

SUMMARY OF CRIMINAL RESTITUTION

(JAMES GRAFTON RANDALL, ESQ./LAWATYOURFINGERTIPS, INC)



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CRIMINAL RESTITUTION

1. THERE IS A CONSTITUTIONAL MANDATE THAT RESTITUTION BE ORDERED IN EVERY CASE IN WHICH A CRIME VICTIM SUFFERS A LOSS

There is “a broad constitutional mandate of California Constitution, article I, section 28, subdivision (b), that restitution must be imposed ‘in every case ... in which a crime victim suffers a loss ’”(*People v. Giordano* (2007) 42 Cal.4th 644, 655.)

“The restitution statute allows for recovery of a broad variety of economic losses that are incurred as a result of the defendant's criminal conduct. (§ 1202.4, subd. (f)(3).)” (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1046.) Section 1202.4, subdivision (f)(3) provides, “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” (Italics added.) The statute then lists several examples of economic losses.

With respect to attorney fees, one example in the statutory list refers to “[a]ctual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.” (§ 1202.4, subd. (f)(3)(H).)

In *Giordano*, our Supreme Court ruled that “the constitutional and legislative intent to provide for all crime victim losses, and the expressly nonexclusive list of categories of loss included in the direct restitution statute” refuted a claim that the courts had to “read into that statute an implied limitation on restitution” to only award reimbursement for those statutory examples. (*People v. Giordano, supra*, 42 Cal.4th at p. 660.)

“Because the statute uses the language ‘including, but not limited to ’these enumerated losses, a trial court may compensate a victim *for any economic loss which is proved to be the direct result of the defendant's criminal behavior*, even if not specifically enumerated in the statute.” (*People v. Keichler, supra*, 129 Cal.App.4th at p. 1046, italics added.)

Under the restitution statute, “[a] victim's restitution right is to be broadly and liberally construed.” (*People v. Mearns* (2002) 97 Cal.App.4th 493, 500.) “[T]he overall history of the amendments to section 1202.4 reflects a legislative intent to enlarge, not restrict, the availability of restitution.” (*People v. McCarthy* (2016) 244 Cal.App.4th 1096, 1107.)

Restitution may include expenses incurred to protect the crime victim from the defendant. (*People v. Mearns, supra*, 97 Cal.App.4th at p. 501.)

2. MATTERS RECOVERABLE UNDER PENAL CODE SECTION 1202.4:

Under Penal Code section 1202.4, numerous items are recoverable in a court-ordered restitution hearing:

“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 commission income as well as 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 commission income as well as 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, 288.5, or 288.7.

(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 violation of Section 273.5, or a violent felony 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.

(L) Expenses for a period of time reasonably necessary to make the victim whole, for the costs to monitor the credit report of, and for the costs to repair the credit of, a victim of identity theft, as defined in Section 530.5.

(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 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.

3. RECOVERY OF ATTORNEYS' FEES

Section 1202.4, subdivision (f)(3)(H) identifies attorney fees as an economic loss recoverable as direct restitution. The fees are expressly limited to those that are “[a]ctual and reasonable” and those incurred in the recovery of damages the victim suffered as a result of the defendant's criminal conduct. This subdivision further includes the phrase “and other costs of collection accrued by a private entity on behalf of the victim.” (§ 1202.4, subd. (f)(3)(H).) Viewed in context, the reference to “attorney's fees *and other* costs of collection” logically suggests the Legislature was viewing attorney fees as a cost of collection and was intending to permit the recovery of attorney fees that were incurred for “collection” purposes. Although the subdivision does not expressly identify the object of that collection, it is only reasonable to infer it is the collection of *restitution* permitted under the statute. *People v. Fulton*, 135 Cal.Rptr.2d 466, 473, 109 Cal.App.4th 876, 883–84 (Cal.App. 4 Dist.,2003).

4. EVIDENCE OF ATTORNEY FEES

First, “there is no legal requirement that an attorney supply billing statements to support a claim for attorney fees.” (*Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 269.) Thus, even had Crowther not attached any billing statements, that would not preclude an attorney fee award.

Second, the standard of evidence at a restitution hearing does not necessarily require a crime victim to produce detailed billing records, receipts, or business invoices. (*People v. Gemelli, supra*, 161 Cal.App.4th at p. 1542; *People v. Prosser* (2007) 157 Cal.App.4th 682, 692.) A victim's loss statement submitted to probation may be sufficient to support a prima facie showing of loss. (*Gemelli*, at p. 1544.)

An under oath statement from a person qualified to state facts about the economic loss the business experienced may also be sufficient for a prima facie showing of loss. Then the burden shifts to the defendant to show the loss is less than the figure the crime victim presented. (*People v. Sy* (2014) 223 Cal.App.4th 44, 63; *Prosser*, at p. 692.)

For determining attorney fees, “[a]ny rational calculation method is permissible.” (*People v. Grundfor, supra*, 39 Cal.App.5th at p. 31.) “The law is clear ... that an award of attorney fees may be based on counsel's declarations, without production of detailed time records.” (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375.) Billing documentation is not required. (*Mardirossian & Associates, Inc. v. Ersoff, supra*, 153 Cal.App.4th at p. 269.)

5. THE COURT’S DISCRETION IN SETTING THE AMOUNT OF RESTITUTION IS BROAD

“[T]he court's discretion in setting the amount of restitution is broad, and it may use any rational method of fixing the amount of restitution as long as it is reasonably calculated to make the victim whole. [Citations.]” (*People v. Baker, supra*, 126 Cal.App.4th at p. 470, 23 Cal.Rptr.3d 871; see also *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391–1392, 122 Cal.Rptr.2d 376.)

“There is no requirement the restitution order be limited to the exact amount of the loss in which *27 the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action. [Citation.]” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121, 43 Cal.Rptr.2d 681, 899 P.2d 67.) *People v. Millard*, 95 Cal.Rptr.3d 751, 767, 175 Cal.App.4th 7, 26–27 (Cal.App. 4 Dist., 2009).

In this case we are asked to decide whether, when a defendant is convicted of leaving the scene of an accident in violation of Vehicle Code section 20002, subdivision (a) (commonly known as “hit-and-run”)¹, We hold it is within the trial court's discretion in a case involving a “no contest” plea to condition probation on payment of restitution to the owner of the property damaged in the accident from which the defendant unlawfully fled. A restitution condition in such a case can be reasonably related to the offense underlying the conviction and can serve the purposes of rehabilitating the offender and deterring future criminality. *People v. Carbajal* (1995) 10 Cal.4th 1114, 1118–1119.

**6. A VICTIM IS NOT ENTITLED TO BE REIMBURSED FOR THE AMOUNT
MEDICAL PROVIDERS CHARGED — HOWEVER, A VICTIM MAY
RECOVER RESTITUTION FOR MEDICAL BILLS PAID BY KAISER OR
MEDI-CAL**

Neither the language of Penal Code section 1202.4 nor apposite case law supports the People's position. Penal Code section 1202.4, subdivision (f)(3), provides that “[t]o the extent possible, the restitution order ... shall be of a dollar amount that is sufficient to *fully reimburse* the victim ... for every determined economic loss incurred as the result of the defendant's criminal conduct, including ... [¶] ... [¶] (B) Medical expenses.” (Italics added.) To “fully reimburse” the victim for medical expenses means to reimburse him or her for all out-of-pocket expenses actually paid by the victim or others on the victim's behalf (e.g., the victim's insurance company).

The concept of “reimbursement” of medical expenses generally does not support inclusion of amounts of medical bills in excess of those amounts accepted by medical providers as payment in full.

In *People v. Bergin* (2008) 167 Cal.App.4th 1166, 84 Cal.Rptr.3d 700, the court rejected the same contention raised by the People in this appeal. *Bergin* rejected the People's assertion that Penal Code section 1202.4 requires a criminal defendant to pay restitution in the amount actually incurred, or billed by, the victim's medical providers. (*Bergin*, at p. 1170, 84 Cal.Rptr.3d 700.)

Citing *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635, 246 Cal.Rptr. 192, *Bergin* concluded there was no reason *Hanif's* holding in a tort case should not apply in a criminal victim restitution context. (*Bergin*, at pp. 1171–1172, 84 Cal.Rptr.3d 700.) Accordingly, *Bergin* agreed with *Hanif* that “an award of damages for past medical expenses in excess of what the medical care and services actually cost constitutes overcompensation” [citation]....” (*Bergin*, at pp. 1171–1172, 84 Cal.Rptr.3d 700.) *Bergin* found additional support for its holding in *In re Anthony M.* (2007) 156 Cal.App.4th 1010, 67 Cal.Rptr.3d 734, which involved analogous victim restitution in a juvenile offender proceeding. (*Bergin*, at p. 1172, 84 Cal.Rptr.3d 700.) *Bergin* *28 noted that *In re Anthony M.* held the trial court erred by awarding victim restitution for medical expenses in excess of the amount actually paid by Medi-Cal. (*Bergin*, at p. 1172, 84 Cal.Rptr.3d 700.) Because “[r]estitution is to be without regard to the victim's reimbursement from other sources [e.g., victim's insurance company],” (*ibid.*) and Penal Code section 1202.4 requires restitution sufficient to “fully reimburse the victim,” *Bergin* concluded the trial court correctly found the victim did not incur “any economic loss beyond the amount” paid by the victim's insurance company to his medical providers. (*Bergin*, at p. 1172, 84 Cal.Rptr.3d 700.) Accordingly, *Bergin* affirmed the trial court's restitution award of only the amount actually paid by the victim's insurer for medical services. (*Ibid.*) We agree with and adopt *Bergin's* reasoning and apply it to this case.

Like *Bergin*, we believe *In re Anthony M.*, *supra*, 156 Cal.App.4th 1010, 67 Cal.Rptr.3d 734 is analogous to this case. In its juvenile offender context, *In re Anthony M.* concluded: “[T]he juvenile court erred when it imposed a restitution order in excess of the amount paid by Medi-Cal [on behalf of the victim].” **769 (*Id.* at p. 1019, 67 Cal.Rptr.3d 734.)

It stated a restitution order “is not ... intended to provide the victim with a windfall. [Citation.]” (*Id.* at p. 1017, 67 Cal.Rptr.3d 734.) Rather, a victim is entitled to reimbursement only for his or her actual loss, which in that case was the amount actually paid by Medi-Cal to the victim's medical providers. (*Id.* at p. 1018, 67 Cal.Rptr.3d 734.) *People v. Millard*, 95 Cal.Rptr.3d 751, 768–69, 175 Cal.App.4th 7, 27–28 (Cal.App. 4 Dist., 2009).

However, simply because a person’s medical bills were paid by Medi-Cal does not preclude a restitution order mandating that a criminal reimburse the crime victim the full amount paid by Medi-Cal for treatment provided for injuries caused by the criminal defendant.

Similarly, it has been held that a victim whose medical treatment was covered by Medicare/Medi-Cal is entitled to restitution for the total costs that had been charged to his Medi-Cal file.” (*In re Eric S.* (2010) 183 Cal.App.4th 1560, 1564, 108 Cal.Rptr.3d 450 (*Eric S.*.) *In re Anthony S.*, 174 Cal.Rptr.3d 522, 525, 227 Cal.App.4th 1352, 1357 (Cal.App. 1 Dist., 2014)

In *Eric S.*, the victim was a member of Kaiser California North, an HMO “providing medical services to its members rather than a medical service provider with a conventional creditor-debtor relationship to its patients.” (*Eric S., supra*, 183 Cal.App.4th at p. 1565, 108 Cal.Rptr.3d 450.) Division Five of this court concluded that “[a]ssuming the victim was not obligated to pay Kaiser for any amount above his membership fee in the HMO, charges were nonetheless incurred on his behalf as a result of appellant's criminal conduct. The fortuity that the victim had purchased membership in an HMO, like the fortuity that a victim has purchased third party insurance [citation], or the fortuity that a victim is covered by ... Medicare/Medi-Cal [citation], should not shield appellant from paying restitution for the medical expenses in this case.” (*Ibid.*) The district attorney had submitted documentation from Kaiser's collection *1358 agency indicating that Kaiser would accept an amount reduced for capitated charges in satisfaction of a lien, apparently entered against any recovery the victim might obtain. (*Id.* at p. 1563, 108 Cal.Rptr.3d 450.) The court concluded that restitution should be set according to the amount that Kaiser was willing to accept for the services it rendered.⁴ (*Id.* at p. 1566, 108 Cal.Rptr.3d 450.) *In re Anthony S.*, 174 Cal.Rptr.3d 522, 526, 227 Cal.App.4th 1352, 1357–58 (Cal.App. 1 Dist., 2014)

In *People v. Hove*, 91 Cal.Rptr.2d 128, 130, 76 Cal.App.4th 1266, 1269 (Cal.App. 4 Dist., 1999), at the restitution hearing, the court received a memorandum from the probation officer which detailed the costs that had been charged to Mr. Prieto's Medi-Cal claims file. The memorandum showed that the total amount of Medi-Cal claims billed through December 11, 1997, was \$286,565.92. The victim's daughter told the probation officer that there was no monetary loss to the family because all of the medical bills were paid by Medicare and Medi-Cal. However, the trial court ordered victim restitution of \$286,565.92.

As the court further provided in *People v. Hove*, 91 Cal.Rptr.2d 128, 132–34, 76 Cal.App.4th 1266, 1272–74 (Cal.App. 4 Dist., 1999):

“Applying the stated principles, we conclude that the fortuity that the victim here was over age 65, and thus covered by Medicare, should not shield defendant from a restitution order which requires him to pay the full amount of the losses caused by his crime. Nor should the payment of medical bills by Medi-Cal allow defendant to escape responsibility for the **133 losses he caused.⁵ As *Birkett* notes, the Legislature could rationally conclude that defendant should bear the burden of the medical costs of his victim, rather than society generally. (*People v. Birkett*, *supra*, 21 Cal.4th 226, 246, 87 Cal.Rptr.2d 205, 980 P.2d 912.) We therefore find the restitution order proper even though the victim had no direct economic losses, and even though the victim could conceivably *1273 profit from recovering restitution if defendant complies with the restitution order and if Medicare and/or Medi-Cal does not pursue reimbursement.

In addition to compensating the victim, the restitution order is proper because of the value of such an order as a means of rehabilitating defendant and deterring defendant and others. (*People v. Crow*, *supra*, 6 Cal.4th 952, 957, 26 Cal.Rptr.2d 1, 864 P.2d 80.)⁶ “Although based in part on the harm caused to the victim [citation], restitution is imposed primarily for the benefit of the state to promote the state's interests in rehabilitation and punishment. [Citation.] Among other things, California's restitution law ensures that amends are made to society for a breach of the law, serves a rehabilitative purpose, and acts as a deterrent to future criminality. [Citations.] Restitution ‘is an effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused. Such a penalty will affect the defendant differently than a traditional fine, paid to the State as an abstract and impersonal entity, and often calculated without regard to the harm the defendant has caused. Similarly, the direct relation between the harm and the punishment gives restitution a more precise deterrent effect than a traditional fine.’ [Citations.]” (*People v. Moser* (1996) 50 Cal.App.4th 130, 135–136, 57 Cal.Rptr.2d 647.)

We thus agree with the trial court: “It is the Court's belief that the [L]egislature intended that [the] defendant in a criminal matter pay for the total costs of the damages that that particular defendant caused.... [¶] And, in addition, that the [L]egislature did recognize that often times victims had insurance and that the **134 Court was not to be concerned by the fact that a *1274 victim had been indemnified by some other service coverage such as insurance.”⁷

Such amounts are recoverable even if the “[t]he hospital stated unequivocally that it has chosen to take the tax write-off instead of pursuing re-payment.” *In re Anthony S.*, 174 Cal.Rptr.3d 522, 527, 227 Cal.App.4th 1352, 1359 (Cal.App. 1 Dist., 2014): “We conclude that even though John Muir chose not to pursue Houston for the charges billed to him on account of medical services received, in the absence of a legal bar preventing John Muir from collecting in the future, or an unequivocal statement from John Muir that it would not exercise its rights, it was not contrary to **529 section 730.6 for the court to base restitution on the billed charges, which were established by substantial evidence.” *In re Anthony S.*, 174 Cal.Rptr.3d 522, 528–29, 227 Cal.App.4th 1352, 1361 (Cal.App. 1 Dist., 2014).

7. LOSS OF SPOUSAL SUPPORT

A surviving spouse may receive as direct restitution the amount of lost economic support incurred due to a criminal act that resulted in the death of his or her spouse. A surviving spouse may receive restitution only in the amount of his or her own economic loss. *People v. Giordano*, 170 P.3d 623, 636, 68 Cal.Rptr.3d 51, 66, 42 Cal.4th 644, 664 (Cal.,2007).

The purpose of a wrongful death judgment is to provide the amounts of future support which the beneficiaries would have received in the future had decedent lived, and where decedent was a husband and father, a significant element of damages is the loss of financial benefits he was contributing to his family by way of support at the time of his death and that support reasonably expected in the future. West's Ann.Cal.C.C.P. § 377.60.

Generally, the calculation of the loss of support a homicide victim's surviving spouse may receive as direct victim compensation may be informed by such factors as the earning history of the deceased spouse, the age of the survivor and decedent, and the degree to which the decedent's income provided support to the survivor's household; these guideposts are not an exhaustive list, and the court's discretion will be guided by the particular factors at play in each individual claim. West's Ann.Cal.Penal Code § 1202.4(f)(3). *People v. Giordano*, 42 Cal.4th 644 (Cal.,2007).

As the California Supreme Court further stated in *People v. Giordano*, 170 P.3d 623, 636, 68 Cal.Rptr.3d 51, 66, 42 Cal.4th 644, 664 (Cal.,2007):

“We next consider how a trial court should measure a surviving victim's economic loss. As discussed, Patricia Armstrong requested restitution “in the amount of a very modest life insurance policy in the amount of \$25,000 to \$50,000, based on the decedent's modest earnings of approximately \$35,000 per year.” The trial court heard testimony by decedent's employer establishing decedent's earnings for the three years preceding his death and by Patricia Armstrong that decedent “was a provider” for their family. Based on this testimony, the court ordered defendant to pay restitution to Patricia Armstrong in the amount of \$167,711.65, which was calculated by multiplying decedent's average annual earnings over the three years prior to his death by five years. Defendant appeals the amount of restitution ordered by the trial court and affirmed by the Court of Appeal, arguing that the trial court improperly calculated Patricia Armstrong's loss. As we will explain, although we agree that the trial court's calculation was imprecise, we are not persuaded that the trial court abused its discretion. *People v. Giordano*, 170 P.3d 623, 635, 68 Cal.Rptr.3d 51, 65, 42 Cal.4th 644, 662–63 (Cal.,2007).

In determining the amount of this loss of spousal support, the Court in *Giordano*, provides:

In concluding that a surviving spouse may receive as direct restitution the economic loss attributable to a criminal act that resulted in the death of his or her spouse, looking to wrongful death case law enabled us to see the surviving spouse's economic loss as a common category of economic loss. This case law is also useful in demonstrating that the surviving spouse's economic loss is best described as a loss of economic *support*.

The purpose of a wrongful death judgment is “to provide the amounts of *future support* which the beneficiaries would have received in the future had decedent lived” (*Canavin, supra*, 148 Cal.App.3d at p. 521, 196 Cal.Rptr. 82, italics added), and “[w]here, as here, decedent was a husband and father, a significant element of damages is the loss of financial benefits he was contributing to his family by way of *support* at the time of his death and that *support* reasonably expected in the future.” (*Id.* at pp. 520–521, 196 Cal.Rptr. 82, italics added.) Additionally, the jury instructions for calculating wrongful death damages, which address both economic and noneconomic damages, describe as “economic loss” the “financial *support*,” that the decedent would have contributed to the surviving heir or family member. (BAJI No. 14.50, italics added; CACI No. 3921.) *People v. Giordano*, 170 P.3d 623, 637, 68 Cal.Rptr.3d 51, 67, 42 Cal.4th 644, 665 (Cal.,2007).

Penal Code section 1202.4, subdivision (f) requires that restitution be “based on the amount of loss claimed by the victim or victims or any other showing to the court,” and here Patricia Armstrong requested restitution only “in the amount of a very modest life insurance policy in the amount of \$25,000 to \$50,000.” The trial court ordered restitution in an amount that more than satisfied Patricia Armstrong's claim, and defendant has not shown that this amount exceeds that which she was eligible to receive. Accordingly, we have not been persuaded that the trial court abused its discretion. *People v. Giordano*, 170 P.3d 623, 638, 68 Cal.Rptr.3d 51, 68, 42 Cal.4th 644, 667 (Cal.,2007).

8. CIVIL COMPROMISE:

The civil compromise statutes provide for the limited circumstances where a person, injured by a misdemeanor, can assert a civil claim; if the injured person in such an instance appears in criminal proceedings and acknowledges he has received satisfaction for his injuries, the court may stay such proceedings and discharge the defendant in accordance with statutory procedures. Cal. Penal Code §§ 1377, 1378. *People v. Dimacali* (2019) 32 Cal.App.5th 822.

Misdemeanor hit-and-run charge is not subject to disposition by way of statutory civil compromise, so that injured person who receives civil satisfaction for his injuries supports discharge of defendant in criminal proceeding, since the collision in a hit-and-run accident is not an element of the offense, forms no part of the conduct proscribed by the law, involves no criminal wrongdoing, but is only an event that gives rise to the statutory duty to stop, provide identification, and render aid. Cal. Veh. Code § 20002; Cal. Penal Code §§ 1377, 1378. *People v. Dimacali* (2019) 32 Cal.App.5th 822.

9. ATTORNEY FEES FOR FELONY CONVICTION:

Code of Civil Procedure § 1021.4, the code section authorizing the recovery of fees under the circumstances against a convicted felon, provides as follows: “In an action for damages against a defendant based upon that defendant's commission of a felony offense which that defendant has been convicted, the court may, upon motion, award reasonable attorney's fees to a prevailing plaintiff against the defendant who has been convicted of the felony.”

Insurer of drunk driver is required to pay damages to injured claimant, but is exonerated from liability for payment of attorney fees allowed solely because of insured's felony conviction pursuant to statute providing that, in action for damages against defendant based upon defendant's commission of felony offense for which defendant has been convicted, court may award attorney fees to prevailing plaintiff against defendant who has been convicted of felony. *Baker v. Mid-Century Ins. Co.* (App. 4 Dist. 1993) 20 Cal.App.4th 921.

Contingent fee contracts are usual in personal injury cases and a proper factor for the trial court to consider in awarding attorney's fees. *Sommers v. Erb* (1992) 2 Cal.App.4th 1644, 1651 [4 Cal.Rptr.2d 52, 58].

Award of attorney fees pursuant to statute authorizing award of fees to prevailing plaintiff against defendant convicted of felony in action for damages based upon commission of felony offense was not precluded when plaintiffs were not “innocent victims,” although conduct of plaintiff could be considered in exercising discretion on whether to award fees; proposition implemented through statute generally refers to persons suffering losses as a result of criminal activity. *Sommers v. Erb* (App. 4 Dist. 1992) Cal.App.4th 1644.

Under statute authorizing attorney fee award in favor of the prevailing plaintiff in an action for damages against a defendant based upon that defendant's commission of a felony offense for which that defendant has been convicted, an action for damages is “based upon” the defendant's commission of a felony if and only if the damages claimed by the plaintiff were caused by the same felonious criminal conduct for which the defendant was convicted. *Corenbaum v. Lampkin* (App. 2 Dist. 2013) 215 Cal.App.4th 1308 [Taxi passengers' damages from collision with drunk driver were not “based upon” driver's commission of the felony offense of leaving the scene of an accident, under the statute authorizing attorney fee award in favor of the prevailing plaintiff in an action for damages based upon the defendant's commission of a felony for which that defendant has been convicted, even if motorist's acts of fleeing the scene and denying responsibility frustrated passengers' efforts to hold him liable and increased their litigation cost. fees properly denied where auto passenger's damages for injuries suffered in accident from collision with drunk driver were not based on driver's commission of felony for which driver was convicted (felony was leaving scene of accident without providing required information or assistance)].

California Code of Civil Procedure § 1021.4 was enacted in response to the Victim's Bill Of Rights, codified in Article I, section 28 of the California Constitution. "Section 28 (b) gives persons who suffer losses, as a result of criminal activity, the right to restitution. Section 1021.4 implements this restitution right by including an award of attorney's fees to such persons who prevail in an action for damages against the felon-defendant." *Wood v. McGovern* (1985) 167 Cal.App.3d 772, 779. The *Wood* court specifically recognized this constitutional restitution right as a factor to be considered by the court in awarding attorney fees under section 1021.4. *Wood*, 167 Cal. App.3d, supra at 779.

The court may rely on an attorney's declaration alone in awarding attorneys' fees. The reasoning behind relying on a declaration as opposed to billing records was explained in *Weber v. Langholz* (1995) 39 Cal.4th 1578: "Although counsel did not state the total hours or substantiate them with time records or billing statements, counsel's declaration and cost memorandum were made under penalty of perjury. Calculations showed the hours were between 90 and 103, and the work done was described. It could not be said that the absence of time records and billing statements deprived the trial court of substantial evidence to support an award."

Detailed time records are not required under California law, there is no required level of detail that counsel must achieve. (See, e.g. *PLCM Group, Inc. v. Drexler*, supra, 22 Cal.4th 1084. *PLCM Group, Inc.* explained: "We do not want "a [trial] court, in setting an attorney's fee, [to] become enmeshed in a meticulous analysis of every detailed facet of the professional representation. It... is not our intention that the inquiry into the adequacy of the fee assume massive proportions, perhaps dwarfing the case in chief."