

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

KAMALA D. HARRIS
Attorney General

OPINION	:	No. 09-308
	:	
of	:	October 8, 2014
	:	
KAMALA D. HARRIS	:	
Attorney General	:	
	:	
LAWRENCE M. DANIELS	:	
Deputy Attorney General	:	
	:	
	:	

THE HONORABLE VERN R. PIERSON, DISTRICT ATTORNEY OF EL DORADO COUNTY, has requested an opinion on the following questions:

1. After a criminal defendant has completed probation, must the court first allocate any funds that it receives from the defendant for the payment of statutory fines and fees imposed in the underlying criminal case toward the payment of an unsatisfied victim restitution order in the same case?

2. After a criminal defendant has completed probation, does the court have the authority to directly collect unpaid victim restitution amounts from the defendant on the victim's behalf?

CONCLUSIONS

1. After a criminal defendant has completed probation, the court must first allocate any funds that it receives from the defendant for the payment of statutory fines and fees imposed in the underlying criminal case toward the payment of any unsatisfied victim restitution order in the same case.

2. While crime victims have various remedies for collecting on unpaid restitution orders after a criminal defendant has completed probation, courts currently lack the authority—*post-probation*—to directly collect unpaid restitution amounts from the defendant on the victim’s behalf.

ANALYSIS

On November 4, 2008, California voters passed Proposition 9, also known as the Victims’ Bill of Rights Act of 2008: Marsy’s Law (hereafter “Marsy’s Law” or “Proposition 9”).¹ This initiative bolstered the state constitutional rights afforded to crime victims, including rights relating to restitution. The uncodified legislative findings adopted with Proposition 9 declare that the People place paramount importance on the rights of victims to obtain justice.² As pertinent here, Marsy’s Law amended the California Constitution to require that “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.”³

We are asked to assess the effect that this constitutional “priority provision” has on a court’s receipt of funds from a criminal defendant after that defendant has completed probation. First, even in the absence of implementing statutory authority, does the priority provision require a court to divert the funds it receives from a former probationer for the payment of statutory fines and fees imposed in the underlying criminal case toward the payment of an unsatisfied victim restitution order in the same case? And second, apart from the question of diverting fine and fee payments in order to satisfy a victim restitution order, must or may a court separately collect victim restitution funds

¹ Cal. Const., art. I, § 28.

² Prop. 9, § 2, ¶ (1); see Secretary of State, Text of Proposed Laws, at <http://voterguide.sos.ca.gov/past/2008/general/text-proposed-laws/text-of-proposed-laws.pdf#prop9> (as of Oct. 1, 2014).

³ Cal. Const., art. I, § 28, subd. (b)(13)(C), emphasis added.

from the former probationer on the victim’s behalf to the extent that the victim restitution order remains unsatisfied?

As to the first question, we conclude that the priority provision of Marsy’s Law unambiguously requires that, even after probation terminates, a court must allocate any funds that it receives from the defendant for the payment of statutory fines and fees toward the satisfaction of an outstanding restitution order in the same case. Although no *statute* specifically requires this priority of distribution, the constitutional priority provision is “self-executing”—i.e., enforceable upon its adoption by the voters—because there is no clearly expressed intent in the initiative to require implementing legislation.

As to the second question, we conclude that no constitutional or statutory authority permits a court to directly collect unpaid victim restitution from a defendant on a victim’s behalf after the defendant’s probation has ended. Nevertheless, in enacting Marsy’s Law, the voters stressed the importance of crime victims receiving full restitution, and the Legislature has facilitated this goal by creating various means to assist victims in obtaining the restitution owed to them, even after the defendant’s probation ends. Among these are measures allowing courts and correctional authorities to collect restitution payments from a defendant on the victim’s behalf, as long as the defendant is on probation or in custody. That said, the Legislature has not, as yet, enacted legislation authorizing courts to directly collect unpaid restitution amounts from a defendant on the victim’s behalf after the defendant has completed probation.

Marsy’s Law

Marsy’s Law, a voter initiative, “amended the California Constitution to guarantee crime victims a number of rights.”⁴ The initiative included a declaration that the “broad reform” intended by a previous victims’ rights initiative (passed as Proposition 8 in 1982) “has not occurred as envisioned by the people.”⁵ Thus, one of the main purposes of Marsy’s Law is to “[p]rovide victims with rights to justice and due process.”⁶

The constitutional centerpiece of Marsy’s Law is the “Victims’ Bill of Rights,” which adds two components to article I, section 28, of the California Constitution. The

⁴ *Kling v. Superior Court* (2010) 50 Cal.4th 1068, 1080; see generally *In re Vicks* (2013) 56 Cal.4th 274, 281-283.

⁵ Prop. 9, § 2, ¶ (3).

⁶ Prop. 9, § 3, ¶ (1).

first of these makes general findings and declarations.⁷ The second establishes a list of “personally held and enforceable” victims’ rights.⁸ This list includes the right to restitution, including an entitlement to priority such that “[a]ll 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.”⁹

Question 1

Again, the first question asks whether, after a criminal defendant has completed his or her probationary period, any funds that a court receives from that defendant for the payment of statutory fines and fees imposed in the underlying criminal case must first be allocated toward the payment of an unsatisfied victim restitution order imposed in the same case. We find that such post-probation funds must be allocated in this way.

A court must order restitution to the crime victim “in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.”¹⁰ In probation cases, a court must also make restitution a condition of probation.¹¹ During probation, the probation department must set up an account and collect restitution on behalf of the victim.¹² After probation terminates, an unsatisfied restitution order is enforceable by the victim in the same way as a “money judgment” or “civil judgment.”¹³

Separately, and in addition to restitution, there are various mandatory and discretionary fines and fees that may result from a criminal conviction.¹⁴ In contrast to

⁷ Cal. Const., art. I, § 28, subd. (a).

⁸ Cal. Const., art. I, § 28, subd. (a)(3).

⁹ Cal. Const., art. I, § 28, subd. (b)(13).

¹⁰ Cal. Const., art. I, § 28, subd. (b)(13)(B); see also Pen. Code, § 1202.4, subd. (f). In addition, absent “compelling and extraordinary reasons for not doing so,” the court must also collect a separate restitution fine from every defendant upon conviction, with the funds so collected to be “deposited in the Restitution Fund in the State Treasury.” (Pen. Code, § 1202.4, subds. (b), (e).)

¹¹ Pen. Code, § 1202.4, subd. (m).

¹² Pen. Code, § 1202.8, subd. (c).

¹³ Pen. Code, § 1214, subd. (b); see also Pen. Code, § 1202.4, subds. (a)(3)(B), (i), (m); Welf. & Inst. Code, § 730.6, subds. (l), (r).

¹⁴ E.g., Pen. Code, §§ 368, 1202.4, subd. (b), 1202.5, subd. (a), 1202.44, 1202.45,

the ways that victim restitution orders are collected and enforced, the court itself is charged with collecting these fines and fees from the defendant, *both during and after the probationary period*.¹⁵ It is uncontroverted that courts continue to have jurisdiction over a criminal case, even after probation has been completed, for the purpose of collecting these fines and fees.¹⁶ And Marsy’s Law states that the victims’ rights, which include the priority-of-distribution right, are enforceable “in any trial or appellate court with jurisdiction over the *case* as a matter of right.”¹⁷

In some contexts during a period of probation or incarceration, the Legislature has expressly prioritized the distribution of restitution payments over other payments in the same case. For example, installment payments that the Franchise Tax Board or any county board of supervisors collects for outstanding fines, fees, and restitution must first be disbursed toward paying off an outstanding victim restitution order.¹⁸ Similarly, victim restitution must be distributed first from the prisons’ and jails’ collection of monies from inmates.¹⁹ Custodial authorities in juvenile cases are likewise required to direct funds first toward victim restitution.²⁰

By contrast, there is no statute prioritizing the distribution of funds that are collected by courts after probation has ended. Under the constitutional priority provision in Marsy’s Law, however, “[a]ll monetary payments, monies, and property collected from any person who has been ordered to make restitution *shall* be first applied to pay the

1202.5, subd. (a), 1203.1b, subd. (a), 1464, subd. (a)(1), 1465.7, subd. (a), 1465.8, subd. (a); Gov. Code, §§ 29550.1, 70372, subd. (a)(1), 70373, 76000, subd. (a)(1), 76000.5, subd. (a)(1), 76104.6, subd. (a)(1), 76104.7, subd. (a); Health & Saf. Code, § 11372.5, subd. (a); Veh. Code, § 23554; see *People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1533 (conc. opn. of Kriegler, J.) (criticizing this system, “[h]owever laudable,” as “begin[ning] to match the complexity of the federal income tax”).

¹⁵ Pen. Code, § 1214.2, subs. (a), (b)(2); see Pen. Code, § 1464, subd. (a)(1) (contemplating court collection of fines); Bus. & Prof. Code, § 2446 (same); Gov. Code, § 68085.1 (same).

¹⁶ Pen. Code, § 1214.2, subd. (b)(2).

¹⁷ Cal. Const., art. I, § 28, subd. (c)(1), emphasis added.

¹⁸ Pen. Code, § 1203.1d, subs. (b)(1), (c).

¹⁹ Pen. Code, § 2085.5, subs. (j), (k).

²⁰ Welf. & Inst. Code, §§ 730.6, subd. (p), 1752.81, subd. (f).

amounts ordered as restitution to the victim.”²¹ This statement is mandatory and without exception. Therefore, if the priority provision were deemed to be “self-executing,” it would require a court to allocate any funds that it received from a defendant toward the payment of any outstanding victim restitution order in the case, even after probation terminated, and even in the absence of implementing legislation.²² In our view, the priority provision is self-executing.

When interpreting a provision of the California Constitution, the “paramount task is to ascertain the intent of those who enacted it.”²³ To discover this intent, we “look first to the language of the constitutional text, giving the words their ordinary meaning.”²⁴ This language must be construed in the context of the initiative as a whole, and of the initiative’s overall scheme.²⁵ “If the language is clear, there is no need for construction.”²⁶

A state constitutional provision is presumed to be self-executing unless a contrary intention is clearly expressed.²⁷ “A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be

²¹ Cal. Const., art. I, § 28, subd. (b)(13)(C), emphasis added.

²² Despite this plain language, it is argued that the priority provision of Marsy’s Law could only apply if a court had explicit statutory authorization to collect victim restitution payments from the defendant, and that there is no statutory authority for a court to collect restitution after probation has ended. The first question presented, however, involves not the collection of restitution payments per se (an issue that we address in response to Question 2, below), but the diversion and allocation of funds collected for another purpose—statutorily-imposed fines and fees—toward an unsatisfied victim restitution order.

²³ *Greene v. Marin County Flood Control and Water Conservation Dist.* (2010) 49 Cal.4th 277, 290, internal quotation marks and citations omitted.

²⁴ *Ibid.*

²⁵ *People v. Rizo* (2000) 22 Cal.4th 681, 685.

²⁶ *Greene v. Marin County Flood Control and Water Conservation Dist.*, *supra*, 49 Cal.4th at p. 290. “If the language is ambiguous, however, we consider extrinsic evidence of the enacting body’s intent.” (*Ibid.*)

²⁷ See *People v. Vega-Hernandez* (1986) 179 Cal.App.3d 1084, 1092; *Taylor v. Madigan* (1975) 53 Cal.App.3d 943, 951.

enjoyed and protected, or the duty imposed may be enforced.”²⁸ One way to analyze this is to ask whether the provision states “broad principles” or “enforceable rules.”²⁹ Analyzing the priority provision of Marsy’s Law, we find that a sufficiently enforceable rule is expressed. The law states that “[a]ll 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.”³⁰ This means that every time a payment is received from a defendant who owes victim restitution, that payment must first be applied toward the victim restitution order.³¹ This rule is clear and definite enough to be applied as it is stated, without debate about the timing of the payment, or the status of the defendant, or the authority of the receiving agency.

Other parts of Marsy’s Law reinforce this interpretation. Marsy’s Law states that crime victims have “personally held *and enforceable* rights described in paragraphs (1) through (17) of subdivision (b).”³² Subdivision (b) includes the right to restitution (subdivision (b)(13)), which in turn includes the priority provision (subdivision (b)(13)(C)).³³

Furthermore, Proposition 9 *deleted* language from earlier restitution provisions in the Victims’ Bill of Rights, which had stated that “[t]he Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.”³⁴

²⁸ *Chesney v. Byram* (1940) 15 Cal.2d 460, 462.

²⁹ *Bautista v. State* (2011) 201 Cal.App.4th 716, 729.

³⁰ Cal. Const., art. I, § 28, subd. (b)(13)(C), emphasis added.

³¹ By negative implication, the provision also prohibits applying collected funds toward other financial obligations such as fines and fees before restitution. (See *Greb v. Diamond Intern Corp.* (2013) 56 Cal.4th 243, 269, fn. 38; *Clausing v. San Francisco Unified School Dist.* (1990) 221 Cal.App.3d 1224, 1236.)

³² Cal. Const., art. I, § 28, subd. (a)(3), emphasis added.

³³ In addition, Proposition 9 requires that crime victims be given a “Marsy’s Card” to notify them of their rights under Marsy’s Law, including the right to priority of restitution payments. (Prop. 9, § 6.1; Pen. Code, § 679.026, subs. (b), (c); see Office of the Attorney General, Marsy’s Card, at <http://oag.ca.gov/victimservices/marsy> (as of Oct. 1, 2014).)

³⁴ Cal. Const., art. I, § 28, subd. (b)(13)(B); see former Cal. Const., art. I, § 28, subd. (b), added by initiative, Prim. Elec. (Jun. 8, 1982), commonly known as Proposition 8.

Thus, in its current incarnation, the Victims' Bill of Rights deliberately omitted calling for implementing legislation of the right to priority in restitution.³⁵

Finally, there is no contrary intention clearly expressed in the law. We acknowledge that the last paragraph of subdivision (a) of the Victims' Bill of Rights, which sets forth the findings and declarations immediately preceding the enumeration of the rights in subdivision (b), states: "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."³⁶ But we believe that this call to legislative action refers to the findings and declarations contained in subdivision (a)—that is, to the broad "goals" of Marsy's Law³⁷—and not to the specific "personally held and enforceable rights" enumerated in subdivision (b).³⁸

Based on our conclusion that the priority provision is self-executing, we find that, even after a criminal defendant has completed probation, the court must first allocate any funds that it receives from the defendant for the payment of statutory fines and fees imposed in the underlying criminal case toward the payment of an unsatisfied victim restitution order in the same case.

³⁵ Compare *People v. Giordano* (2007) 42 Cal.4th 644, 652 (citing *People v. Vega-Hernandez*, *supra*, 179 Cal.App.3d at pp. 1091-1099 (finding the right to restitution in Proposition 8 not self-executing based on Proposition 8's directive that the Legislature would be responsible for enacting implementing restitution legislation within the calendar year, and on the undefined and non-prohibitory nature of the right to restitution)).

³⁶ Cal. Const., art. I, § 28, subd. (a)(8).

³⁷ The findings and declarations set forth broad "goals" such as: criminals should be "sufficiently punished" and sentences should not be "undercut or diminished" by rights or privileges not afforded them by law (Cal. Const., art. I, § 28, subd. (a)(5)); frequent parole proceedings prolong victim suffering and "must come to an end" (Cal. Const., art. I, § 28, subd. (a)(6)); and the right to public safety extends to all public or private schools (Cal. Const., art. I, § 28, subd. (a)(7)).

³⁸ Courts interpreting other changes that Marsy's Law made to the Victims' Bill of Rights have assumed them to be effective without implementing legislation. (*People v. Runyan* (2012) 54 Cal.4th 849, 858-859 [Cal. Const., art. I, § 28, subd. (e)]; *People v. Smith* (2011) 198 Cal.App.4th 415, 439-440 [Cal. Const., art. I, § 28, subd. (c)(1)]; *People v. Taylor* (2011) 197 Cal.App.4th 757, 760 [Cal. Const., art. I, § 28, subd. (b)(13)(B)].)

Question 2

The second question asks whether a court must, or even may, take steps to directly collect unpaid restitution amounts from a defendant on the victim's behalf after the defendant's probation has ended. Because there is no existing constitutional or statutory authorization for courts to do so, we conclude that they may not. However, we see no impediment to the Legislature's enacting legislation to that effect should it choose to do so.

When a criminal defendant is placed on probation, the county probation officer is required to set up an account for depositing the defendant's victim restitution payments.³⁹ Restitution payments may also be collected by a court during probation.⁴⁰ Either way, these payments must be forwarded to the defendant's victim within specified deadlines.⁴¹ But, unlike statutory fines and fees, which a court may continue to collect and allocate after the probation period ends, no statute authorizes a court (or probation officer) to collect *direct victim restitution payments* after probation is over.⁴² Nor is there any provision in Marsy's Law, or anywhere else in the state Constitution, requiring a court to collect victim restitution after probation ends.⁴³

Instead, after probation, victims are provided with a set of enforcement tools, along with assistance and resources from governmental entities, to obtain the full payment of restitution orders. For example, after probation, a victim may personally enforce an unsatisfied restitution order in the same manner as a "civil judgment" or "money judgment."⁴⁴ To accomplish this, the victim, the victim's attorney, or the prosecutor "shall have access to all resources under the law," may obtain information

³⁹ Pen. Code, § 1202.8, subd. (c).

⁴⁰ Pen. Code, §§ 1202.4, subd. (a)(3)(B), 1203.1, subd. (b); see also Pen. Code, § 1202.1, subd. (l).

⁴¹ Pen. Code, § 1203.1, subd. (b).

⁴² *Cf. People v. Dorsey* (1999) 75 Cal.App.4th 729, 734-738 ("No statute directly authorizes a court in a case where the defendant has been sentenced to prison, to collect direct victim restitution.").

⁴³ We therefore reject the suggestion that statutory authority failing to authorize a court to collect restitution after probation ends would be in conflict with Marsy's Law.

⁴⁴ Pen. Code, § 1214, subd. (b); see also Pen. Code, § 1202.4, subs. (a)(3)(B), (i), (m); Welf. & Inst. Code, § 730.6, subs. (l), (r); see generally 8 Witkin, Cal. Procedure (5th ed. 2008) Enforcement of Judgment.

about the defendant's financial records and assets, and may utilize "wage garnishment and lien procedures."⁴⁵ Other entities may also collect on unpaid restitution from the defendant on the victim's behalf. First, "[a] local collection program may continue to enforce victim restitution orders once a defendant is no longer on probation . . ."⁴⁶ Second, outside agencies may contract with counties to collect both levies and restitution.⁴⁷ Third, the Franchise Tax Board may collect delinquent restitution debts.⁴⁸

Absent from the statutory scheme, however, is another way to achieve satisfaction of outstanding restitution orders after a defendant's probation has ended: for the court itself to continue to collect on the victim's behalf for his or her direct restitution.⁴⁹ Given the elaborate statutory framework established for victims and agencies to collect on restitution orders, and the absence of any indication that a court itself may collect such amounts after a defendant has completed probation, we conclude that a trial court, at present, lacks that authority.

Still, as discussed in response to Question 1, any funds that courts *do* collect from fines and fees after probation ends must first be applied to satisfy restitution orders before being applied to the unpaid fines and fees. It appears that this priority-of-distribution rule

⁴⁵ Cal. Const., art. I, § 28, subd. (c)(1); Pen. Code, § 1214, subd. (b); see also Pen. Code, §§ 1202.4, subd. (f)(11), 1202.42, subd. (b); Code Civ. Proc., § 2033.720, subd. (b); *People v. Holman* (2013) 214 Cal.App.4th 1438, 1453.

⁴⁶ Pen. Code, § 1214, subd. (b).

⁴⁷ See Pen. Code, §§ 1463.007, 1463.010; California Judicial Branch Home, Revenue Collection Unit, at <http://www.courts.ca.gov/partners/collections.htm> (as of Oct. 1, 2014) (providing links to the Judicial Council's master agreements that require private agencies to collect victim restitution); California Judicial Branch Home, Guidelines and Standards for Cost Recovery, at <http://www.courts.ca.gov/partners/documents/Guidelines-and-Standards-for-Cost-Recovery.pdf> at p. 4 (as of Oct. 1, 2014) (noting that restitution must be applied first from any installment payments that these agencies collect).

⁴⁸ One commenter has suggested that a court may collect on restitution after probation because it retains generally "the authority to compel obedience to its judgments and orders." (Rev. & Tax Code, § 19280, subd. (a)(1).) But the power to *enforce* a restitution order in response to the victim's legal action—that is, to exercise judicial power to compel the defendant to pay the victim—does not mean that a court has authority on its own initiative to *collect* on the order, or to act as an independent agent on the victim's behalf.

⁴⁹ See Code Civ. Proc., § 128, subd. (a)(4).

will sometimes work to satisfy (wholly or partially) the victim restitution orders, while possibly leaving the fine and fee orders unsatisfied. Legislation authorizing trial courts to collect unpaid restitution amounts on the victim's behalf post-probation⁵⁰ would therefore appear to further the policy goals set forth in Marsy's Law, while also bolstering the receipt of governmental funding through full payment of statutory fines and fees.

Thus, in response to the second question, we conclude that while crime victims have other statutory remedies for collecting on restitution orders after a defendant has completed probation, courts currently lack authority—*post-probation*—to directly collect unpaid restitution amounts from a defendant on the victim's behalf.

⁵⁰ Cf. Rev. & Tax Code, § 19280, subd. (a)(1) (the Department of Corrections and Rehabilitation may authorize the collection of restitution after parole ends).