



# County of Monterey

Board of Supervisors  
Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

## Board Report

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**File #:** 16-398, **Version:** 1

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Approve and Authorize the Monterey County Sheriff's Office as the agency to collect restitution, fines and/or fees from Penal Code Section 1170(h)(1)(2)(3) offenders currently imprisoned in the Monterey County Jail pursuant to Penal Code Section 2085.5.

### RECOMMENDATION:

It is recommended that the Board of Supervisors Approve and Authorize the Monterey County Sheriff's Office as the agency to collect restitution, fines and/or fees from Penal Code section 1170(h)(1)(2)(3) offenders in the Monterey County Jail pursuant to Penal Code Section 2085.5.

### SUMMARY:

The recommended action designates the Sheriff's Office as the local entity authorized to collect a portion of Court-ordered direct restitution and restitution fines from 1170(h)(1)(2)(3) offenders while in custody in County Jail and under the jurisdiction of the Sheriff's Office. This is a critical step toward protecting the rights of victim of 1170(h)(1)(2)(3) crimes, and for improving outcome for collection and distribution of victim restitution.

### DISCUSSION:

On April 4, 2011, the Governor of California approved and filed with the Secretary of State Assembly Bill 109, which modified numerous code sections including the classification of when a felony was a crime that was punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail for more than one year. This bill failed to address the authorized entity or entities entitled to collect restitution, fines and fees for those convicted of a felony, and sentenced to state prison but housed at a county jail to serve their imprisonment term.

On September 29, 2012, the Governor of California approved and filed with the Secretary of State Senate Bill 1210, which modified several code sections regarding the collection of restitution and restitution fines for post release community supervision offenders and those imprisoned in a county jail and/or released on mandatory supervision. Penal Code Section 2085.5 authorized the agency designated by the Board of Supervisors in the county where the prisoner, parolee or person was imprisoned in the county jail to collect any outstanding court ordered restitution or restitution fine monies from the incarcerated person's equivalent of a wages and trust account.

Approval of the recommended action will designate and allow the Monterey County Sheriff's Office to withdraw fifty percent (50%) from each deposit made into an individual inmate jail account for 1170(h)(1)(2)(3) offenders for outstanding restitution, fines and/or fees to be either deposited with the State California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury, or issued directly to the victim named in the sentencing order. The restitution rights of victims of 1170(h)(1)(2)(3) crimes have been lost in the legislative changes and exacerbated by the lack of a process and infrastructure at the local level to ensure the collection of restitution from offenders in custody. This has been an unintended

and unfortunate consequence following the transfer of responsibilities from the State to the counties pursuant to Public Safety Realignment, so that victims who had been awarded restitution by Court order might never be able to collect it.

The recommended action would allow for piloting a process to collect restitution while in custody and later to establish more detailed policies and procedures to increase outcomes for victim restitution. The extent of Monterey County Sheriff's involvement would be personnel at the jail processing a transaction which would take less than 30 minutes. In December 2015, the District Attorney's office identified 141 1170 (h) inmates, of those, 23 had restitution orders (ranging from cents to thousands of dollars). Of those 23, the District Attorney's office would identify which have sufficient funds worth taking, maybe half or less. Then every month the District Attorney's office would go through an inmate list and identify any new inmates with restitution orders. The District Attorney will be doing the work to identify potential collections and will not cost the department extra.

Pursuant to law, this process affects only a portion of sentenced offenders, specifically those convicted of 1170 (h)(1)(2)(3) offenses and among them only those with a restitution amount already determined by Court order.

At the present time, these funds are not being collected by any County agency until the person is released from custody, at which point collection efforts are not as potentially successful due to circumstances beyond the control of the County, and/or loss of jurisdiction over the offender. When under authority, post release collection efforts will continue to be implemented through existing modalities (e.g., Court, Probation, Tax Collector Revenue Division efforts).

Collection of the outstanding restitution, fees and fines, as well as the administrative costs permitted pursuant to Penal Code Section 2085.5 are not taxes and are categorically exempt from application of California Constitution Article XIIC, section 1(e)(5) (Prop 26; fine, penalty or other monetary charge imposed by the judiciary as a result of a violation of law).

#### OTHER AGENCY INVOLVEMENT:

The Monterey County District Attorney's Office, Sheriff's Office, and Probation Department, in collaboration with the Superior Court of Monterey County, collectively support this recommendation, and are working with other affected Departments towards this endeavor.

#### FINANCING:

It is expected there would be no increase in the General Fund Contribution as a result of the recommendation at this time. The expected additional expense due to the implementation of the program would be increased clerical staff time at the Jail which is depending on the number of transactions. It is estimated that a jail clerical staff would spend less than 30 minutes to process a transaction. These costs will be offset by process fees, which will be collected from those imprisoned in the Jail. Penal Code section 2085.5 permits an administrative expense allowance (blocked account) to be taken in the amount of 10% of the collected funds of any amount transferred to the California Victim Compensation and Government Claims Board pursuant to subdivision (b) or (d) (5% if sourced from any prisoner settlement or trial award). It is difficult to estimate an annualized additional costs and revenues at this time due to lack of historical data, number of affected 1170(h)(1)(2)(3) offenders and their account balances. Additional board report(s) will be brought forth when the program is

implemented and the outcome is different than expected.

Prepared by: Pamela J Patterson, Victim Witness Assistance Program Manager, ext. 5326

Approved by: Stephen T. Bernal, Sheriff, ext. 3750

**ATTACHMENTS:**

- Resolution Appointing the Monterey County Sheriff's Office as the collection agency for offenders serving 1170(h)(1)(2)(3) sentences in the Monterey County Jail.
- Penal Code Section 2085.5