

## RESTITUTION

***Restitution is money paid to victims for the losses they suffered as the result of a crime.***

For some crimes—including crimes of violence and property crimes—a defendant **must** be ordered to pay restitution to the crime victims.

### ***1. What losses does restitution cover?***

The court can order a defendant to pay any expenses directly related to the criminal conviction—for example, a victim's medical expenses, funeral expenses, property damage claims, lost income, child care, transportation and other expenses.

Restitution is ordered only if the defendant admits or is found guilty of the crime.

### ***2. How does the court know how much restitution to order?***

Before the defendant is sentenced, the court will require the United States Probation Office to find out what losses have been suffered by crime victims. The probation officer may call the victims on the phone or may write the victims a letter asking what losses each victim suffered as a result of the crime. The probation office will want specific dollar amounts from the victims, so the victims should save any bills they get for medical treatment, property repairs, insurance claims, etc.

### ***3. How much does a victim get paid?***

The court will set up a payment schedule based on the defendant's income and expenses, property and debts. If a defendant is ordered to spend time in prison, the amount of money earned while in prison will probably be very small, so the victims may not receive much restitution during that time. If the defendant is

not sentenced to prison, or once the defendant is released from prison, the Probation Office will be in charge of enforcing the court's restitution order. If the defendant is able to work, but not willing to pay the restitution ordered by the court, the Probation Office may ask the court to put the defendant back in prison or in a halfway house or may ask to keep the defendant under court supervision for a longer time if the law allows it. Sometimes the defendant cannot earn enough money to pay back the victim for all losses. The court will then order the defendant to make monthly payments based on what the court thinks the defendant can afford.

### ***4. What happens if there is more than one victim?***

In cases where many victims are owed restitution, the Clerk of the Federal Court divides the payments from the defendant so that each victim gets a proportionate share based on how much each victim is owed, unless the court orders otherwise.

### ***5. Who enforces restitution for the victims once the probation office is no longer involved?***

The United States Attorney's Office is required to enforce the court's order for restitution when the defendant no longer reports to a probation officer. The United States Attorney's Office can garnish the wages of the defendant, seize and sell property of the defendant, and use other tools to collect the restitution debt.

### ***6. How often does a victim get paid?***

The defendant usually is required to make monthly payments to the Clerk of the Federal Court for distribution to victims, but this does not mean a victim gets a restitution payment each month. Sometimes the clerk holds payments until a minimum check amount is reached. Sometimes the defendants do not make their monthly payments or like anyone else, may lose a job, have unexpected major

expenses, or get sick or injured and be unable to work. Defendants are expected to make up missed payments as soon as possible when these events occur.

### ***7. What if the defendant cannot afford to pay what the court ordered?***

If the defendant has a change in ability to pay, the defendant must bring it to the court's attention and request the court to change the monthly payment amount. The United States Attorney's Office is required to notify the victims of the defendant's request before the court can decide whether to lower the payment.

### ***8. What if the defendant can pay more than what the court ordered?***

Both the United States Probation Office and the United States Attorney's Office must monitor the defendant's ability to make restitution payments. This means making the defendant tell the government on a regular basis where the defendant works, how much money he or she earns, etc. However, if the victim learns that the defendant has a financial windfall, like an inheritance, the victim should notify the United States Attorney's Office. If the defendant has increased earnings or fewer expenses, the court can order the defendant to increase monthly restitution payments if the defendant refuses to do so voluntarily.

### ***9. Is the victim guaranteed to get the money the court orders for restitution?***

Despite the best efforts of the U.S. Probation Office and the United States Attorney's Office, there is no guarantee that a victim will get the full amount of restitution ordered by the Court. Some defendants will never have the means or ability to pay the ordered amount. This is especially true of defendants who are sentenced to a long prison term.

### ***10. How long does a restitution order last?***

A restitution order lasts 20 years from the day the defendant is released from custody or until the defendant dies, whichever comes first.

### ***11. What is a restitution lien?***

A restitution lien keeps a defendant from disposing of assets that could be used to pay off what is owed to the victims. For instance, if the defendant owned a home, the lien would notify a potential buyer that the money the defendant would get for the sale of the home must first be used to pay what is owed to the victims.

### ***12. How does a victim get a restitution lien?***

The United States Attorney's Office files a notice of lien as part of its collection efforts right after the defendant is sentenced. The lien notice is filed in any county where it is believed the defendant owns property. Victims who want their own liens can ask the Clerk of the Federal Court for an "abstract of judgment". The abstract of judgment, once it is filed, gives the victim a lien on the defendant's property in that county. State law determines where the abstract must be filed to be a valid lien. There is no charge for the abstract of judgment, but the county will charge a filing fee.

### ***13. Whom does a victim notify of a change of address?***

Victims should notify the victim witness advocate in the United States Attorney's Office of any change in address, as well as the Clerk of the Federal Court. A victim's change of address will NOT be provided to the Defendant. Victims who do not update their addresses may not receive important notices or restitution payments.

Address changes should be addressed to the clerk at: U.S. Clerk of Courts, 400 S Phillips Avenue, Room 128, Sioux Falls SD 57104.

### ***14. Can a defendant get rid of a restitution order by filing bankruptcy?***

No, an order for criminal restitution is not subject to discharge through bankruptcy.

### ***15. How can a victim find out if the defendant is going to be released from prison?***

Any victim of a serious crime who wants to know when a defendant will be released is automatically enrolled in the Department of Justice Victim Notification System unless they request otherwise. The defendant cannot get the names and addresses of victims who participate in this program. Release dates can also be obtained from the inmate locator section of the Bureau of Prison's website, bop.gov.

### ***16. Can victims file their own lawsuits to collect restitution?***

The United States Probation Office and the United States Attorney's Office will work hard to collect restitution. However, the law also gives victims the right to start their own lawsuits. Any money the victims collect from their own lawsuits may be subtracted from what the defendant still owes under the restitution order.

### **HELPFUL REFERENCES**

Case name: US v

\_\_\_\_\_

Court file number: \_\_\_\_\_

US Attorney file number: \_\_\_\_\_

### **Report victim's change of address to:**

**U.S. Clerk of Courts  
400 S. Phillips Avenue, Room 128  
Sioux Falls, SD 57104  
605-330-6600**

7/10/2009

## ***YOUR RIGHTS AS A CRIME VICTIM***

### ***WHAT YOU SHOULD KNOW ABOUT***

## **RESTITUTION PAYMENTS TO VICTIMS**



### **UNITED STATES ATTORNEY DISTRICT OF SOUTH DAKOTA**

*The United States Attorney's Office is committed to protecting the rights of crime victims and witnesses. If you have questions or comments about your status or rights as a victim, please contact one of our Victim Witness Advocates.*

Sioux Falls	800-804-6790
Pierre	800-603-8157
Rapid City	800-603-3750