

Restitution

Explanation of Losses Subject to Restitution

Many victims are interested in how they can be repaid for their financial losses suffered as a result of a crime. The Mandatory Restitution Act of 1996 established procedures for determining the amount of restitution to which a victim may be entitled. For further information on any restitution issue please contact the Victim Witness Services Unit of the U.S. Attorney's Office.

The Act provides that 'identified' victims may be entitled to an order of restitution for certain losses suffered as a result of the commission of an offense as part of the criminal sentence imposed on the defendant, or as part of a plea agreement. Victims may be either individuals, or businesses/corporations.

It is important to begin keeping a record of all expenses incurred as a result of the crime, so this information can be used in determining what costs may be ordered by a Judge to be repaid by a defendant if convicted.

Requesting Restitution

Under federal law, in many types of federal crime, it is mandatory for a defendant to pay restitution for cases occurring after April 24, 1996. For most crimes committed prior to this date, Judges have more discretion on whether to order restitution.

Unfortunately, as a practical matter, a defendant who has no money or potential to make money may be unlikely to ever make meaningful restitution to the victims of a crime.

If a defendant pleads guilty or is found guilty at trial, available information on each identified victim's loss will be provided to the U.S. Probation Office by the U.S. Attorney's Office. A pre-sentence probation officer is assigned to investigate the background of a defendant, and prepare a pre-sentence report for the Judge, recommending the most appropriate sentence and restitution owed.

Identified victims will have the opportunity to request restitution and explain their losses in detail in a Financial Loss Impact Statement. Victims should consider closely the types of restitution allowable, as it is often limited, and may not include damages for such things as pain and suffering. Provide receipts or other verification where possible.

How Does a Victim Begin Receiving Money?

For all cases, the U.S. Clerk of Court is charged with the collection and distribution of restitution as any payment becomes available.

If you are awarded restitution, simply keep the U.S. Clerk of Court informed of where you live and if your address changes. Any restitution payment owed will be forwarded to you as it becomes available.

For cases in which the sentence date is on or after April, 24, 1996, the U.S. Attorney's Office, Financial Litigation Unit (FLU) is now charged with enforcing orders of restitution, and monitors efforts in enforcing a Judgment if defendant assets or income are identified. In the District of Utah, in cases in which a restitution order is dated on or after April 24, 1996, the Financial Litigation Unit (FLU) of the U.S. Attorney's Office will file a lien.

The FLU unit will pursue various means to enforce restitution, as its resources permit, on behalf of identified victims for 20 years from the filing date of the Judgment, (plus the time period of actual incarceration) or until the death of the defendant. In addition, while a defendant is under the supervision of a probation officer, that probation officer will also monitor and ensure appropriate restitution is paid, where possible.

An order of restitution is not dischargeable in bankruptcy.

Can Victims File a Lien Against the Defendant?

A victim may also choose to request the U.S. Clerk of Court to issue an Abstract of Judgment certifying that a judgment has been entered in a victim's favor in the amount specified in the Judgment. A victim may then file this with the Recorder's Office for any county in which it is believed the defendant has assets, in the state in which a defendant was convicted in federal court. Upon its recording, the Abstract of Judgment becomes a lien upon the property of the defendant in that county/state in the same manner as a state court judgment. Victims should consult with a private attorney for specific information.