

Restitution

- [Introduction](#)
- [The difference between restitution and compensation](#)
- [The difference between restitution and civil damages](#)
- [Increasing the likelihood that restitution will be ordered](#)
- [Courts may order full or partial restitution](#)
- [Collecting restitution](#)

Introduction

The term "restitution" in the criminal justice system means payment by an offender to the victim for the harm caused by the offender's wrongful acts. Courts have the authority to order convicted offenders to pay restitution to victims as part of their sentences. In approximately one-third of states, courts are required to order restitution to victims in cases involving certain types of crimes, typically violent felony offenses, but sometimes other serious offenses as well. Restitution can cover any out-of-pocket losses directly relating to the crime, including:

- medical expenses
- therapy costs
- prescription charges
- counseling costs
- lost wages
- expenses related to participating in the criminal justice process (such as travel costs, child care expenses, etc.)
- lost or damaged property
- insurance deductibles
- crime-scene clean up, or any other expense that resulted directly from the crime

Restitution will not cover such things as pain and suffering or emotional distress, only damages that are easy to prove-things for which a victim might have a bill or a receipt.

The difference between restitution and compensation

While restitution is court-ordered payment from a convicted offender, crime victim compensation is a state government program that pays many of the out-of-pocket expenses of victims of violent crime even when there is no arrest or prosecution. Ordinarily, to be eligible for compensation the victim is required to report the offense within a certain amount of time, cooperate in the investigation and prosecution, and file an application within a set time. The expenses covered by compensation vary and are usually set by state law. All compensation programs cover medical expenses, most cover counseling, and very few cover any property loss.

In comparison, restitution can only be ordered in cases where someone has been convicted. However, restitution can be ordered in almost any case (although courts may be required to order it only for certain offenses), and can be ordered for a wider variety of losses, including property loss.

A victim cannot collect both compensation and restitution for the same losses. Where compensation has already paid for some of the victim's losses, a court may order the offender to reimburse the state compensation program and order the offender to pay the victim for losses that weren't covered by compensation.

The difference between restitution and civil damages

Restitution, as noted above, is ordered by a criminal court after the offender has been found guilty. Civil damages are ordered when someone has won a lawsuit in civil court. Victims of crime can obtain both restitution and civil damages. A victim can sue an offender even when the offender has been ordered to pay restitution. Civil damages can include losses not covered by restitution, such as payment for pain and suffering, payment for intentional infliction of emotional distress, and even punitive damages-damages imposed just to punish the defendant. However, as in cases where the victim receives crime victim compensation and court-ordered restitution, victims cannot collect twice for the same loss. Usually a civil judgment is decreased by the amount of restitution that the victim has already received for a loss.

Increasing the likelihood that restitution will be ordered

Victims can do two things to increase the likelihood that restitution will be ordered in their case: gather information about their financial loss, and request that restitution be ordered.

To increase the chances that restitution will be ordered, victims should make sure their [victim impact statement](#) includes a summary of the out-of-pocket expenses resulting from the crime. The prosecutor's office may have financial impact forms that can help victims think about the possible losses that could be covered by restitution. Victims should also tell prosecutors early in the process that restitution is important to them, so that prosecutors can be prepared to request restitution as part of any plea agreement, sentence, or condition of probation. If victims have the opportunity to address the court at the time a plea agreement is presented or at sentencing, they should specifically describe the financial impact of the crime and, if permitted in that state, request restitution. (In some states, a victim's in-court statement must be limited to describing the impact of the offense and cannot include any opinion about the sentence that should be given, including restitution. In those states, the prosecutor can still seek restitution.)

Courts may order full or partial restitution

When courts order restitution, they look not only at the victim's losses but also at the offender's ability to pay. In some states, the court may reduce the total amount of restitution ordered if the offender is unlikely to be able to pay that amount. In other states, courts will order the offender to pay for the full amount of the loss, but then set a payment schedule based on the offender's finances, which may only be a minimal amount per month.

Collecting restitution

Collection of restitution is often limited by the offender's ability to pay. As a result, many victims wait years before they receive any restitution, and they may never receive the full amount of restitution ordered.

Collection also depends on enforcement of the court's order of restitution, either by the criminal justice system or the victim. There are many laws and procedures used to make sure the offender pays as ordered.

For example, where payment of restitution is made a condition of probation or parole, the probation or parole officer must monitor whether payments are being made on time. The victim may help provide this information to the probation or parole officer. If the offender is about to be released from probation or parole, but has not paid restitution as ordered, this information must be conveyed to the court or parole board. Victims who have not received restitution as ordered should ask the probation or parole officer how this information will be provided to the court or parole board. In some states, probation or parole can be extended when the offender has willfully failed to pay restitution.

In those states with prison work programs, restitution payments are typically collected out of the wages of those programs. Some states collect restitution from state income tax refunds, prisoner accounts, lottery winnings, or damage awards from lawsuits against the prison.

Where the offender has not paid restitution as ordered-has "defaulted" in payment-restitution often can be collected by the same methods used to enforce other court judgments, such as attachments of assets or garnishment of wages. In some states, the victim is authorized to take these actions; in other states, enforcement is up to the prosecutor, the court, or another official.

Many states provide that restitution orders become civil judgments. This expands the ability of victims to collect restitution and also means the orders can stay in effect for many years, typically ten to twenty years. In many jurisdictions, civil judgments can be renewed, so they can stay in effect even longer. During that time, the offender's financial circumstances may change: he or she may have inherited property, won a legal judgment, or become employed. Depending on the state, the civil judgment may be enforceable immediately, or enforceable when the offender defaults on payment, or enforceable only after the criminal justice process is completed and the offender has been released from probation, prison, or parole. A victim may need to hire an attorney to help enforce the civil judgment.

To find out more about your state's restitution law, contact your state Attorney General, county/city prosecutor, county probation/parole office or your local law library: Check in the Blue Pages of your local phone book under the appropriate section heading of either "Local Governments," "County Governments," or "State Government."

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