



# LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

## SACRAMENTO LEGISLATIVE OFFICE

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February 20, 2024

Assembly Member Kevin McCarty  
Chair, Assembly Public Safety Committee  
1020 N Street, Room 111  
Sacramento, CA 95814

### **ASSEMBLY BILL 1909**

#### **SPONSOR**

#### **Assembly Public Safety Committee**

Dear Assembly Member McCarty:

The Los Angeles County District Attorney's Office is pleased to sponsor Assembly Bill 1909 (Quirk-Silva).

Currently, there is a vagueness in the existing law that precludes crime victims, whose perpetrators have been granted diversion, from obtaining an enforceable civil judgment for court-ordered restitution that remains outstanding upon the defendant's completion of diversion.

AB 1909 would clarify that in any felony or misdemeanor case where the defendant is granted diversion, and the court orders restitution, the victim may enforce any unpaid restitution as a civil judgment upon defendant's successful completion of diversion just as they could had the defendant completed probation, parole, mandatory supervision, post-release community supervision, or a term in local custody pursuant to Penal Code § 1170(h).

Victims have a Constitutional right to receive restitution from the defendant in every criminal case. *Cal. Const. art. I, § 28*. Direct victim restitution aims to make crime victims whole by compensating them for the full amount of their economic loss. Upon completion of a defendant's prison sentence or probationary or supervisory period, courts can continue to enforce such orders as money judgments. *Cal. Penal Code § 1214(b)*.

In 2018, the Legislature enacted Penal Code section 1001.36, which provides the statutory guidelines for courts to grant pretrial diversion to defendants in both felonies and misdemeanors for individuals suffering from mental health disorders. Upon successful completion of diversion, the criminal charges against the defendant are dismissed, and the arrest is deemed to have never occurred. Despite the absence of a conviction, the mental health diversion statute expressly allows for a restitution order to be entered. The statute further makes it clear that an inability to pay restitution shall not be grounds for a finding that the defendant failed to comply with the

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terms of diversion. When the Legislature enacted this code section, it made an explicit exception to restitution laws that typically require a criminal conviction before a restitution order may be entered. In so doing, the Legislature expressed its intent for crime victims to still be afforded the right to be made whole for the criminal offenses committed by defendants placed on diversion.

Similarly, in 2020, the Legislature enacted Penal Code section 1001.96, extending the right to diversion to most misdemeanor cases. That code section also expressly allows for a restitution order to be entered, despite the absence of a conviction.

However, the existing statutes are silent as to the viability of unpaid restitution orders once diversion is otherwise successfully completed. This vagueness has created confusion in the courts, resulted in inconsistent interpretations, and created a two-tier system for victims of crime.

Crime survivors often suffer significant trauma as a direct result of the crime inflicted upon them. They then must navigate the complexities of a criminal case, which includes restitution hearings. In seeking a criminal restitution order, crime victims put a significant amount of time and energy into compiling paperwork, seeking estimates, locating receipts, and/or testifying at a hearing. In issuing a criminal restitution order, including when a defendant has been placed on diversion, a court has already reviewed the documents submitted and live testimony presented. Disregarding this already litigated and lawfully issued order and requiring a victim to file a separate lawsuit for any outstanding restitution unnecessarily burdens the already harmed survivor, while also undermining the goal of judicial economy.

Even if a crime victim goes through the extensive process of filing a civil lawsuit, they are still required to renew the judgment every ten years, or the judgment expires. The same is not true for a criminal restitution order enforceable as a civil judgment. Criminal restitution is a permanent order that does not expire and is not dischargeable through bankruptcy. The burden shifted onto a crime victim who is forced to seek their own civil remedy does not end when the victim obtains that separate civil judgment; this burden is recurrent and ongoing. Without the explicit ability to enforce a lawfully issued criminal restitution order as a civil judgment, crime survivors are left to carry the entire financial burden of the defendant's crime and the full responsibility of seeking a civil remedy on their own.

AB 1909 does not impact a defendant's eligibility for diversion or change any existing laws around a defendant's inability to pay. It also does not expand a court's right to order restitution during the period of diversion or as part of a criminal sentence. Courts already have the right to order restitution under the diversion statutes mentioned. AB 1909 merely cures a vagueness in the law by closing the existing gap between obtaining a restitution order during the period of diversion and converting it to a money judgment upon completion of diversion. The clarifying amendment in this bill will ensure that defendants eligible for diversion are afforded that opportunity without shifting the expense of their crimes to their victims once diversion is completed, and a crime victim's Constitutional right to restitution is fully protected regardless of whether a defendant is sentenced or provided the benefit of diversion.

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For these reasons, we respectfully request an **AYE** vote on AB 1909.

If you have any questions or need additional information, please contact Tamar Tokat in our Legislative Office at (916) 442-0668.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Gascón", written in a cursive style.

**GEORGE GASCÓN**  
District Attorney

cc: Assembly Member Sharon Quirk-Silva  
Members, Assembly Public Safety Committee