RESTITUTION BASICS FOR VICTIMS OF OFFENSES BY JUVENILES

If you are the victim of an offense committed by a youth under the age of 18, you have a right to be repaid for losses that resulted from the offense.

This booklet will help you understand:

- How to exercise your right to restitution
- What to expect as the juvenile case moves forward
- Special rules for restitution in juvenile cases
- How to collect the money you are owed

What is restitution?

Restitution is repayment by the offender of money you lost or had to spend as the result of an offense committed by a youth under the age of 18. No one can undo the harm, but if the person who committed the offense is found and held responsible, the judge can order that person to pay you back for any monetary losses or costs from the offense.

What losses can I expect to be covered by restitution?

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 offense, including:

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

To get restitution, you must be able to:

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

Nonfinancial losses

Many 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 offense. 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 to collect restitution. To find the office in your county, visit *www.vcgcb.ca.gov/victims/localhelp.aspx*.

Can the court order restitution if the youth who committed the offense isn't found and held responsible?

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

youth is never found legally responsible for the offense. This program, however, does not pay for everything that restitution does. For example, only victims of offenses 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/*.

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.

How long does it take to get restitution?

It depends. Before you can request restitution, the youth must first be found legally responsible for the offense. That determination may be reached quickly if the youth admits responsibility in court. It will take longer if a trial is needed.

If the offender admits to the charges or is found legally responsible, then restitution will be discussed at the *disposition hearing*, which is the juvenile court equivalent of a sentencing hearing. This hearing usually happens a few weeks after the hearing where the offender was found responsible, to give the probation department time to prepare a report for the judge to consider in determining the right disposition.

Can I get restitution if the youth is not found responsible for the offense or the matter is dismissed?

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

Yes. In a juvenile case, when a youth admits to some of the charges in exchange for having others dismissed, the judge is always allowed to order restitution, even if the charges related specifically to your loss are dismissed.

Do I have to go to the disposition 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, your lawyer may attend for you.

If I go to the disposition 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 disposition 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 disposition hearing 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 disposition 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 disposition hearing. If the offender disputes the amount you claim you are owed 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 completed 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 juvenile hall 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's record to be sealed or destroyed until victim restitution has been paid in full.

What if the offender is sentenced to juvenile hall 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.

What if the offender is sent to a state juvenile facility?

The Division of Juvenile Justice (DJJ) of 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 *Request for Offender Information (Juvenile)*, following 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/docs/requestforoffender.pdf*.

How can the probation officer help?

Because different agencies and divisions can be in charge of collecting restitution, individual probation 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 officer know and he or she may be able to help in the following ways:

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. To find out when the offender's probation ends, look at the dispositional order or ask the probation department. If the offender is to be released from a juvenile facility soon, ask the district attorney about getting a court order for the probation department 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*.

To make certain that DJJ has your restitution order on file and knows where to send any money it collects for you, mail a copy of the order and your contact information to:

California Department of Corrections and Rehabilitation
Office of Victim & Survivor Rights & Services
Attn: Juvenile Services Unit
P.O. Box 942883
Sacramento, CA 94283-0001

How can the juvenile court help?

UNFREEZING ASSETS. If the offender or the offender's parents have assets, such as property or bank accounts, that the judge froze before the sentencing, the judge can order that the offender 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 *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.

If the judge has ordered that the parents be held responsible for their child's debt, you can use the same process to find out about the parents' ability to pay.

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 or the offender's parents have a steady job and a bank account, or own a house or other valuable property.

If you are trying to get paid through collection agencies outside of the juvenile 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 or the offender's parents have property, use the *Defendant's*

Statement of Assets (form CR-115) or a debtor's examination. To get a lien on real estate 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, file the abstract of judgment with the Secretary of State.

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*.

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, or a levy on a real estate property could force the offender to sell it and pay you out of the money from the sale.

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 *Writ of Execution* (form EJ-130) and *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 or the offender's parents 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 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.

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 to the county probation department. Don't forget to keep at least one copy for yourself.

Before disposition

- ❒ Contact the probation department of the county where the case was filed to find out if a report has been prepared for the offender, and if so, ask for a copy.
- ❒ Find out the date of the disposition hearing 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 offender or the offender's parent has a job or significant assets, talk to the district attorney about asking for a wage deduction order or an asset freeze before the disposition.
- ❒ 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 disposition hearing.

After disposition

- ❒ 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 or the offender's parents own 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 them from selling or refinancing the property without first paying your restitution in full.

Getting paid

- ❒ If the offender is sent to a state juvenile facility, use the CDCR form *Request for Offender Information (Juvenile)*, available online at *www.cdcr.ca.gov/Victim_Services/docs/requestforoffender.pdf*.
- ❒ If the offender is placed on probation or sent to a local juvenile hall, contact the probation department to 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 disposition 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.

NOTES

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*.

For additional copies, please contact
Administrative Office of the Courts
Attn: Center for Families, Children & the Courts
455 Golden Gate Avenue, San Francisco, CA 94102-3688
415-865-7739 | email: cfcc@jud.ca.gov

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