

*Restitution is the money a judge orders the defendant to pay to the victim to compensate the victim for losses related to the crime. Restitution is part of the defendant's sentence or disposition and can be ordered in both adult and juvenile cases after the defendant is found guilty or pleads guilty. The amount of restitution ordered by the judge depends on the victim's crime-related expenses and the defendant's ability to pay.*

### **Who can request restitution?**

Victims with out-of-pocket losses resulting from the crime may request restitution. Organizations such as churches, schools, businesses, or government agencies may also be eligible if they sustained a loss due to the crime.

### **What will restitution cover?**

Restitution may be requested for a victim's out-of-pocket losses that are a direct result of a crime. Eligible expenses may include, but are not limited to, medical and dental bills, counseling costs, lost wages, property losses, and repairing damaged property.

If the entire amount of the out-of-pocket loss is unknown at the time of sentencing or juvenile disposition, the amount of restitution may be determined at a later date, although restitution should still be requested. Requests may also be made for anticipated expenses, such as ongoing medical or counseling expenses.

### **What expenses are not covered?**

Costs that are not related to the crimes committed by the defendant will not be included in a restitution order. A criminal court cannot order restitution payments for physical pain, suffering, or emotional trauma. Victims seeking financial compensation for these types of losses may wish to hire an attorney to pursue a personal injury claim in civil court against the person. The defendant's financial resources and ability to pay should be taken into account when considering this option.

### **How to Request Restitution**

Requests for restitution should be made in writing using an *Affidavit of Restitution* court form or other form used by the county prior to the sentencing or juvenile dispositional hearing. Practices vary by county, but these forms are typically distributed

by the prosecutor's office, probation department, or court administrator, with instructions on how to submit.

Requests for restitution should be supported by copies of documents detailing the victim's expenses, including medical/dental bills, insurance co-payment receipts, estimates for replacing stolen items or repairing damaged property, counseling bills, transportation expenses, proof of lost wages, and other expenses directly related to the crime.

Victims should submit their restitution information as early in the prosecution process as possible. The majority of criminal cases are settled by plea agreement, and it is important for the prosecutor to have restitution information during plea negotiations with the defense. If the victim later identifies or incurs additional expenses, information about those expenses should also be forwarded to the prosecutor.

### **How Restitution is Determined**

At the sentencing or juvenile dispositional hearing, the court will typically order restitution as part of the sentence or disposition. In some cases where the amount of restitution has not yet been established by the time of the hearing, the court may reserve the issue and determine the exact amount at a later date. In many jurisdictions, the probation or community corrections department assists the court in determining the amount of restitution.

The court can deny or reduce restitution, but must record the reasons for this decision. The court considers two factors in determining the amount of restitution: (1) the amount of economic loss sustained by the victim as a result of the offense, and (2) the income, resources, and obligations of the defendant.

In the event that the defendant wishes to contest the amount of restitution or the specific items claimed for restitution, a hearing will be set. The

prosecutor has the burden of demonstrating the amount of loss sustained by the victim. The court can amend or issue an order of restitution after the sentencing or disposition if (1) the defendant is still under the court's jurisdiction, (2) the victim has submitted sufficient evidence of the right to restitution, and (3) the true extent of the victim's loss was not known at the time of the sentencing, dispositional, or restitution hearing. In practice, however, it can be difficult to change an order after sentencing, so victims are encouraged to identify their losses and submit their documentation prior to sentencing.

### **After Restitution Is Ordered**

Typically, a defendant will be ordered to pay restitution according to a payment schedule. The defendant's probation officer is responsible for creating the payment schedule and monitoring the payments made to victims. If the defendant is not put on supervised probation, the court administrator or another official may set up the payment schedule. If no payment plan is ordered, then restitution is due on the date of sentencing. In some counties, the restitution order will be sent to collections.

Any restitution ordered by the court will be paid to the court administrator. The court administrator may hold the payment up to 30 days, and then will mail a restitution check to the victim. If victims do not receive scheduled payments, they should contact the defendant's probation officer or the court administrator.

If the person is in prison, the court administrator will send a copy of the restitution order to the Department of Corrections. The DOC has policies to promote the collection of restitution from inmates. All proceeds collected are sent to the county for distribution to the victim. To check that the restitution order has been sent to the DOC, victims can contact the court administrator or the DOC Victim Assistance Program (800-657-3830).

## COMMON QUESTIONS ABOUT RESTITUTION

**How does insurance affect the victim's request for restitution?** To be eligible for restitution, victims do not have to submit a claim to their insurance company for their losses. However, because there is no guarantee that the defendant will pay the restitution that has been ordered, victims are encouraged to submit claims to their insurance. The court can order the defendant to pay for the victim's co-payments and deductibles.

**Are victims who file a civil lawsuit prevented from getting restitution?** Filing or planning to file a civil lawsuit cannot be used by the court as a basis to deny restitution.

**Does interest accrue on the restitution debt?**

Interest does not accrue on the restitution ordered in the criminal case. If the restitution order is entered as a civil judgment, then interest on the unpaid balance of the civil judgment is computed by the court administrator and added to the balance until it is paid.

**What does it mean to "docket a restitution order as a civil judgment"?** The court administrator can enter a restitution order from the criminal case as a civil judgment. This civil judgment is a court order stating that the defendant owes the victim money. Although there is no filing fee for this action, the victim does have to complete additional forms and may need to take additional steps through the civil court to collect the judgment. For more information, see the brochure *Collecting Court-Ordered Restitution* available on the Office of Justice Programs Website at [ojp.dps.mn.gov](http://ojp.dps.mn.gov).

**What happens if the person does not pay restitution?** The fact that restitution has been ordered does not mean the victim will get paid. Payment of court-ordered restitution by the defendant will depend on a number of factors, including the defendant's resources, the collection strategies used in that particular county, and the efforts by the person's probation officer. For more information, see the brochure *Collecting Court-Ordered Restitution* available on the Office of Justice Programs Website at [ojp.dps.mn.gov](http://ojp.dps.mn.gov).

## COMMON QUESTIONS ABOUT RESTITUTION

**What is the difference between restitution and reimbursement?** The Minnesota Crime Victims Reimbursement Program provides financial assistance to victims of violent crime. The Reimbursement Program can compensate victims for expenses related to the crime, including medical bills, lost wages, funeral expenses, and loss of support. However, it does not compensate victims for property losses. The Reimbursement Program can compensate victims regardless of whether the case is charged or successfully prosecuted. In comparison, restitution can only be ordered if a defendant is convicted. Victims of violent crime should apply for reimbursement even if they are also requesting restitution.

Victims and their families do not have to wait for the completion of any medical, dental, or mental health treatment to apply for reimbursement. They are encouraged to apply as soon as possible after the incident to hasten reimbursement. Claim forms are available from the Minnesota Crime Victim Reimbursement Board at 651-201-7300 or [ojp.dps.mn.gov](http://ojp.dps.mn.gov).

**Are juveniles required to pay restitution?** All crime victim rights, including the right to restitution, apply in juvenile court. In addition, under Minnesota law, a victim can pursue a civil case against the parents of a juvenile for personal injury or property damage up to \$1,000.

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MINNESOTA DEPARTMENT OF PUBLIC SAFETY