

**RESTITUTION BASICS
FOR VICTIMS OF CRIMES
BY ADULTS**

If you are the victim of a crime, you have a right to be repaid for losses that resulted from the crime.

This booklet will help you understand:

- How to exercise your right to restitution
- What to expect as the criminal case moves forward
- How to collect the money you are owed

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Note: The term *defendant* refers to the person charged with a crime before they are found guilty. The term *offender* refers to the person found guilty of a crime.

What is restitution?

Restitution is repayment by an offender of money you lost or had to spend because of a crime. No one can undo the crime, but if the person responsible for committing the crime is found and convicted, the judge can order that person to pay you back for any monetary losses or costs from the crime.

What losses can I expect restitution to cover?

In most cases, restitution will cover only financial losses. Nonfinancial losses are usually not covered.

Financial losses

You have the right to restitution for any financial loss caused directly or indirectly by the crime, including:

- Lost, stolen, or damaged property
 - Medical, dental, or counseling expenses
 - Lost wages because of an injury
 - Moving or security expenses
 - Lost wages for time you spent helping the police or prosecution
 - Legal fees related to collecting restitution
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To get restitution, you must be able to:

- Show that your loss was caused by the crime, and
 - Prove the amount of your loss with documents like bills, receipts, or estimates for repair.
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Nonfinancial losses

Many crime victims experience losses that are not financial, such as ongoing pain and suffering. In most cases, the judge cannot order restitution for these kinds of losses. You may, however, claim restitution for the cost of treatment.

If you were the victim of a sex offense when you were under the age of 18, you may be eligible for compensation for pain and suffering. For more information, talk to the district attorney or county probation department.

Even if your losses are not eligible for court-ordered victim restitution, you still have the right to sue the offender in civil court. There are, however, strict deadlines for civil lawsuits, and suing for restitution can be complicated. Talk to a lawyer who specializes in restitution cases right away. Your local bar association can refer you to a qualified lawyer.

How do I request restitution?

Even though you have a right to restitution, it is your responsibility to claim and document your losses or expenses. You need to make sure the probation department, the district attorney, and the court know about all losses and expenses you had because of the crime. Save and submit all the information about your losses—including receipts, bills, repair estimates, and similar records—to the probation department. Always make copies of any records you give to the probation department. The probation department will write a report for the district attorney and the court using the information that you give them. The district attorney will then request that the court order restitution. If you need help, contact your county's Victim Witness Assistance Center (VWAC) and request a *victim advocate*, who will help you collect restitution. To find the office in your county, visit www.vcgcb.ca.gov/victims/localhelp.aspx.

Can the court order restitution if the person who committed the crime isn't found and convicted?

No. But you may be able to get reimbursed for some expenses from the state-run California Victim Compensation Program (CalVCP). Unlike restitution, which is paid by the offender, CalVCP payments come from the state Restitution Fund, which is available even in cases where the

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Note: If you receive money from the Victim Compensation Program and later get repaid for the same expense by someone else, such as the offender or an insurance company, you will need to pay back some or all of the money you got from the Victim Compensation Program.

person who committed the crime is never found or convicted. This program, however, does not pay for everything that restitution does. For example, only victims of crimes involving violence or the threat of violence may be reimbursed through CalVCP, and the program will not pay for personal property losses except for medically necessary items, like eyeglasses or wheelchairs. To learn more, contact your county's VWAC or go to www.vcgcb.ca.gov/victims/.

How long does it take to get restitution?

It depends. Before you can request restitution, the defendant must first be found guilty of the crime. That determination may be reached quickly if the defendant pleads guilty. It will take longer if a trial is needed.

If the offender pleads guilty or is found guilty in a trial, then restitution will be discussed at the time of sentencing. For less serious crimes, sentencing takes place at the end of the hearing where the offender is found guilty. More serious crimes usually have a *sentencing hearing* on a later date. This hearing may be held several weeks after the offender is found guilty, to give the probation department time to prepare a background report for the judge to consider in sentencing.

Can I get restitution if the defendant is found not guilty or the matter is dismissed?

No. If the entire case against the defendant is dropped by the district attorney or dismissed by the judge, you cannot get restitution through

criminal court. However, you may still be able to recover money for your loss by suing that person in civil or small claims court or by applying to CalVCP.

Can I get restitution if only some of the charges are dismissed?

Maybe. Often a defendant will admit to some of the charges in exchange for having others dismissed. If that happens, and the charges for the crime that led to your loss are dismissed, you cannot get restitution unless the defendant agrees to allow the judge to also consider the dropped charges during the sentencing. This agreement is called a *Harvey waiver* and must be made at the same time the defendant pleads guilty.

How do I know if the offender has the money to pay me restitution?

You have the right to find out about the defendant's income and any assets, such as property or bank accounts, that could be sold to pay your restitution. The defendant must file with the court a completed *Defendant's Statement of Assets* (form CR-115). You can request a copy from the court or get the defendant's financial information yourself. To do so:

- 1.** Get a blank copy of *Defendant's Statement of Assets* (form CR-115) from the district attorney or clerk of court, or print out the blank form at www.courts.ca.gov/documents/cr115.pdf.
- 2.** Mail the blank form to the defendant's lawyer, along with a letter asking that the form be completed and sent back to you or, if you prefer, to your victim advocate or the prosecutor at least one week before the sentencing date.
- 3.** If you have not received the completed form CR-115 one week before the sentencing hearing, ask the district attorney, your victim advocate, or the county probation department for help.

If the defendant has significant assets, you can ask the district attorney to seek a court order freezing those assets until sentencing in case they are needed to pay your restitution. If the defendant has a job, you can ask at the sentencing hearing for an *income deduction order*, which takes money directly from the defendant's paycheck to pay restitution.

Even if the defendant has no money or assets, you still have the right to restitution—but it will probably take the defendant much longer to pay.

Do I have to go to the sentencing hearing?

No, but you may want to talk to the district attorney or the probation department about whether you should. If you have a lawyer, he or she may attend for you.

If I go to the sentencing hearing, will I have to speak to the judge?

No. You have the right to speak to the judge if you want to, but you are not required to speak at the sentencing hearing.

If I don't go, will the judge know about my request for restitution?

Yes. The probation department will inform the judge *before* the sentencing about your request for restitution. That means you must give the probation department information about your losses right away. If you want a copy of the information that the probation officer gives the judge about sentencing and restitution, ask the probation department or, if you have one, your victim advocate.

What if there is a disagreement about the amount of restitution?

The amount of victim restitution is usually decided at the sentencing hearing. If the offender disputes the amount you claim or some other question arises about how much restitution should be ordered, the judge may schedule a separate *restitution hearing* before making a decision in your case.

What happens at a restitution hearing?

The judge will hear evidence related to restitution. The judge may ask you to show proof of your loss—such as receipts, bills, or estimates for repairs—and to answer questions about the following issues in court:

- Did you experience a financial loss?
- Was your loss caused by the offender's illegal act?
- Is your loss the kind that restitution can pay for?
- How much money are you owed?

If there is a restitution hearing in your case, talk to the district attorney, the assigned probation officer, or your victim advocate *before* the hearing so you will know what you need to do if and when you go to court.

What if my insurance has already paid for some of my losses?

The court will not reduce the amount of restitution, but you may be asked to reimburse your insurance company for any insurance payments you have received for the same loss.

What paperwork will I need from the court to get paid?

The court clerk makes a summary of what happened during court each day in what is called a *minute order*. Ask for a copy of the minute order after the hearing where you are granted restitution.

If the offender fails to pay you, the minute order may not be enough to help you collect restitution. In that case, you will need a copy of *Order for Restitution and Abstract of Judgment* (form CR-110/JV-790). This form isn't used by all courts, so you may want to ask the district attorney, the probation officer, or your victim advocate if the judge in your case usually uses this form; and if the answer is no, you can ask them to use it in your case. Get the form from the court clerk's office, a legal self-help center, the District Attorney's Office, your victim advocate, or the California Courts website at www.courts.ca.gov/documents/jv790.pdf.

Since you can't know if you will have problems collecting restitution until after the judge has made the order and some time has passed, it is important to get a copy of the judgment form when the offender is sentenced. If you attend the sentencing hearing, you can bring form CR-110/JV-790 with you and ask the judge to complete it, or you can have the district attorney or probation officer ask the judge for you.

Having a copy of the judgment lets you use the courts to help collect your restitution if the offender does not pay you voluntarily. For example, you can use the judgment to:

- Put a lien on the offender's property, or
- Have money taken out of the offender's paycheck or bank accounts.

In many cases, a county or state agency will collect restitution for you and send you the payment, but it's always a good idea to keep all paperwork you get.

What if I need to change the amount of restitution I am owed?

As long as the offender is on probation or parole, you can ask the judge to change the amount of the restitution order. You can contact the district attorney for help getting the case back into court, or you can ask the court clerk's office yourself. The offender will be told about your request and has a right to go to the hearing. You should be prepared to show proof to the judge of what the new amount of restitution should be.

What happens to an offender who refuses to pay restitution?

The court may:

- Send the offender to the county jail for violating a condition of probation;
- Order the offender's employer to take out a percentage of the offender's paychecks to send to you; or
- Order that restitution be paid from the offender's assets, if any.

Before issuing this kind of order, the judge may give the offender a chance to show that payments have actually been made or that there was a legitimate reason for not making payments. The court will not allow an offender to move and transfer probation to another state until victim restitution has been paid in full.

What if the offender files for bankruptcy?

The restitution order will remain in effect until paid in full. It cannot be discharged by bankruptcy.

What if the offender is sentenced to the county jail or put on probation?

The probation department or the county collection agency will collect your restitution from the offender and send it to you. If the offender cannot pay it all at once, the office will collect it and send it to you in installments. If the offender is sentenced to the county jail, speak with the probation department about whether the offender has a job in jail or an inmate account and what options you may have for collection.

What if the offender is sent to a state prison?

The California Department of Corrections and Rehabilitation (CDCR) can collect money from the inmate and send you restitution payments. CDCR is allowed to take up to half of the inmate's prison account to pay toward your restitution. You must first complete and submit CDCR form 1707 (Request for Victim Services) according to the instructions on the form. Your victim advocate can help you get this form, or you can find it on the CDCR website at www.cdcr.ca.gov/victim_services/application.html.

How can the probation or parole officer help?

Because different agencies and divisions can be in charge of collecting restitution, individual probation and parole officers don't always know whether the offenders they supervise are making their payments. If the offender in your case is not making payments toward restitution, let the probation or parole officer know. (If the offender is on informal or court probation and doesn't have a probation officer, contact the District Attorney's Office instead.) Some ways that the parole or probation officer may be able to help are:

COUNSELING THE OFFENDER. The officer may be able to get the offender to pay you simply by speaking with him or her about what can happen if the restitution is not paid.

GETTING THE OFFENDER'S FINANCIAL INFORMATION. If you have not been paid in full by the time the offender is within four months of finishing the probation term, be sure to tell the probation department. Someone there will get the offender to fill out an updated *Defendant's Statement of Assets* (form CR-115) to tell you what the offender's current income and assets are. To find out when the offender's probation ends, look at the sentencing order or ask the probation department. If the offender is to be released from prison soon, ask the district attorney about getting a court order

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Are probation and parole the same?

No. Although both are forms of supervision, *parole* is a state-level program overseen by CDCR that monitors offenders released after serving time in a state prison.

Probation, the monitoring of an offender by the county probation department, may be a sentence in itself or in combination with time in the county jail.

Knowing whether an offender is on probation or on parole will help you contact the right agency to collect your restitution.

for the parole division to notify you if the offender gets a job. Then if the offender starts working after release but doesn't start paying you, you can ask the court for an income deduction order.

How can the criminal court help?

INCOME DEDUCTION. If the offender has a job and the ability to pay, the judge can order an income deduction. This requires the offender's employer to withhold a portion of the offender's wages to make restitution payments directly to you or to the county probation department or collection agency. If the judge already made an income deduction order at sentencing and *stayed* the order or waited to enforce it until the offender actually failed to pay, you will need to notify the probation department or collection agency that the offender has not paid you and that you now want the court to lift the stay and enforce the order.

UNFREEZING OF ASSETS. If the offender has assets, such as property or bank accounts, that the judge froze before the sentencing, the judge can order the offender to use those assets to pay restitution.

DEBTOR'S EXAMINATION. Until your full restitution is paid, you are allowed to make the offender come to court once a year and answer questions about income and assets. This is called a *debtor's examination*, and it will help you find out if the offender has new assets or income that can be used to pay you. You can ask a victim advocate, the court's self-help center, or a private lawyer to help you with this. Or, you can fill out and file an *Order to Attend Court or Provide Documents* (form CR-125/JV-525), which will require the offender to go to court to provide financial information. Attach a blank copy of *Form Interrogatories—Crime Victim Restitution* (form CR-200) for the offender to complete, then have both forms served on the offender. If the offender does not appear in court or provide financial information, you can ask the judge to issue a bench warrant. That means the offender can be arrested and brought to court.

What other options do I have to help me get paid?

Because a court cannot create money where there is none, collecting restitution can be difficult or impossible if the offender has no job or assets. Collection will usually be more successful if the offender has a steady job and a bank account, or owns a house or other valuable property.

If you are trying to get paid through collection agencies outside of the criminal court, make sure you have a judgment document that specifies the amount of money you are owed, such as your *Order for Restitution and Abstract of Judgment* (form CR-110/JV-790), if the court completed one.

LIENS. A lien is a legal claim or hold on someone’s property, usually a house, land, or a business. It keeps the owner from selling or refinancing the property without first paying off the debt owed to you. To find out where the offender has property, use the *Defendant’s Statement of Assets* (form CR-115) or a debtor’s examination. To get a lien on real property belonging to the offender, file a copy of your abstract of judgment with the County Recorder’s Office in each county where the offender owns property. To put a lien on a business owned by the offender, you must file the abstract of judgment with the Secretary of State.

If your lien is granted, you must also go back after your restitution is paid in full and file an *Acknowledgment of Satisfaction of Judgment* (form EJ-100) with the court clerk to end the lien.

LEVIES. A levy is the legal way of taking someone’s property or assets to pay off what they owe you. Placing a levy on an offender’s bank account, for example, could require the bank to give you money from the account. A levy on real estate could force the offender to sell it and pay you out of the money from the sale. One of the most common levy targets is bail; if the offender posted bail personally (not through a bail bonds firm), a levy requires the county to return the bail money to the victim instead of the offender.

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Note: You can get all Judicial Council forms named in this brochure from:

- the office of the clerk of court,
- your court’s self-help center,
- your victim advocate, or
- the California Courts website:
www.courts.ca.gov/forms.htm.

Placing a levy can be complicated, so you may want to hire an attorney to help with the process. Unlike a lien, a levy requires you to list the specific items that you want to levy. To ask for a levy you must fill out a *Writ of Execution* (form EJ-130) and a *Notice of Levy* (form EJ-150) and take the forms, along with a copy of your abstract of judgment, to

the court clerk. The clerk will charge you a fee and issue the writ. (If you cannot afford the fee, ask the clerk if you qualify for a fee waiver.)

Then, take the paperwork you get from the clerk to the sheriff of the county where the levy is to be made. The sheriff will serve the paperwork on the offender or whoever has control of the property and make it known that you are levying the property. A separate writ must be issued for each county in which you want a levy.

COLLECTION AGENCIES. You can hire a private collection agency to collect restitution from the offender for you. Be advised, however, that these agencies usually get paid by keeping a portion of the money they collect for you—often as much as half.

What if the judge didn't use a form to order restitution and I only have the minute order?

You can ask to go back to court to have the judge fill out the *Order for Restitution and Abstract of Judgment* (form CR-110/JV-790). Talk to the district attorney or your victim advocate about arranging this.

If you aren't able to go back to the criminal court, you will need to try to get the judgment recorded on your own. You will need to:

- 1.** Ask the court clerk for a *certified copy* of the minute order from the hearing where the judge ordered the restitution. There may be a small fee for this copy; if you can't afford the fee, ask if you qualify for a fee waiver.
- 2.** Fill out *Abstract of Judgment—Civil and Small Claims* (form EJ-001) and attach it to your certified copy of the minute order.
- 3.** Have the court clerk endorse and file certified copies of your minute order and form EJ-001. This process, called “recording the abstract of judgment,” also requires a filing fee. Again, if you can't afford the fee, you may qualify for a fee waiver.

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Note: Sometimes suing in civil court is the most effective way to collect restitution, but civil lawsuits have strict deadlines. If you are having problems collecting restitution, talk to a lawyer who specializes in this kind of case as soon as possible. Your local bar association can refer you to one.

I still have questions. Where can I get help?

Although many cases involving restitution are resolved smoothly, some cases can be more challenging (especially when it comes to getting paid). This booklet gives a general overview of the restitution process, but it can't address every issue that might come up.

Fortunately, there are a number of resources available statewide to help with your case or answer questions at no cost to you. The agencies and facilities listed here can be found in every California county—follow the links to find the location nearest you:

- Your county Victim Witness Assistance Center:
www.vcgcb.ca.gov/victims/localhelp.aspx
- A legal self-help center:
www.courts.ca.gov/selfhelp-selfhelpcenters.htm
- The District Attorney's Office:
<http://doju.tripod.com/california.html>
- Your county probation department:
www.cpoc.org/php/Links/probdept.php

PRIVATE LAWYERS. If your case is complicated and you're entitled to receive a sizeable amount of restitution, you may also want to talk to a private lawyer. Most lawyers will want payment to work on your case, but many offer free initial consultations and some take cases on *contingency*, which means they don't charge you anything up front but instead keep a percentage of any money they help you recover. A few may even take cases *pro bono* (free) for certain low-income clients. The State Bar website has a list of referral services that can help you find lawyers in your area who specialize in cases like yours.

- Lawyer Referral Services page:
www.calbar.ca.gov/Public/LawyerReferralServicesLRS.aspx

Restitution Checklist

Right away

- Make a list of all of the losses you suffered because of a crime, and include the monetary value of each loss.
- Gather written proof of the cost of every loss on your list. You can use bills, receipts, or proof of the cost to replace an item with a similar item in similar condition.
- Get written estimates, preferably two or three, for the cost to repair any item with damage.
- Give copies of your list and documents of proof to the district attorney handling the case and the county probation department. Don't forget to keep at least one copy for yourself.

Before sentencing

- Contact the probation department of the county where the case was filed to find out if a presentencing report has been prepared for the offender, and if so, ask for a copy.
- Get the defendant's financial information from the court or by mailing a blank *Defendant's Statement of Assets* (form CR-115) to his or her lawyer, along with a letter asking that the form be completed and returned as soon as possible. (Get the blank form from the district attorney or the court clerk's office, or print out a copy of the online form at www.courts.ca.gov/documents/cr115.pdf.)
- Find out the defendant's sentencing date from the court or the District Attorney's Office. If you decide not to go to the hearing, ask the district attorney how you can find out the court's decision on restitution.
- If the defendant has a job or significant assets, talk to the district attorney about asking for a wage deduction order or an asset freeze before the sentencing.

- Ask the district attorney to prepare an *Order for Restitution and Abstract of Judgment* (form CR-110/JV-790) and to get the judge to sign it, or fill out the form yourself (the court's self-help center can help) and ask the judge to sign it at the sentencing hearing.

After sentencing

- Get a copy of the judge's signed *Order for Restitution and Abstract of Judgment* (form CR-110/JV-790), fill out the back page, and take the form to the court clerk and ask for an abstract of judgment.
- If the offender owns property such as a house or land, file your abstract of judgment documents with the County Recorder's Office where the property is located. This will keep the offender from selling or refinancing the property without first paying your restitution in full.

Getting paid

- If the offender is sent to state prison, submit form CDCR 1707 (Request for Victim Services), available online at www.cdcr.ca.gov/victim_services/application.html.
- If the offender is sentenced to probation, county jail, or state prison, contact the probation or parole department and ask for help collecting your restitution.
- Make sure any agency that may send you payments—such as county revenue and recovery services, the county probation department, or CDCR—always has your current mailing address.
- If you have not been paid in full by the time the offender is within four months of finishing probation (look at the sentencing order to find out when probation ends), ask the district attorney or probation department to go back to court to make the offender stay on probation longer.
- Keep a record of all restitution payments you receive.

The Administrative Office of the Courts produced this booklet in summer 2012, and its contents reflect laws in effect at that time. *Laws can change at any time—this document is not a source of legal advice nor a substitute for consultation with a lawyer.* The production team wishes to thank all those legal experts and professionals—particularly the Superior Court of Yolo County’s Office of the Family Law Facilitator—who contributed their time, expertise, and experience toward the development of the *Restitution Basics* booklet series.

This booklet, as well as other AOC publications, can be found on the California Courts website at www.courts.ca.gov.

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