

Case No. C088227

**IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA**

THIRD APPELLATE DISTRICT

THE PEOPLE
Plaintiff and Appellant,

v.

J.H.,

Defendant and Respondent.

**[PROPOSED] AMICUS BRIEF OF THE CALIFORNIA STATE
ASSOCIATION OF COUNTIES IN SUPPORT OF PLAINTIFF AND
APPELLANT THE PEOPLE**

San Joaquin County Superior Court
Case No. 61891
The Honorable Gus Barrera II

Jennifer B. Henning (SBN 193915)
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941
Tel: (916) 327-7535
jhenning@counties.org

Attorney for Amicus Curiae California State Association of Counties

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 3

INTRODUCTION 5

LEGAL ARGUMENT 8

 I. The People of California amended the Constitution to ensure that every crime victim receives compensation due to the defendant’s actions 8

 A. Victim restitution is a right under the California Constitution..... 9

 B. The role of victim restitution orders is to help the victim recover from the crime, making them fundamentally different from civil judgments..... 10

 C. The Purpose of a Victim Restitution Order Is Different Than the Purpose of a Civil Judgment..... 11

 II. There is no ambiguity in Welfare and Institutions Code 706.3, which should, therefore, be given its literal meaning; while Code of Civil Procedure section 683.020 should be interpreted consistent with the purpose of the Victim’s Bill of Rights 12

 III. Requiring Victim Restitution Orders To Be Enforced as Civil Judgments Places An Unrealistic Burden on Counties 14

CONCLUSION 15

CERTIFICATION OF COMPLIANCE 17

TABLE OF AUTHORITIES

Cases

<i>In re Lance W.</i> (1985) 37 Cal.3d 873	8
<i>People v. Mearns</i> (2002) 97 Cal.App.4th 493.....	13
<i>People v. Moser</i> (1996) 50 Cal.App.4th 130.....	12

Statutes

Code Civ. Proc., § 683.020	passim
Welf. & Instit. Code, § 730.6	5, 6, 13

Constitutional Provisions

Cal. Const., art. I B, § 28	5, 8
-----------------------------------	------

Government Publications

California Courts, <i>Renew Your Judgment</i> (2019) Judicial Counsel of California < https://www.courts.ca.gov/1180.htm > [as of June 5, 2019]	14
California Department of Corrections and Rehabilitation, <i>CDCR Collections-2011</i> (2011) < https://www.cdcr.ca.gov/Victim_Services/docs/AnnualCollections14.pdf > [as of June 5, 2019]	14
California Victim Compensation Board, <i>How CalVBC Helped Victims of Crime in 2018</i> (May 5, 2019) < https://victims.ca.gov/docs/brochures/fs/CalVCPFactSheet-	

English.pdf> [as of June 5, 2019]..... 14

California Victim Compensation Program, *A Victim’s Restitution Guide*
(Nov. 18, 2015)
<https://www.cdcr.ca.gov/victim_services/docs/restitution_guide.pdf>
[as of June 5, 2019]..... 11, 15

California Victim Restitution Board, *FAQ: Victim Restitution* (2016) State
of California <<https://victims.ca.gov/restitution/defined.aspx#two>> [as of
June 5, 2019]..... 10

Santa Clara County Civil Grand Jury, Santa Clara County Civil Grand Jury
Report 203-2014 (Approved June 16, 2014) Victim Restitution-Promises
Unfulfilled, p, 2..... 10, 11

Law Review Articles

*California Annual Review: Summary: 2008 California Criminal Law Ballot
Initiatives* (2009) 14 Berkeley J. Crim. L 173 9

Okazaki, *Notes and Comments: People v. Sexton: Insuring an Absurd
Result through Inflexible Interpretation-The Court of Appeal Denies
Criminal Restitution to a Victim’s Insurance Company* (1997) 31 Loy.
L.A. L. Rev. 297 11, 12

INTRODUCTION

Section 28 of article I B of the California Constitution, the Victims' Bill of Rights, requires that victims of crime receive restitution for the losses they suffered as a result of the crime. Under the Victim's Bill of Rights, victim restitution is a constitutional right. After voters adopted section 28, article I B of the Constitution via Proposition 9, the Legislature adopted Welfare and Institutions Code section 730.6, which mandates that victims receive restitution in juvenile delinquency matters, and requires that a juvenile defendant continue paying restitution to the victim until the order is satisfied. Code of Civil Procedure section 683.020 states that a victim restitution order is to be treated "as if the restitution order were a civil judgment" and "in the same manner as" a civil money judgment. Hence, the specific question facing this Court boils down to this: Does the ten year enforcement period for civil judgments required by Code of Civil Procedure section 683.020 apply to a victim restitution order created under Welfare and Institutions Code section 730.6?

The answer to that question must clearly be no. First and foremost, CSAC agrees with the County of San Joaquin that Welfare and Institutions Code section 730.6, subdivision (l) is unambiguous and protects victims' constitutional right to restitution "until the obligation is satisfied in full." Nothing in the plain language of the statute conditions that right on a

county's renewal of the victim restitution order every ten years. As the statute is unambiguous on its face and does not conflict with any other statute, the analysis should end there.

If, however, the Court finds there is a material ambiguity or conflict in the statutory scheme, the rules of statutory interpretation – especially the rules governing interpretation of constitutional provisions – weigh against any interpretation that would undermine victims' constitutional right to full restitution. Victim restitution orders are distinct from civil money judgments, and should be treated as such. Unlike a victim restitution order, a civil judgment is not a right under the California Constitution. When voters adopted Proposition 9, victim restitution became a constitutional right. As a result, victims are always entitled to restitution once the specified criteria are met. Placing limits, such as a ten year renewal requirement, diminishes the constitutional right that victims hold to restitution.

Moreover, victim restitution orders serve a different purpose than civil judgments. Victim restitution orders rehabilitate the defendant, deter future criminality, and amend the breach of law made to society. In contrast, civil judgments are solely concerned with giving a party in civil litigation financial compensation in a civil matter. Welfare and Institutions Code section 730.6 recognizes that victim restitution orders are distinct from civil money judgments, and should be read literally.

There is no question that the fundamental purpose of the Victim's Bill of Rights in the California Constitution is to guarantee that victims receive compensation for their losses. Requiring that victim restitution orders are renewed in the same manner as civil money judgments threatens to deny victims their constitutional right by requiring counties to undertake a burdensome renewal process in order for the restitution order to remain in effect.

In addition, the implications of this appeal go beyond the facts developed in the underlying case. Most California Counties are responsible for handling hundreds or even thousands of victim restitution orders every year. Amicus Curiae California State Association of Counties ("CSAC") is not aware of any prior case or official guidance on victim restitution orders indicating that renewal is required, and is similarly unaware of any California County having adopted a practice or policy of "renewing" such orders. Only for purposes of enforcement, not renewal or expiration, do California Counties treat victim restitution orders as if they were ordinary civil money judgments. The trial court's decision, if affirmed, would therefore represent a significant shift in current statewide practice.

As such, this Court should interpret "as if the restitution order were a civil judgment" in Code of Civil Procedure section 683.020 in a manner consistent with the California Constitution and Welfare and Institutions

Code 730.6, and hold that counties are not required to renew victim restitution orders every ten years.

LEGAL ARGUMENT

I. The People of California amended the Constitution to ensure that every crime victim receives compensation due to the defendant's actions.

The question facing this Court is whether a victim restitution order must be renewed every ten years under Code of Civil Procedure section 683.020. To the extent this Court believes the statute is not sufficiently clear on its face, because the statute relates to a constitutional amendment, this Court should consider the reasons for amending the constitution, as well as the purpose the amendment serves. (*In re Lance W.* (1985) 37 Cal.3d 873.) “In construing constitutional and statutory provisions, whether enacted by the Legislature or by initiative, the intent of the enacting body is the paramount consideration. The goal of statutory construction is ascertainment of legislative intent so that the purpose of the law may be effectuated.” (*Ibid.*) As Respondent’s interpretation of Code of Civil Procedure section 683.020 runs contrary to Section 28 of Article I B of the California Constitution, it should be rejected.

///

///

A. Victim restitution is a right under the California Constitution.

In 2008, California voters passed Proposition 9, which amended the California Constitution to include a Victim's Bill of Rights. (*California Annual Review: Summary: 2008 California Criminal Law Ballot Initiatives* (2009) 14 Berkeley J. Crim. L 173, 176-177.) California voters believed that amending the California Constitution to contain a Victim's Bill of Rights would help victims "pervade the criminal justice system" and "provide victims with rights to justice and due process." (*Ibid.*) Section 28 lists a number of rights that victims hold, among which is the right to restitution. (*Id.* at pp. 182-183.) Prior to the adoption of Section 28, judges used their discretion in determining if the defendant should pay victim restitution. (*Ibid.*) However, under section 28, victim restitution is required in all cases in which a victim suffers a loss, regardless of the sentence or disposition imposed. (*Ibid.*) Moreover, the addition of section 28 to the California Constitution requires that money collected from the defendant goes first to the victim before applying it to the defendant's other debts and penalties. (*Ibid.*) Therefore, by passing Proposition 9, the People of California demonstrated their desire for victims' rights to be prioritized. (*Ibid.*) Regardless of an individual's need or desire to collect the victim restitution, the People of California determined that victim restitution is a constitutional right, and that determination should be honored.

B. The role of victim restitution orders is to help the victim recover from the crime, making them fundamentally different from civil judgments.

Often times, the constitutional right to victim restitution is fulfilled through a victim restitution order. (Santa Clara County Civil Grand Jury, Santa Clara County Civil Grand Jury Report 203-2014 (Approved June 16, 2014) Victim Restitution-Promises Unfulfilled, p, 2 <http://www.scscourt.org/court_divisions/civil/cgj/2014/VictimRestitution.pdf> [hereinafter “Santa Clara Grand Jury Report”].) A victim restitution order is not a punishment. (*People v. Moser* (1996) 50 Cal.App.4th 130, 135.) Instead, the purpose of victim restitution is to “help victims recover from any financial hardship caused by criminal activity.” (California Victim Restitution Board, *FAQ: Victim Restitution* (2016) State of California <<https://victims.ca.gov/restitution/defined.aspx#two>> [as of June 5, 2019].) It is an order made by the judge as part of the defendant’s sentence, and requires the defendant to repay the crime victim for losses suffered because of the defendant’s criminal conduct. (Santa Clara Grand Jury Report, at p. 2.) Victims are compensated for expenses such as crime scene clean-up, funeral costs, medical treatment, income loss, relocation, and residential security. (*Ibid.*)

Using the police report, the District Attorney and the crime victim quantify the losses resulting from the crime. (Santa Clara Grand Jury

Report, at p. 2.) When the defendant is convicted, the court is required to order the defendant to pay the victim for the losses resulting from the crime. (*Id.* at p. 5-6.) The defendant must keep making payments on the victim restitution order until it is paid off and may not stop making payments for any reason; victim restitution orders do not expire and they are not discharged through bankruptcy. (California Victim Compensation Program, *A Victim's Restitution Guide* (Nov. 18, 2015) <https://www.cdcr.ca.gov/victim_services/docs/restitution_guide.pdf> [as of June 5, 2019].) Hence, victim restitution orders are valid until they are satisfied. (*Ibid.*)

C. The Purpose of a Victim Restitution Order Is Different Than the Purpose of a Civil Judgment.

The objective of a victim restitution order is distinct from the objective of a civil money judgment; the objective of victim restitution is rehabilitation. (Okazaki, *Notes and Comments: People v. Sexton: Insuring an Absurd Result through Inflexible Interpretation-The Court of Appeal Denies Criminal Restitution to a Victim's Insurance Company* (1997) 31 Loy. L.A. L. Rev. 297, 301.) Through victim restitution, the defendant is able to accept social responsibility for his or her actions because he or she recognizes the causal relationship that exists between the crime and the victim's loss. (*Ibid.*) In addition to rehabilitation, victim restitution helps

the defendant to make amends to society for the breach of law, and it deters future criminality. (*People v. Moser* (1996) 50 Cal.App.4th 130, 135.)

Victim restitution is successful in deterring future criminality because it forces the defendant to acknowledge the harm he or she caused; by seeing the amount of damage suffered by the victim the defendant becomes aware of the results of the crime. (Okazaki, *supra*, 31 Loy. LA. Rev., at p. 301.)

Additionally, victim restitution guarantees victims are compensated for their losses without having to pursue civil litigation, which is often not efficient for victims. (*Ibid.*) Therefore, victim restitution orders are not the same as civil money judgments under Code of Civil Procedure section 683.020 because they serve purposes beyond merely compensating the victim for the financial losses suffered. Requiring victim restitution orders to be enforced in the same manner as civil judgments likely eliminates the additional purposes of victim restitution orders, which hurts not only victims but society as a whole.

II. There is no ambiguity in Welfare and Institutions Code 706.3, which should, therefore, be given its literal meaning; while Code of Civil Procedure section 683.020 should be interpreted consistent with the purpose of the Victim’s Bill of Rights.

The Legislature reiterated the intent of the voters when it passed Welfare and Institutions Code 706.3, which states, “Any portion of a restitution order that remains unsatisfied after a minor is no longer on

probation shall continue to be enforceable by a victim pursuant to subdivision (r) until the obligation is satisfied in full.” (Welf. & Inst. Code, §730.6, subd. (a)(1).) Consistent with the intentions of the People of California, the Legislature wanted to ensure every victim received compensation, even from juvenile defendants. (*Ibid.*) The statute indicates no expiration date, nor does it require renewal. (*Ibid.*) Instead, it indicates that a victim restitution order is unsatisfied until paid in full. (*Ibid.*) Consequently, Welfare and Institutions Code 706.3 should be given its literal meaning: a victim restitution order is valid until it is satisfied.

Moreover, “the literal meaning of a statute must be in accord with its purpose.” (*People v. Mearns* (2002) 97 Cal.App.4th 493, 500.) It is the intent of the voters and the Legislature that every crime victim has a right to restitution. (*Ibid.*) As a result, Code of Civil Procedure section 683.020 should be interpreted literally and in consideration of the purpose of the Victim’s Bill of Rights: to ensure that no victim is denied the constitutional right of compensation. Failing to do so circumvents the purpose of the Victim’s Bill of Rights. Accordingly, a victim’s right to restitution is to be “broadly and liberally construed.” (*Ibid.*) Thus, if there is any doubt surrounding the meaning of Code of Civil Procedure section 683.020, it should be given the interpretation that favors the victim.

III. Requiring Victim Restitution Orders To Be Enforced as Civil Judgments Places An Unrealistic Burden on Counties.

Requiring counties to renew victim restitution orders in the same manner as civil judgments risks denying victims their constitutional rights; counties do not have the resources to monitor and renew all victim restitution orders. In 2011, the California Department of Corrections and Rehabilitation reported that it collected \$8,023,986.50 in prison and post-prison victim restitution orders (California Department of Corrections and Rehabilitation, *CDCR Collections-2011* (2011) <https://www.cdcr.ca.gov/Victim_Services/docs/AnnualCollections14.pdf> [as of June 5, 2019].) Similarly, the California Victim Compensation Board spent \$61,500,000 in 2018 helping crime victims (California Victim Compensation Board, *How CalVBC Helped Victims of Crime in 2018* (May 5, 2019) <<https://victims.ca.gov/docs/brochures/fs/CalVCPFactSheet-English.pdf>> [as of June 5, 2019].) This suggests most counties have hundreds or even thousands victim restitution orders in their jurisdictions.

In order to renew a victim restitution order using renewal requirements for civil judgments, counties would be obliged to monitor the expiration date of every victim restitution order in their jurisdiction and file requests for renewals of every judgment. (California Courts, *Renew Your Judgment* (2019) Judicial Counsel of California <<https://www.courts.ca.gov/1180.htm>> [as of June 5, 2019].) Tracking and

filing requests on hundreds of victim restitution orders is infeasible for counties; counties do not have the time or funds to put personnel in charge of tracking and renewing victim restitution orders. Thus, requiring the renewal of restitution orders places an impossible workload on counties.

Furthermore, victim restitution orders are currently treated as if they do not expire. (California Victim Compensation Program, *supra*, *A Victim's Restitution Guide*.) Requiring renewal of victim restitution orders every ten years would change the current practice, and lead to confusion. In order to ascertain that all victims have their constitutional right fulfilled and to prevent a large burden on counties, Civil Procedure section 683.020 should not be interpreted to require that victim restitution orders be renewed.

CONCLUSION

Civil Procedure section 683.020 provides that a victim restitution order is enforced “as if the restitution order were a civil judgment.” The voters were very clear in passing Section 28: restitution for victims is a constitutional right, and every victim should receive compensation for the losses suffered, regardless of the circumstances. Requiring victim restitution orders to be renewed every ten years sets a dangerous precedent that would allow for victims to be denied compensation. Victims’ rights should not depend on whether the county is able track and renew victim restitution orders.

This court is now tasked with deciding whether victim restitution orders must be renewed every ten years. Amicus Curiae urges this Court to interpret the statute in a manner that does not conflict with the California Constitution and that carries out the intent of the voters. This Court should hold that the county is not required to renew victim restitution orders every ten years.

Dated: June 25, 2019

Respectfully submitted,

/s/

By _____

Jennifer B. Henning

Attorney for Amicus Curiae
California State Association of
Counties

