

Restitution Orders FAQs

The following information was obtained 3/28/11 from the Victims Compensation and Government Claims Board (VCGCB) with minor amendments for MHRF claimants. If you wish to see all the FAQ's from VCGCB, you can visit their websites at:

<http://www.vcgcb.ca.gov/default.aspx>

<http://www.vcgcb.ca.gov/restitution/victim.aspx>

How do I request restitution if I am the victim of a crime?

As a victim of crime, you have a constitutional and statutory right to request restitution for your economic losses. At the time of sentencing, the deputy district attorney must ask the court to order the offender to pay restitution. Before the sentencing, contact the district attorney's office and inform the deputy district attorney assigned to your case of your crime-related losses. You may also be required to contact the probation department in your county to advise the probation officer handling the pre-sentence report of your losses. The following agencies can assist you in providing information regarding your losses to the court:

- Victim Witness Assistance Centers
- The District Attorney's Office in the county where the crime happened
- The Probation Department in the county where the crime happened

It is recommended that you keep copies of all the bills, receipts, and estimates of expenses related to the crime. You can then provide these copies to the district attorney's office to help them calculate the amount the offender owes you.

Do I have a right to restitution from the defendant?

Yes. If you incurred losses, including property loss, as a direct result of a crime, you have the right to ask the court to order an offender to pay restitution to you.

If the offender is a juvenile, the offender's parents or legal guardians may be held responsible some or part of the ordered restitution. (Welfare & Institution Code section 730.6).

How does the payment get to me?

Methods of collecting restitution payments vary from county to county. You may want to contact your local District Attorney's Office or Victim Witness Assistance Center to find out what you need to do to receive payment. If you are owed restitution and your address changes, you must let the county know, so payments can be forwarded to you as they are made.

- If the offender is sent to prison, or if the offender is a juvenile sent to a state facility, you must make sure you are registered with the California Department of Corrections and Rehabilitation, Office of Victim and Survivor Services or the CDCR Division of Juvenile Justice (formerly California Youth Authority), Office of Victim and Survivor Services. Be sure to ask that a form

1707 is submitted on your behalf. Forms are available through Victim Witness Centers throughout the state.

- In most felony cases and juvenile cases, prior to sentencing or a disposition hearing, the probation officer prepares and submits a report to the court. The report will include a recommendation regarding the amount of restitution the court should order. To assist the probation officer with the recommendation, you may need to contact the probation officer and advise him/her of your losses. Your local District Attorney's Office or Victim Witness Assistance Center can help you contact the probation department.
- Even if you are not able to get information to the court about your restitution before the sentencing, you can still talk to the district attorney about requesting restitution at a later date, but an additional court hearing may be required.

If you have additional losses that occur after the offender is sentenced, restitution can be amended to include them. However, in both of these cases, you will have to contact the District Attorney's Office to provide the updated information about your losses. (Penal Code section 1202.4 (f) and Welfare & Institution Code section 730.6(h))

The offender has the right to ask for a hearing to dispute the amount of restitution ordered. You may be asked to submit documentation for your crime-related losses.

How can I collect on a restitution order?

Penal Code section 1214(b) provides that in any case where a defendant is ordered to pay restitution, the order is deemed a money judgment if the defendant was informed of his/her right to judicial determination of the amount was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution order.

The order is fully enforceable by a victim as if it were a civil judgment and enforceable in the same manner as is provided for the enforcement of any other money judgment.

Penal Code section 1214(b) further provides that a victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant's financial records, information regarding the defendant's assets, use of wage garnishment, and lien procedures.

How can I obtain information regarding a defendant's assets?

In any case in which an order may be entered, the defendant, pursuant to Penal Code 1202.4 (f)(5), is required to file a "Defendant's Statement of Assets" (CR-115) prior to sentencing, a disclosure identifying all assets, income, and liabilities in which the defendant held an interest as of the date of the defendant's arrest. This disclosure is available to the victim pursuant to Penal Code section § 1214.

Additionally, victims may serve Form Interrogatories – Crime Victim Restitution (CR-200) to ascertain further financial interests of the defendant. These interrogatories are designed for use by crime victims to assist them in recovering unpaid restitution as provided in Code of Civil Procedure section 2033.5(d) and (e).

How do I obtain copies of the restitution order and the defendant's financial disclosure statement?

Penal Code section 1214(b) provides that upon a victim's request, the court shall provide the victim in whose favor the order of restitution was entered with a certified copy of the order (CR 110) and a copy of the defendant's financial disclosure statement. You can contact the clerk of the court directly, or contact the Victim Witness Assistance Center in the county where the offender was sentenced. You may be charged a fee for copies of documents by that court.

At the time of sentencing, a victim's losses are not yet known. How should the issue of assessing a restitution order be handled?

According to Penal Code section 1202.4(f), in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in the amount established by the court, based on the amount of loss claimed by the victim(s) or any other showing to the court. In those cases when the amount of loss cannot be ascertained, the court shall order restitution with a provision that the amount is "to be determined" (TBD). In the future, once crime-related expenses are incurred, the court can then order that amount of restitution to be paid to the victim after a hearing or with concurrence of the offender.