

RESTITUTION



OFFICE OF JUSTICE PROGRAMS

MINNESOTA DEPARTMENT OF PUBLIC SAFETY

Restitution is the money a judge orders the offender to pay to the victim to compensate the victim for losses related to the crime. Restitution is part of the offender's sentence or disposition and can be ordered in both adult and juvenile cases after the offender is found guilty or pleads guilty. The amount of restitution ordered by the judge depends on the victim's crime-related expenses and the offender'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 offender 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 offender. The offender'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* form prior to the sentencing or juvenile dispositional hearing. These forms are available from the prosecutor's office, corrections or probation department, or court

administrator. To determine where to submit the forms, contact the victim advocate or prosecutor involved with the case.

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 offender. 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 offender.

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

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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 offender 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, an offender will be ordered to pay restitution according to a payment schedule. The offender's probation officer is responsible for creating the payment schedule and monitoring the payments made to victims. If the offender 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 offender's probation officer or the court administrator.

If the offender is in prison, victims should contact the court administrator or the Victim Assistance Program at the Department of Corrections (800-657-3830) to be sure that the restitution order has been sent to the correctional facility. State correctional facilities send restitution payments to victims on various schedules. Some distribute payments monthly or quarterly, while others may pay restitution on a yearly basis.

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 offender will pay the restitution that has been ordered, victims are encouraged to submit claims to their insurance. The court can order the offender 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 offender 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.

What happens if the offender 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 offender will depend on a number of factors, including the offender's resources, the collection strategies used in that particular county, and the efforts by the offender'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.

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What is the difference between restitution and reparations? Crime Victim Reparations is a state program that provides financial assistance to victims of violent crime. Reparations 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. Reparations can compensate victims regardless of whether the case is charged or successfully prosecuted. In comparison, restitution can only be ordered if an offender is convicted. Victims of violent crime should apply for reparations 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 reparations. They are encouraged to apply as soon as possible after the incident to hasten reimbursement. Claim forms are available from the Minnesota Crime Victim Reparations Board at 651-201-7300 or ojp.dps.mn.gov.

Are juvenile offenders 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 offender for personal injury or property damage up to \$1,000.

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