

For additional information, please do not  
hesitate to contact OVSRS by mail or  
toll-free telephone number :

877-256-6877

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[www.cdcr.ca.gov](http://www.cdcr.ca.gov)



## **Department of Corrections and Rehabilitation**

Office of Victim and Survivor Rights and Services



# **RESTITUTION**

## *A Victim's Guide*



*While the CDCR may not be able to collect  
for everyone, the Office of Victim and  
Survivor Rights and Services will do it's best  
on behalf of victims of crime.*



*"....all persons who suffer losses as a result of criminal activity  
shall have the right to restitution..."*

**California Constitution**

## **FORWARD/INTRODUCTION**

This brochure provides a brief overview of the restitution collection process as it relates to the California Department of Corrections and Rehabilitation (CDCR) for adult offenders.

Victims should be aware that although the CDCR may be able to assist with the collection of restitution for those offenders sentenced to state prison, other options are available should the victim decide to use them.

If you have been a victim of a **violent crime**, the California Victim Compensation and Government Claims Board (VCGCB) and its network of victim advocates and providers throughout the state can help you recover financially. This program may pay bills for expenses that are the result of the crime and are not covered by insurance or other sources. VCGCB does not pay for lost, damaged, or stolen property or for pain and suffering. To obtain assistance from this agency, the victim must first file a VCGCB application within one year of the crime. Victim/Witness Assistance Centers in every county have trained staff to assist victims in applying for compensation under VCGCB. For additional information, victims can call the VCGCB toll-free number at 800-777-9229.

## **RESOURCES FOR VICTIMS**

California Department of Corrections and Rehabilitation (CDCR)  
Office of Victim and Survivor Rights and Services  
877-256-6877  
*Provides services for victims of offenders sentenced to a state prison or juvenile institution*

California Attorney General's Office  
Office of Victim Services  
877-433-9069  
*Provides victims with appeal information on adult offenders sentenced to life in prison*

Mc George School of Law  
Victims of Crime Resource Center  
800-Victims (1-800-842-8467)  
*Provides a wide range of information and services to victims of crime*

Victim Compensation and Government Claims Board  
(VCGCB)  
Victim Compensation Program  
800-777-9229  
*Provides assistance for victims of **violent crimes***

Office of the District Attorney  
Local Victim/Witness Center  
*See the **white Government Pages** of your local telephone directory for the office nearest you*

## **CALIFORNIA RESTITUTION LAWS**

- PC 1202.4** Restitution Sentencing Law
- PC 1202.45** Parole Revocation Law
- PC 1202.46** Reserving Jurisdiction Over Restitution
- PC 2085.5** Authorization to Collect On Fines and Direct Orders by the Department of Corrections

**PC 11177.22** Transferring Parole Out of State



*It is only through cooperation and collaboration by all agencies involved in the criminal justice system that a victim can feel that justice was served.*

Keep in mind that some victims may qualify for assistance through VCGCB and still be eligible for the CDCR to assist them with the collection of a direct order of restitution resulting from monetary loss. The CDCR collects restitution regardless of the crime.



*Offenders should be held accountable for the financial consequences of their crimes.*

## WHAT IS RESTITUTION?

### **Legislative intent:**

It is the unequivocal intention of the people of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the person convicted of the crime for losses they suffered. Restitution shall be ordered from the convicted person in every case in which a crime victim suffers a loss regardless of the sentence or disposition imposed, unless compelling and extraordinary reasons exist to the contrary.

### **Penal Code section 1202.4(a)(1) states in part:**

“..... Every victim shall be compensated for economic loss incurred resulting from a crime.”

### **A restitution fine is defined in Penal Code section 1202.4(b) as:**

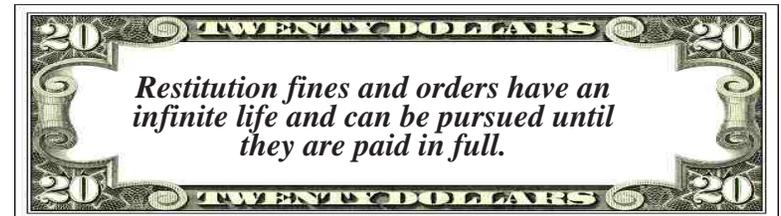
Restitution fines are considered an offender's debt to society for the offender's criminal behavior. In the State of California, the court must impose a restitution fine regardless of the crime committed or the sentence imposed. A fine is set at the discretion of the court. The court must order offenders who are sentenced to state prison to pay a fine between \$200 (minimum) and \$10,000 (maximum).

**Q. What is the difference between a direct order and a restitution fine?**

**A.** A restitution fine is the offender's debt to society. A direct order is the offender's debt to the victim for any out of pocket expenses the victim may have incurred as a direct result of the crime.

**Q. Do all inmates have jobs?**

**A.** Although every person sentenced to prison must either attend school or work, not every job assignment is a wage earning position. Inmates who work and do not earn a wage, and who qualify, will reduce their sentence under the day for day program. Other inmates will attend educational programs which are non wage earning positions. Those inmates may also qualify to earn time off of their sentence.

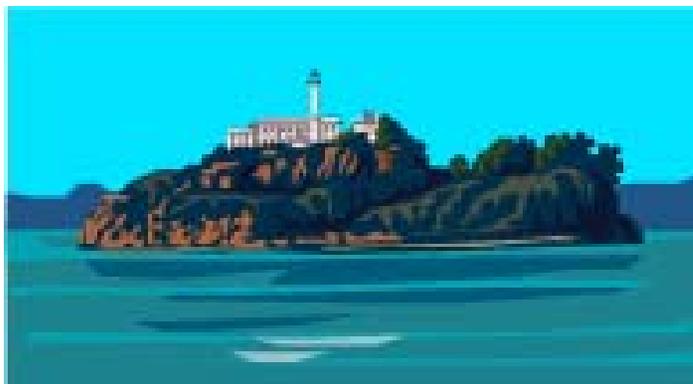


**Q. How does an inmate make payments?**

**A.** When an inmate has a deposit made to his/her trust account, the CDCR will automatically withdraw 50 percent of all deposits made and apply the money towards the offender's obligation. The deposit can either be from an outside source, such as friends or family, or from a wage-earning job that the inmate might have at the institution.

**Q. How does a parolee make payments?**

**A.** Restitution is considered when recommending a parolee for early discharge or when conducting an annual discharge review. Also, failure to make restitution payments may result in aggressive collection by the California Franchise Tax Board.



**A direct order of restitution is defined in Penal Code section 1202.4(f):**

The court must award restitution to the victim(s) in the full amount of the economic loss, including but not limited to:

- Full or partial payment for the value of stolen or damaged property.
- Medical expenses.
- Mental health counseling expenses.
- Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent(s) or guardian(s) while caring for the injured minor.
- Expenses to install or increase residential security incurred, relating to the crime.
- Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.
- Expenses to retrofit a residence or vehicle, or both, to make the residence accessible or the vehicle operational by the victim, if the victim is permanently disabled whether the disability is partial or total, as a direct result of the crime.
- If the conviction is for a felony violation of Section 288 (child molestation), the court may order restitution for non-economic losses, including, but not limited to psychological harm.

## **FREQUENTLY ASKED QUESTIONS**

### **HOW DOES A VICTIM GET RESTITUTION ORDERED?**

#### ***Probation Officer's Presentence Report***

In determining the amount of restitution, the sentencing court will often delegate to the County Probation Department the responsibility to investigate the circumstances surrounding the crime and the criminal history and record of the offender, and to prepare a probation report for the court. When a victim has sustained losses, the report also contains a recommendation as to the appropriate amount of restitution to be awarded to the victim.

#### ***Restitution Ordered by a Judge***

The responsibility to order restitution is that of a judge. Although the judge may delegate to the probation officer or others the function of arriving at the stipulated level of restitution, it is the sole responsibility of the judge to order the amount in court.

#### ***Plea Bargain***

Plea bargaining is a practice in which a defendant in a criminal case is permitted to plead guilty to a lesser charge, thereby receiving a lighter sentence than if found guilty on the more serious charge and saving the state the effort and expense of a trial. However, the court may order restitution on dismissed counts when the negotiated disposition includes a Harvey Waiver. The waiver may also encompass unfiled charges. When it does, the court may base a restitution order on the defendant's uncharged offenses.

#### ***Q. How does a victim request a direct order?***

**A.** The victim must make contact with the DA's office regarding any losses suffered as a result of a crime. It is the responsibility of the DA to present all of the evidence to the judge during the time of sentencing. The judge will order restitution if all of the documentation presented is correct.

#### ***Q. How does a victim request collection of a direct order?***

**A.** If the victim knows that the offender has been sentenced to state prison, he/she will need to contact the OVSRS either by completing the CDCR form 1707 or by calling our office and providing the necessary information verbally. Once the offender arrives at a CDCR Reception center, the collection process will begin automatically. If the offender has both a restitution fine and a direct order, the direct order will be collected first. If the offender only has a fine, then the fine will be collected until the institution receives notification that a direct order exists.

#### ***Q. How do I know if I have a direct order?***

**A.** In every case, misdemeanor or criminal, the victim is entitled to a copy of the judgment. The document will reflect whether or not the court ordered a direct order. It will also reflect to whom the order was made and the amount awarded. These documents may be obtained through the county clerk's office where the proceeding was held. Check with your county to determine if any costs are involved.

- **Bankruptcy.** Restitution is not affected by the offender filing for bankruptcy. Restitution is considered a debt owed until paid in full.
- **Multiple victims.** Currently, the CDCR accounting system only permits collection for one victim at a time. Some inmates have multiple victims. The collection procedure for multiple victims is to process the restitution request on a “first come, first served” basis.



*In the State of California, the Court must impose a restitution fine regardless of the crime or the sentence imposed.*

## ***Offender Sentenced to State Prison or Serving Parole***

The Department of Corrections and Rehabilitation (CDCR) can only collect restitution from offenders under the jurisdiction of the CDCR. The offender must be incarcerated in one of our thirty-three (33) institutions, or on parole. The victim can proceed with civil remedies once the offender is released on parole.

## ***Collection of Victim Restitution***

Effective January 1, 2007, Assembly Bill 1505 amended Penal Code section 2085.5. As a result, victims who are owed restitution from inmates incarcerated in state prison, will no longer be required to complete the CDCR 1707 form for the Office of Victim and Survivor Rights and Services (OVSRS) to begin the collection process. However, to expedite the disbursement of funds collected, victims are strongly encouraged to continue to complete and mail the CDCR 1707 to the OVSRS. Another option is for the victim to contact the OVSRS directly by phone 877-256-6877 and provide the CDCR with a current address and telephone number. The CDCR form 1707 can be obtained from any local Victim/Witness Assistance Center or downloaded from our web site at [www.cdcr.ca.gov/victims](http://www.cdcr.ca.gov/victims).

## **HOW DOES A VICTIM COLLECT ON THE RESTITUTION ORDER FROM AN INMATE OR A PAROLEE?**

### **Collections from Inmates**

- Upon the offender's arrival at the CDCR, an inmate trust account is established to accommodate monetary deposits and/or withdrawals. It is also designed to track any and all obligations that an offender may have, such as restitution fines and direct orders. For those offenders who have both a fine and a direct order, the direct order obligation will be satisfied first, effective January 1, 2007. Any money deposited into the account will be garnished at 50 percent. This money is applied toward the offender's restitution obligations.
- When a victim contacts the OVSRS, either by completing the CDCR 1707 or by phone, the CDCR verifies whether a court order (required for restitution) is present or not. The court order must state the victim's name and a specific dollar amount to be paid to that victim.
- It is possible, however, that while incarcerated, the inmate does not receive any deposits into his/her account and therefore no restitution collections can be made. Unfortunately, this is outside of the control of the CDCR.
- Money collected from the inmate's trust deposits is transferred to the Victim Compensation and Government Claims Board (VCGCB) for disbursement to the victim. Disbursements are made in increments of \$50 or every six months, whichever is reached first.

- **Complete CDCR 1707 immediately.** Victims should obtain as much information as possible regarding which forms must be completed and ensure that all deadlines are met. Most often the victim/witness advocates in the DA's office will assist victims through the process, such as providing information on sentencing dates, forms to complete if their offenders are sentenced to state prison, and other programs that might be helpful. However, it is ultimately the victim's responsibility to contact the CDCR either by completing all necessary forms, or by phone to provide the information verbally.
- **Inform the CDCR of address/phone change.** Payments are mailed to the victim's address using the information obtained from the CDCR 1707 form, which victims complete and mail in. In the event a victim's address or phone number should change, the victim must contact the OVSRS to update the information as soon as possible. A delay in the payment process will occur if the information is not current or accurate.
- **Follow-up with required documentation.** Often a victim will contact our office to begin the collection process. However, in some cases the courts have not made an order of restitution. The OVSRS staff will inform the victim to contact the DA's office for resolution and clarification. In some cases, the victim must push to have their case reheard in court so that an order of restitution can be awarded. It is the victim's responsibility to follow up on any necessary documentation required by the CDCR to begin the collection process.

## **ADDITIONAL INFORMATION A VICTIM SHOULD KNOW**

- ***Stay in touch with the District Attorney's Office regarding your case.*** Every victim should become proactive where his or her case is concerned. Should you have additional information concerning your restitution, do not hesitate contact the District Attorney's (DA's) office. Additionally, you may want to contact the DA's office simply to follow up on the status of sentencing or restitution.
- ***Complete and return all forms promptly to the District Attorney.*** In the event the DA's office should send you any questionnaires or forms to complete concerning losses you may have incurred, it is critical that you complete and return all forms as soon as possible. Often times the DA is dealing with a very short window of opportunity.

To assist you in obtaining your restitution order during the sentencing, the DA's office will need the questionnaires and/or forms completed accurately. Any delay on your part may slow down the process of collecting any restitution from the offender.

- Be patient, the collection process takes a long time. Inmates typically make between \$0.38 and \$1.00 per hour. There are also more inmates incarcerated than there are jobs available. Therefore, some inmates may not have a wage-earning job and are unable to pay restitution, unless the inmate receives money from outside sources, such as family or friends.
- In order for the CDCR to collect on a Direct Order for a victim, the inmate must be housed at one of California's prisons, or be on active parole.

### **Collections from Parolees**

- Often victims are told to wait until the inmate is on parole. This is not advisable. By law, the CDCR has the authority to take money from an inmate's trust deposits.
- Once on parole, an offender may earn consideration towards early release from parole during his/her annual review process by paying restitution.
- Failure to make reasonable restitution payments while on parole may result in referral of the account to the Franchise Tax Board for aggressive collection.
- For those inmates wishing to transfer their parole out of state, payment of all restitution must be made in full before their transfer request may be granted.

## **Other Collection Processes**

### ***Court Judgments and Settlements***

The Prison Litigation Reform Act (PLRA) enables the CDCR to collect restitution obligations from settlements obtained by inmates. Once all of the restitution obligations have been paid, the inmate would then receive the balance of the settlement. Effective January 1, 2002, this law was expanded to include parolees.

### ***Restitution Fines vs. Direct Orders***

The ability of the CDCR to collect restitution is limited to collecting restitution on either the fine or the direct order, one at a time. By law, the collection will begin on the direct order when the offender is sentenced to prison. This is subject to change in the event that the judge at the time of sentencing did not order restitution to the victim. In those cases, the CDCR will collect on the fine until the CDCR receives legal documentation which reflects a direct order awarded to a victim with a specific dollar amount. At that time the CDCR will stop the collection on the fine and begin to collect on behalf of the victim. Therefore, it is imperative that the victim maintain contact with the District Attorneys' Office in the county where the trial was held.

### ***To Be Determined Orders***

However, if a To Be Determined (TBD), is the only reflection on the legal documents, money cannot be collected on behalf of the victim. Our office must have a specific dollar amount along with victim's name reflected on the legal documents in order to assist the victim to collect their restitution order. (See frequently asked questions section.)

### ***Discharged Offenders***

CDCR has no jurisdiction over offenders who have been discharged from parole. However, because restitution is a debt owed until paid, and cannot be dissolved through bankruptcy, victims may proceed civilly.

### ***Civil Suit***

Keep in mind that victims have options available to them in terms of collecting their restitution from the offender. Victims may seek remedy through the civil process. Check with your local county clerk's office for filing procedures and cost associated with the civil process. The CDCR cannot assist you at this level.

