUTOR, THE CHARGES FILED, THE DETERMINATION WHETHER TO EXTRADITE THE DEFENDANT, AND, UPON REQUEST, TO BE NOTIFIED OF AND INFORMED BEFORE ANY PRETRIAL DISPOSITION OF THE CASE.**
- (7) TO REASONABLE NOTICE OF ALL PUBLIC PROCEEDINGS, INCLUDING DELINQUENCY PROCEEDINGS, UPON REQUEST, AT WHICH THE DEFENDANT AND THE PROSECUTOR ARE ENTITLED TO BE PRESENT AND OF ALL PAROLE OR OTHER POST-CONVICTION RELEASE PROCEEDINGS, AND TO BE PRESENT AT ALL SUCH PROCEEDINGS.**
- (8) TO BE HEARD, UPON REQUEST, AT ANY PROCEEDING, INCLUDING ANY DELINQUENCY PROCEEDING, INVOLVING A POST-ARREST RELEASE DECISION, PLEA, SENTENCING, POST-CONVICTION RELEASE DECISION, OR ANY PROCEEDING IN WHICH A RIGHT OF THE VICTIM IS AT ISSUE.**
- (9) TO A SPEEDY TRIAL AND A PROMPT AND FINAL CONCLUSION OF THE CASE AND ANY RELATED POST-JUDGMENT PROCEEDINGS.**
- (10) TO PROVIDE INFORMATION TO A PROBATION DEPARTMENT OFFICIAL CONDUCTING A PRE-SENTENCE INVESTIGATION CONCERNING THE IMPACT OF THE OFFENSE ON THE VICTIM AND THE VICTIM'S FAMILY AND ANY SENTENCING RECOMMENDATIONS BEFORE THE SENTENCING OF THE DEFENDANT.**
- (11) TO RECEIVE, UPON REQUEST, THE PRE-SENTENCE REPORT WHEN AVAILABLE TO THE DEFENDANT, EXCEPT FOR THOSE PORTIONS MADE CONFIDENTIAL BY LAW.**
- (12) TO BE INFORMED, UPON REQUEST, OF THE CONVICTION, SENTENCE, PLACE AND TIME OF INCARCERATION, OR OTHER DISPOSITION OF THE**

DEFENDANT, THE SCHEDULED RELEASE DATE OF THE DEFENDANT, AND THE RELEASE OF OR THE ESCAPE BY THE DEFENDANT FROM CUSTODY.

(13) TO RESTITUTION.

(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.

(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.

(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.

(14) TO THE PROMPT RETURN OF PROPERTY WHEN NO LONGER NEEDED AS EVIDENCE.

(15) TO BE INFORMED OF ALL PAROLE PROCEDURES, TO PARTICIPATE IN THE PAROLE PROCESS, TO PROVIDE INFORMATION TO THE PAROLE AUTHORITY TO BE CONSIDERED BEFORE THE PAROLE OF THE OFFENDER, AND TO BE NOTIFIED, UPON REQUEST, OF THE PAROLE OR OTHER RELEASE OF THE OFFENDER.

(16) TO HAVE THE SAFETY OF THE VICTIM, THE VICTIM'S FAMILY, AND THE GENERAL PUBLIC CONSIDERED BEFORE ANY PAROLE OR OTHER POST-JUDGMENT RELEASE DECISION IS MADE.

(17) TO BE INFORMED OF THE RIGHTS ENUMERATED IN PARAGRAPHS (1) THROUGH (16).

(c) (1) A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.

(2) This section does not create any cause of action for compensation or damages against the State, any political subdivision of the State, any officer, employee, or agent of the State or of any of its political subdivisions, or any officer or employee of the court.

(d) The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. The court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant. The parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.

(e) As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.

(f) In addition to the enumerated rights provided in subdivision (b) that are personally enforceable by victims as provided in subdivision (c), victims of crime have additional rights that are shared with all of the People of the State of California. These collectively held rights include, but are not limited to, the following: (1) Right to Safe Schools. All students and staff of public primary, elementary, junior high, and senior high schools, and community colleges, colleges, and universities have the inalienable right to attend campuses which are safe, secure and peaceful. (2) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and postconviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press. (3) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or

denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations. A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail. Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter. When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes. (4) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court. (5) Truth in Sentencing. Sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce those sentences. (6) Reform of the parole process. The current process for parole hearings is excessive, especially in cases in which the defendant has been convicted of murder. The parole hearing process must be reformed for the benefit of crime victims.

(g) As used in this article, the term "serious felony" is any crime defined in subdivision (c) of Section 1192.7 of the Penal Code, or any successor statute.

ATTACHMENT B

Penal Code 1202.4

(a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464. (3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following: (A) A restitution fine in accordance with subdivision (b). (B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. (1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars (\$200), and not more than ten thousand dollars (\$10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars (\$100), and not more than one thousand dollars (\$1,000), if the person is convicted of a misdemeanor. (2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars (\$200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two hundred-dollar (\$200) or one hundred-dollar (\$100) minimum. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Section 11469 of the Health and Safety Code, be applied to the restitution fine if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two hundred-dollar (\$200) or one hundred-dollar (\$100) 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 as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments authorized in Section 1464 or Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, or the state surcharge authorized in Section 1465.7, and shall be deposited in the Restitution Fund in the State Treasury.

(f) Except as provided in subdivisions (q) and (r), 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. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Section 11469 of the Health and Safety Code, be applied to the restitution order if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. 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 modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) 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. Restitution ordered pursuant to this subdivision shall be ordered to be deposited to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance from the Victim Compensation Program pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment 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.

(B) Medical expenses.

(C) Mental health counseling expenses.

(D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income

during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(H) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(I) Expenses incurred by an adult victim in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(J) Expenses to install or increase residential security incurred related to a crime, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.

(K) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime.

(4) (A) If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to or on behalf of a victim or derivative victim pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code, 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 the restitution ordered. (B) The amount of assistance provided by the Restitution Fund shall be established by copies of bills submitted to the California Victim Compensation and Government Claims Board reflecting the amount paid

by the board and whether the services for which payment was made were for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Certified copies of these bills provided by the board and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the board, shall be sufficient to meet this requirement. (C) If the defendant offers evidence to rebut the presumption established by this paragraph, the court may release additional information contained in the records of the board to the defendant only after reviewing that information in camera and finding that the information is necessary for the defendant to dispute the amount of the restitution order.

(5) Except as provided in paragraph (6), in any case in which an order may be entered pursuant to this subdivision, the defendant shall 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 financial disclosure statements shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose of facilitating the disclosure. 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.

(6) A defendant who fails to file the financial disclosure required in paragraph (5), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, 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 pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (5), and paragraphs (7) to (10), inclusive, shall not apply.

(7) Except as provided in paragraph (6), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(8) In its discretion, the court may relieve the defendant of the duty under paragraph (7) of filing with the clerk by requiring that the defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following: (A) Any report submitted pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203. (B) Any stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203. (C) Any report by the probation officer, or any information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(9) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (5) as any of the following: (A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170. (B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203. (C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203. (D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(10) A defendant's failure or refusal to make the required disclosure pursuant to paragraph (5) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following: (A) Require the defendant to be examined by the district attorney pursuant to subdivision (h). (B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities. (C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (5) as a condition of probation or suspended sentence.

(11) If a defendant has any remaining unpaid balance on a restitution order or fine 120 days prior to his or her scheduled release from probation or 120 days prior to his or her completion of a conditional sentence, the defendant shall prepare and file a new and updated financial disclosure identifying all assets, income, and liabilities in which the defendant holds or controls or has held or controlled a present or future interest during the defendant's period of probation or conditional sentence. The financial disclosure shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed and prepared by the defendant on the same form as described in paragraph (5). 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. The financial disclosure required by this paragraph shall be filed with the clerk of the court no later than 90 days prior to the defendant's scheduled release from probation or completion of the defendant's conditional sentence.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include all of the following: (1) The immediate surviving family of the actual victim. (2) 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 a crime. (3) Any person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions: (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 listed in

subparagraph (A). (D) Is another family member of the victim, including, but not limited to, the victim's fiance or fiancée, and who witnessed the crime. (E) Is the primary caretaker of a minor victim. (4) Any person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code. (5) Any governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material, as defined in subdivision (e) of Section 594, and that has sustained an economic loss as the result of a violation of Sections 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code.

(l) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(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. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13963 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) The court clerk shall notify the California 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. Notification shall be accomplished by mailing a copy of the court order to the board, which may be done periodically by bulk mail or electronic mail.

(q) Upon conviction for a violation of Section 236.1, the court shall, in addition to any other penalty or restitution, order the defendant to pay restitution to the victim in any 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. In determining restitution pursuant to this section, the court shall base its order upon the greater of the following: the gross value of the victim's labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim's labor as guaranteed under California law, or the actual income derived by the defendant from the victim's labor or services or any other appropriate means to provide reparations to the victim.

(r) In addition to any other penalty or fine, the court shall order any person who has been convicted of any violation of Section 653h, 653s, 653u, or 653w to make restitution to any owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of a phonograph record, disc, wire, tape, film, or other device or article from which sounds or visual images are derived that suffered economic loss resulting from the violation. For the purpose of calculating restitution, the value of each nonconforming article or device shall be based on the aggregate wholesale value of lawfully manufactured and authorized devices or articles from which sounds or visual images are devised, unless a higher value can be proved in the case of (1) an unreleased audio work, or (2) an audiovisual work that, at the time of unauthorized distribution, has not been made available in copies for sale to the general public in the United States on a digital versatile disc. The order of restitution shall also include reasonable costs incurred as a result of any investigation of the violation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner or lawful producer. "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized sound or audiovisual recordings. Proof of the specific wholesale value of each nonconforming device or article is not required.