

DPO CORE 2019

Victim Restitution

Why Care About Restitution?

(Myths we hear.....)



After all, victims can be a pain.....



The defendant/minor isn't going to pay anything anyway



Victims can just go sue defendants in civil court to recover damages

Topics for Today

- ▶ Victims' Rights
- ▶ What is Restitution and Who Qualifies as a Victim
- ▶ Miscellaneous restitution topics
 - Joint and Several liability
 - Case law
 - Insurance
 - Harvey waivers
 - Ability to Pay
 - Juvenile Cases
- ▶ Fines / Fees
- ▶ Procedure
- ▶ Enforcement / Collection
- ▶ Expectations for Probation Officers

WE Are Responsible for Victims

- ▶ The criminal justice system is designed to protect the rights of the accused
- ▶ It must also guarantee the rights of crime victims
- ▶ As probation officers and prosecutors, WE have the responsibility to ensure that proper victim restitution is ordered in EVERY case
- ▶ Remember this mantra: **“DON’T FORGET THE VICTIM.”**

Victims' Right to Full Restitution

- ▶ In 1982, California passed Proposition 8, known as “Victims’ Bill of Rights”
- ▶ In November 2008, we enacted Section 28 of the California Constitution to guarantee certain victim rights, including the right to full restitution → MARSY’S LAW
- ▶ “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 seek and secure restitution from the persons convicted of the crimes for causing the losses they suffer” (Art. I, § 28(b)(13)(A))

Rights to be mindful of.....

- ▶ The right to be notified of all proceedings
- ▶ The right to be heard at any proceeding
- ▶ The right to provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and victim's family and any sentencing recommendations
- ▶ The right to be informed of the release date of the defendant
- ▶ The right to restitution

Victims' Right to Restitution

- ▶ This right is in every case, regardless of the sentence or disposition imposed where the crime victim suffers a loss.*
- ▶ All monetary payments, monies, and property collected from any person who has been ordered to make restitution must first be applied to pay the amounts ordered as restitution to the victim.*
- ▶ Upon request, a victim has the right to be heard at any proceeding (including juvenile delinquency proceedings) ... in which a right of the victim is at issue.*

▶ *California Constitution: Article 1, Section 28

Victims' Right to Restitution

- ▶ The California Penal Code provides the format for imposition of victim restitution orders
- ▶ Penal Code section 1202.4(a)(1) specifically explains the law's intent:
 - “It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.”

PC 679 – Respect for Victims

- ▶ Victims and witnesses of crimes are to be treated with dignity, respect, courtesy, and sensitivity. They are to be honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded defendants.

Judge's Authority to Order Victim Restitution

- ▶ Penal Code section 1203.1 confers broad power on the courts to impose conditions to foster rehabilitation and to protect public safety
- ▶ This power includes ordering restitution, if such a condition is reasonably related to the crime
- ▶ In addition, while it is still recognized that orders of restitution have rehabilitative purposes, it is now also recognized that such orders have the additional important purpose of preventing victims of crimes from suffering economic loss.

In re I.M. (2005) 125 Cal.App.4th 1195

Victim Restitution Must Be Addressed by the Judge in EVERY Sentencing!

- ▶ At the time of sentencing, the judge should always order the defendant to pay full victim restitution
- ▶ A sentence is legally INVALID if the court fails to address victim restitution – *People v. Rowland* (1997) 51 Cal.App.4th 1745, 1751

Determining Restitution

- ▶ If the victim's economic loss is reasonably related to the defendant's crime, restitution can be ordered
- ▶ Case example: *In re I.M.* (2005) 125 Cal.App.4th 1195
 - Juvenile petition for PC32 & PC186.22(b) – accessory after the fact to a gang murder
 - Minor hid items after the crime, but did not participate in the actual murder
 - Still, ordered to pay restitution to the victim's family for funeral expenses (over \$15K)
 - Proper restitution order because:
 - Reasonably related to the crime, and
 - Would force minor to face the effects of his gang offense

Restitution for Out-of-Pocket Losses

- ▶ Crime victims have a right to restitution for financial losses associated with the crime
- ▶ These are “out-of-pocket” expenses that have been (or will be) incurred as a result of the defendant’s criminal conduct
- ▶ A criminal law judge cannot order punitive damages, only compensatory damages
- ▶ No victim will ever leave court yelling, “The Probation Dept / DA’s Office got me 2.3 million!”
 - *ONE EXCEPTION: PC 288 child molestation cases*

Out-of-Pocket Loss Examples

- ▶ Penal Code section 1202.4(f)(3) provides examples of legitimate losses:
- ▶ *Including, but not limited to all of the following:*
 - Value of stolen or damaged property (**repair or replacement cost**)
 - Medical expenses
 - Mental health counseling
 - Wages or profits lost due to injury, including lost commission income (includes parents' losses if victim is a minor)

Out-of-Pocket Loss Examples – cont'd

- ▶ Wages or profits lost due to time spent as a witness or assisting the police during investigation (includes parents' losses if victim is a minor)
- ▶ Relocation costs
- ▶ Home security expenses
- ▶ Expenses to retrofit a home or vehicle if the crime permanently disabled the victim
- ▶ Cost of restitution collection accrued by a private entity on behalf of the victim
- ▶ California Victim Compensation Board payments

The goal of restitution – making victims “whole”

- ▶ *People v. Stanley* (2012) 54 Cal.4th 734
 - D vandalized a victim's 1974 Dodge truck
 - V had purchased this “vintage” vehicle for \$950 about 18 months before the crime
 - V obtained a repair estimate of \$2,812.94
 - D objected, arguing that he should only have to pay the V the \$950 purchase price
 - The CA Supreme Court held that the V was entitled to the repair costs of \$2,812.94
 - *PC 1202.4(f)(3)(A) – victim entitled to the replacement cost of like property, or the actual cost of repairing the property when repair is possible*

Victim Restitution in Juvenile Cases

- ▶ Welfare & Institutions Code 730.6
 - Value of stolen or damaged property (repair or replacement cost)
 - Medical expenses
 - Wages or profits lost due to injury (includes parents' losses if victim is a minor)
 - Wages or profits lost due to time spent as a witness or assisting police during investigation (includes parents' losses if victim is a minor)
 - California Victim Compensation Board payments

Very similar to PC 1202.4 and can draw from both statutes – In re M.W. (2008) 169 Cal.App.4th 1

Noneconomic losses

- ▶ Our restitution statutes generally do not cover emotional damages, such as “pain and suffering”
- ▶ **EXCEPTION: PC 288 cases:**
 - PC 1202.4(f)(3)(F) – noneconomic losses, including, but not limited to, psychological harm, for felony violations of PC 288, 288.5, or 288.7
 - People v. Smith (2011) 198 Cal.App.4th 415:
 - Child sexual abuse over several years (PC 288)
 - \$750K ordered in restitution for psychological harm to victim (\$50K x 15 years = \$750K)
 - This was *in addition to* any economic losses

Who Qualifies as a “Victim” For Restitution Purposes?

- ▶ The actual person who was harmed
- ▶ Immediate surviving family of the actual victim
- ▶ Any company or government entity that is a direct victim
- ▶ Insurance companies (only if they are the direct victim – i.e., insurance fraud)
- ▶ California Victim Compensation Board (CalVCB)
- ▶ *See PC 1202.4(k) for complete list*

CalVCB

- ▶ CalVCB is a state agency that provides monetary assistance to victims of certain crimes (funded through restitution orders, restitution fines, and other penalties)
- ▶ Recompenses victims for certain financial losses up to a specific amount, such as:
 - Lost wages
 - Mental health counseling
 - Medical expenses
 - Relocation
 - Crime scene clean-up
 - Funeral/burial expenses

▶ **Does NOT cover property crimes**

CalVCB

- ▶ Victims (through DA victim advocates) submit applications to CalVCB for monetary assistance
- ▶ CalVCB processes the claims and provides compensation to victims from a statewide restitution fund
- ▶ *This is happening behind the scenes most of the time, so always check with the DDA or DA victim advocate on whether a claim has been submitted and what the status is*
 - *Joint Powers Paralegal – Renata Espanol (HOJ), DA's Office CalVCB liaison (Renata.Espanol@sdcd.org)*

CalVCB

- ▶ Restitution orders for CalVCB should be made separately, and possibly in addition to, any normal restitution orders for the victim
- ▶ Example:
 - Victim suffers \$500 property damage but also has a \$50K medical bill that is ultimately covered by CalVCB
 - \$500 is ordered for the victim
 - \$50K is ordered for CalVCB

CalVCB

- ▶ PC 1202.4(f)(4)(A):
 - If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to or on behalf of a victim... The amount of assistance provided **SHALL BE PRESUMED** to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered

Joint & Several Liability

- ▶ The restitution liability of co-defendants should be ordered “joint and several”
- ▶ Joint and several is a form of liability used when 2 or more people are found liable for damages
- ▶ Victim may collect the entire judgment from any one of the parties, or from any and all of the parties in various amounts until the judgment is paid in full
- ▶ In other words, if any of the defendants do not have enough money to pay an equal share of restitution, the other defendants must make up the difference

Joint & Several Liability

- ▶ J&S liability should be ordered in ALL multiple defendant cases
- ▶ Judges should always order that victim restitution be “joint & several” amongst the defendants
- ▶ Restitution orders must be crystal clear as to who all the responsible parties are – include FULL NAME of each defendant (ensure all names are spelled correctly)
 - **Important for Revenue & Recovery**

Courts Cannot Force a Victim to Bargain for Best Deal

- ▶ A V is entitled to FULL compensation for all reasonable out-of-pocket losses
- ▶ A court cannot force a V to seek the best “possible deal” in order to reduce the loss amount
 - *People v. Lauren M.* (2011) 196 Cal.App.4th 1221
 - V’s medical bills totaled \$6,660.27
 - Judge ordered the DA and victim to negotiate with the hospital for a lower bill
 - Appellate court held that the judge acted improperly when he ordered the victim to negotiate
 - Judges must order “FULL RESTITUTION unless [they] find compelling and extraordinary reasons for not doing so” and state the reasons on the record

What About Insurance?

- ▶ Even if a victim is reimbursed for losses by his/her own insurance company, **it does not matter** – no effect on restitution
- ▶ Despite insurance coverage, the court should still order FULL restitution
- ▶ Criminal law leaves it up to the insurer and the victim to work out repayment under the terms of their coverage contract – we don't get involved

How About D's Insurance?

- ▶ If, however, the D's insurance company pays the victim for losses, the D is entitled to an offset of the restitution amount
 - *People v. Jennings* (2005) 128 Cal.App.4th 42
 - Items paid by insurance or civil settlement must match SAME items claimed for restitution
 - Defendant must be a named person under the insurance policy

Receiving Stolen Property

- ▶ Receiving stolen property, by itself, does not permit a conclusion that the D was responsible for the underlying theft/burglary
- ▶ Therefore, the PC496 conviction is not a basis for ordering restitution for the theft/burglary
 - *In re Maxwell C.* (1984) 159 Cal.App.3d 263
 - *People v. Scroggins* (1987) 191 Cal.App.3d 502
- ▶ BUT, if the facts show that the D damaged the stolen property, replacement or repair costs should be ordered

Receiving Stolen Property

▶ Lost profits

- Court CAN impose restitution for lost profits due to V's inability to use the stolen property
 - *People v. Holmerg* (2011) 195 Cal.App.4th 1310
 - Business burglarized and computers stolen
 - D had the computers within a day of the burglary but did not return them to the V or police dept
 - V presented proof of lost profits due to missing computers (\$10K for “lost business productivity”)
 - Restitution order for \$10K was proper – “by holding on to the equipment, knowing it was stolen, defendant’s conduct was a ... cause of victim’s losses.”

Hit & Run Cases

- ▶ What is the actual crime?
- ▶ The CA Supreme Court has settled the restitution question:
 - Victim restitution is properly imposed as a condition of probation for a hit & run causing damage
 - *People v. Carbajal* (1995) 10 Cal.4th 1114

Harvey Waivers

- ▶ A Harvey Waiver (HW) gives the judge authority to order restitution for dismissed counts (named after *People v. Harvey* (1979) 25 Cal.3d 754)
- ▶ Example:
 - D charged with 2 separate burglaries but only pleads guilty to 1, and the other is dismissed with a HW
 - Court can order restitution for BOTH victims
 - No HW = NO restitution for the dismissed charges
 - *JUVENILE CASES DIFFERENT – no HW required*

Harvey Waivers

- JUVENILE CASES DIFFERENT – no HW required
 - In re T.C. (2009) 173 Cal.App.4th 837
 - Minors can be ordered, as a condition of probation, to pay restitution for conduct underlying dismissed charges;
 - Requirement of a *Harvey* waiver before restitution can be ordered on counts dismissed pursuant to a plea bargain does NOT apply to juvenile proceedings; and
 - Minor's plea bargain did not bar juvenile court from ordering restitution for dismissed count

Ability to Pay is Irrelevant

- ▶ A judge must impose a restitution order regardless of inability to pay
- ▶ WIC 730.6 & PC 1202.4 both say:
 - The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. A defendant's inability to pay shall NOT be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be considered in determining the amount of the restitution order
 - *BUT – can't violate a D's probation for not paying unless can show willful nonpayment*

Juvenile Cases

- ▶ Welfare & Institutions Code
 - 730.6 – general statute governing restitution in juvenile matters
 - 730.7 – explains parents' liability for restitution
 - 656.2 – Victims' rights & DPO's duty to obtain statement from victims and notify them of their rights (victim impact statement)
 - 676.5(a) – victim notification & right to attend hearings

Victim Restitution in Delinquency Cases = REHABILITATION

- ▶ “The purposes . . . are threefold: to make the victim whole by compensating the victim for economic losses, to rehabilitate the minor, and to deter future delinquent behavior.”
 - *In re Cristian S.* (2017) 9 Cal.App.5th 510
- ▶ “The purpose behind requiring a minor to pay victim restitution is for its deterrent **as well as rehabilitative effect**. ‘Requiring the [minor] to make complete reparation to her victims for the harm done to them is more likely to make an impression on the [minor] than simply imposing a statutory fine.’”
 - *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1387

Parental Liability

- ▶ Restitution, fines, and/or penalty assessment orders: A parent OR guardian who has joint or sole legal & physical custody of a minor shall be presumed to be jointly and severally liable with the minor in accordance with Sections 1714.1 and 1714.3 of the Civil Code up to certain limits (currently \$45,000). The parent/guardian has the burden of showing an inability to pay.

Restitution Hearings

- ▶ Hearsay evidence is admissible, including statements reported in the probation report.
- ▶ The court may base its determination upon the amount of loss claimed by the victim.
- ▶ The standard of proof is by a preponderance of the evidence.
- ▶ Once a showing of economic loss has been made, the burden shifts to the defendant to show that the amount claimed is inaccurate.

Restitution Hearings

- ▶ DPO might be subpoenaed to testify about contents of report
 - *TAKE THOROUGH NOTES on your conversations with the victim(s) and attach ALL documents received to your report*

Procedure – Adult Cases

- ▶ Old procedure – case issued by DA's Office, goes through court proceedings, D pleads guilty or is convicted at trial, then a Sentencing Hearing is set → probation writes report and contacts the victim regarding restitution
 - Restitution often not known at time of Sentencing – would be ordered “TBD”
 - *“TBD” orders are basically the death of restitution – PLEASE AVOID AT ALL COSTS*

Procedure – Adult Cases

- ▶ New procedure starting at the DA's Office (in an effort to combat and reduce TBD orders)
 - DA's office will reach out to victims about restitution right after issuing cases
 - New DA website offers victims the ability to submit all restitution requests and supporting documents online
 - Once we receive online submissions, we will upload to the case file which will then automatically send the documents to probation and defense counsel
 - **LOOK OUT FOR THESE DOCUMENTS AS SOON AS YOU ARE ASSIGNED TO WRITE A REPORT**

Procedure – Adult Cases



The screenshot shows the official website of the San Diego County District Attorney. The header features the county seal on the left, the title "San Diego County District Attorney" in the center, and navigation links (FAQs, Hollines, Contact Us, Sitemap) and a search bar on the right. Below the header is a secondary navigation bar with links to "The DA's Office", "Prosecution Links", "Preventing Crime", "Helping Victims", and "Newsroom & Videos". The main content area is titled "Restitution FAQs and Information" and contains a list of 14 frequently asked questions regarding restitution procedures, each followed by a plus sign indicating an expandable answer.

San Diego County District Attorney

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Restitution FAQs and Information

The following has been compiled by the San Diego District Attorney's Office Restitution Recovery Team to answer common questions asked by crime victims who have been awarded restitution or would like to obtain a restitution order.

- Do I have a right to restitution?* +
- What is restitution, and what losses are covered?* +
- Does restitution include "pain and suffering"?* +
- Who needs my restitution information?* +
- How do I submit a Restitution Request to the District Attorney's Office?* +
- When should I complete the Restitution Request Form (RRF)?* +
- What happens to my Restitution Request Form (RRF) once it is submitted to the District Attorney's Office?* +
- Do I need to appear in court?* +
- Who collects the restitution money?* +
- How can I check on the status of my restitution payments?* +
- What should I do after restitution has been ordered?* +
- What if the prison or Revenue and Recovery does not have a record of my restitution order on file?* +
- Do I really need to file a CDCR 1707 Victim Services form?* +
- When does the defendant start making payments?* +
- Why are the monthly payments ordered by the court so low? At the rate ordered.*

Procedure – Adult Cases



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Request Restitution

[Click here for Restitution Request Instructions.](#)

To begin a restitution request first validate your email address. You will then be emailed a link that will take you to the Restitution Request form.

Please enter your email address:

Procedure – Adult Cases

- ▶ NOTE – even if there is restitution documentation in the file, you still need to contact the victim for his/her input on sentencing (victim impact statement)
- ▶ Once the amount of restitution is determined, include it in the report
 - *If the victim is a minor, please be sure to include the full name of at least one parent or guardian as the recipient of the restitution order – R&R needs this info*
 - *Example: “Restitution of \$500 is to be paid to John Smith, parent of victim Ethan S.”*

Restitution Orders

- ▶ 1) Dollar amount
- ▶ 2) Victim's full name
 - If victim is a minor – need at least ONE parent's full name in the minute order for Office Revenue and Recovery (ORR)
 - Example: “Restitution is to be paid as follows: \$100 to Jane Smith, parent of victim Ethan S.”
- ▶ 3) Agency which is collecting the restitution
- 4) Payment plan/schedule

Procedure – Juvenile Cases

- ▶ Cases move MUCH FASTER – critical to contact victims sooner
- ▶ The DA's Office Juvenile Division has been contacting victims regarding restitution right after issuing cases since Sept 2018
- ▶ Also mail out victim impact statements for victims to fill out and mail back
- ▶ Will soon mirror adult procedure with online restitution website
- ▶ Any documents received via website will be uploaded into JELS and sent to probation

Procedure – Juvenile Cases

A Message from your District Attorney:

On November 4, 2008, the People of the State of California approved Proposition 9, the Victims' Bill of Rights Act known as Marsy's Law. The measure amended the California Constitution to include a Bill of Rights for crime victims in California.

The purpose of this constitutional amendment is to provide all victims with rights to justice and due process, and to give them a greater right to be involved in the criminal justice process.



For years, victims of crime were overlooked, ignored and often reduced to the role of "witness." Eventually, victim activist groups gave crime victims a new voice that was heard by policymakers and legislators. This latest law gives victims even more rights, helping them navigate a sometimes challenging criminal justice system.

This brochure provides notice to victims of their seventeen enumerated rights as required by Marsy's Law itself and gives victims the means necessary to contact the District Attorney's Office.

Crime victims can get information about cases by calling the office locations listed in this brochure, or by logging onto www.SanDiegoDA.com.

I am committed to working together with the community to ensure that victims are treated with fairness and respect – and that their voices are heard.

Summer Stephan

District Attorney, San Diego County

Victims' Bill of Rights – "Marsy's Law"

California Constitution, Article I, Section 28(b)
Penal Code Section 679.026

In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:

- (1) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.
- (2) To be reasonably protected from the defendant and persons acting on behalf of the defendant.
- (3) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.
- (4) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.
- (5) To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
- (6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.
- (7) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.
- (8) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.
- (9) To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.
- (10) To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
- (11) To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.
- (12) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
- (13) To restitution.
 - (A) 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 seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.
 - (B) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.
 - (C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.
- (14) To the prompt return of property when no longer needed as evidence.
- (15) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.
- (16) To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.
- (17) To be informed of the rights enumerated in paragraphs (1) through (16).

Procedure – Juvenile Cases

- ▶ ALWAYS be in the habit of checking JELS for any restitution documents first
- ▶ You still need to call victims for their input on Disposition (required – WIC 656.2)
- ▶ Attach all restitution documents to your social study
 - But do NOT attach the victim's confidential information sheet – this is for ORR only



CONFIDENTIAL
VICTIM CONTACT INFORMATION – RESTITUTION
(TO ENSURE CHECKS ARE MAILED TO THE CORRECT PERSON/ADDRESS)

VICTIM'S NAME: _____

DATE OF BIRTH: _____

VICTIM'S PARENTS' NAMES (IF VICTIM IS A MINOR):

MOTHER: _____

FATHER: _____

ADDRESS: _____

PHONE #: _____

EMAIL: _____

Restitution Orders as Civil Judgments

CR110/JV790 is the Restitution Order and Abstract of Judgment document. The CR110 is provided by the DA and the JV790 is provided by the PO. Can be obtained from court records where the matter was decided.

These documents are the foundation for all other civil collections that the victim may wish to pursue.

CR-115

This document is a financial disclosure statement completed by the probationer and a copy of which is provided to the victim (PC1214). Yes, the victim will have the probationer's address and place of employment. The victim will use the recorded CR-110 to garnish the probationer's wages, place a lien on his property, etc.

CR115s may be obtained from court records and are available to the victim for the pursuit of civil process.

How the Victim Collects

Victims collect restitution by obtaining the CR110 from court records. They need to have the form certified and then filed at the County Recorder's Office. This places a LIEN on the offender.

Unfortunately, collection can be very complicated for victims. They often need to hire an attorney to assist in the process.

Collection Options for Victims

- ▶ Assignment to a Judgment Collection Agency
- ▶ Liens on property in San Diego County or any other county the offender has property
- ▶ Seizure of personal property
- ▶ Wage garnishments
- ▶ Levy bank accounts
- ▶ Till Taps

Collection of Restitution

- ▶ **The Office of Revenue and Recovery** is the collection agency for the Probation Department in both felony and misdemeanor matters.
- ▶ Cases are opened based on a Minute Order/Docket or the Probation Order / CR21

The Department of Corrections & Rehabilitation (CDCR)

is the collection agency for the state. The CDCR collects 50% of a prisoner's wages and money added to the prisoner's trust account. In 2014, this was also extended to those defendants who are sentenced to local imprisonment pursuant to PC1170(h)(5). (PC2085)

CDCR collects an average of \$1.6 million a month from inmates, parolees, and discharged offenders.

Approximately 43% of all restitution collection goes directly to victims for compensation ordered by the court (direct orders).

From July 1, 2014 – June 30, 2015, approximately \$847,661.00 was collected from offenders sentenced out of San Diego County for victim direct orders.

Fine money accounts for the remaining 57% of collections and is deposited into the general fund at CalVCB for victim assistance programs.

From July 1, 2014 – June 30, 2015, approximately \$1,006,425.00 was collected from offenders sentenced out of San Diego County for restitution fines.

Victim's Responsibilities

- ▶ The victim has the right to receive information regarding all court hearings, copies of the charging petition, the minutes of the proceedings, and orders of adjudications and disposition of the court that are in the court file.
- ▶ A victim shall not disclose or disseminate this information beyond his or her immediate family or support persons authorized by Section 676.
- ▶ Documents released by the Court to the victim shall be stamped “CONFIDENTIAL” and with a statement that the unlawful dissemination of the document is a misdemeanor punishable by a fine of not more than \$500.

PO'S RESPONSIBILITIES

- ▶ It is the Probation Officers responsibility to notify all victims of their rights to make an impact statement in all Court hearing. If the victim makes a statement to the PO, this statement needs to be included in the social study / Presentence Investigation report to the Court. The PO needs to inform the victims of the date and time of the court hearings.

PO's Responsibilities

- ▶ Help the victim make an impact statement and it should include:
- ▶ **Emotional Impact**: How has the crime affected their emotional well being?
- ▶ **Physical Impact**: Describe the physical injuries or limitations due to the crime. Will there be on-going treatment? Do you expect any future physical problems?
- ▶ **Financial Impact**: How has the crime affected your lifestyle and/or ability to earn a living?

PO's Responsibilities

- **Restitution**: In order for the judge to set restitution payments, an itemized list of losses will be required, including supporting documentation.
- What do you think would be an appropriate sentence?
- Include any statement you want to make to the Court.

PO's Responsibilities

- ▶ The PO must provide the victim with information regarding the victim's right to an action for civil damages against the defendant, the minor and his or her parents, and the victim's opportunity to be compensated from the restitution fund. This information must be in the form of written material prepared by the Judicial Council and given to each victim. (Marsy's Law)

PO's Responsibilities

- ▶ Supervision officer: Make contact with the victim. Confirm restitution has been set. If not, and victim reports a loss, schedule restitution hearing. Notify victim of all hearings.
- ▶ Confirm the CR110/JV790 order for restitution and abstract of judgment have been prepared, signed by the Judge, and the victim has a copy.

PO's Responsibility

- 120 days prior to probation expiration, confirm the defendant completed the CR115 form (financial statement, address, work place etc. and filed with court records. Victim can go get a copy for the pursuit of civil process. (PC1203.05(b), PC1202.4, PC1214)
- Provide victim with brochure on how to Enforce Criminal or Juvenile Court Restitution Orders as Civil Judgments.

If a large amount of restitution is owed, the grant of probation can be ordered/extended to a total of 10 years to accommodate the payment of restitution (PC186.11(B)). After 3 years successful probation request probation to the court.

When transferring a case, notify victim of new PO's contact information, closing to prison, or completion of probation.

Hypothetical

- ▶ D shoplifts \$85 worth of electronics from Target
- ▶ LPO confronts D outside store and recovers all merchandise
- ▶ Who's the victim?
- ▶ Is there restitution? If so, how much?

Hypothetical

- ▶ D steals 2 cases of beer worth \$32 from 7-Eleven
- ▶ Store employee tries to stop D; D punches employee in the nose and makes off with the beer; employee's glasses are knocked off and broken
- ▶ D trips and falls in the parking lot of 7-Eleven and all the bottles shatter
- ▶ Who's the victim?
- ▶ What's the restitution?

Hypothetical

- ▶ Residential burglary case
- ▶ D breaks window to get inside and steals \$1200 worth of electronics; also breaks a TV in the process
- ▶ Who's the victim?
- ▶ What's the restitution?

Hypothetical

- ▶ Residential burglary case
- ▶ D breaks window to get inside and steals \$1200 worth of electronics; also breaks a TV in the process
 - V makes homeowner's insurance claim – pays a \$500 deductible and insurance reimburses V for \$1200
- ▶ Who's the victim?
- ▶ What's the restitution?

Hypothetical

- ▶ 5 defendants participate in a group beatdown of V at trolley station
- ▶ V goes to hospital for treatment
- ▶ V's iPhone also gets broken during the assault
- ▶ Who's the victim?
- ▶ Who's responsible for the restitution?
- ▶ What's the restitution?

Hypothetical

- ▶ 5 defendants participate in a group beatdown of V at trolley station
- ▶ V goes to hospital for treatment
- ▶ V's iPhone also gets broken during the assault
- ▶ **CalVCB covers V's hospital bill**
- ▶ Who's the victim?
- ▶ Who's responsible for the restitution?
- ▶ What's the restitution?

Hypothetical

- ▶ 5 defendants participate in a group beatdown of V at trolley station
- ▶ V goes to hospital for treatment
- ▶ V's iPhone also gets broken during the assault
- ▶ CalVCB covers V's hospital bill
- ▶ V is a minor and V's father had to take time off work to care for V
- ▶ Who is/are the victim(s)?
- ▶ Who's responsible for the restitution?
- ▶ What's the restitution?

Hypothetical

- ▶ DUI case – D crashes into V's car, causing damage to V's vehicle; V suffers serious injury to leg
- ▶ V had to miss 6 months of work to recover from injury
- ▶ Who's the victim?
- ▶ What's the restitution?

Hypothetical

- ▶ DUI case – D crashes into V's car, causing damage to V's vehicle; V suffers serious injury to leg; **V is a juvenile**
- ▶ **V's mother had to miss 3 weeks of work to care for V**
- ▶ Who's the victim?
- ▶ What's the restitution?

Hypothetical

- ▶ DUI case – D crashes into V's car, causing damage to V's vehicle; V suffers serious injury to leg; **V is a juvenile**
- ▶ **V's mother had to miss 3 weeks of work to care for V**
- ▶ Who's the victim?
- ▶ What's the restitution?

Hypothetical

- ▶ Vehicular manslaughter case – juvenile victim pedestrian killed
- ▶ V's parents are divorced, but both came to every court hearing and attended the trial
- ▶ CalVCB covered V's funeral/burial costs
- ▶ V's father submits bills/receipts for hotels and flights as he lives out of county
- ▶ V's mother submits lost wages claim for multiple days coming to court and attending trial

Hypothetical

- ▶ DUI case: minor rear-ends V's truck, causing damage
- ▶ V was driving truck and had a passenger
- ▶ As a result of the impact, passenger suffered back pain and had to see a chiropractor for several months
- ▶ Who is/are the victim(s)?
- ▶ What's the restitution?

Hypothetical

- ▶ DUI case: minor rear-ends V's truck, causing damage
- ▶ V was driving truck and had a passenger
- ▶ As a result of the impact, passenger suffered back pain and had to see a chiropractor for several months
- ▶ M's insurance company reimburses V for damage to truck
- ▶ Who is/are the victim(s)?
- ▶ What's the restitution?

Hypothetical

- ▶ Residential burglary – house is ransacked and \$25K worth of property stolen
- ▶ 2 days later, D found with several items that were stolen during the burglary – charged with PC496(a) (possessing stolen property)
- ▶ D surrenders all items and nothing was damaged
- ▶ Who's the victim?
- ▶ What's the restitution?

Hypothetical

- ▶ Residential burglary – house is ransacked and \$25K worth of property stolen
- ▶ 2 days later, D found with several items that were stolen during the burglary – charged with PC496(a) (possessing stolen property)
- ▶ D surrenders all items **but several things were damaged/broken**
- ▶ Who's the victim?
- ▶ What's the restitution?

Hypothetical

- ▶ Auto theft case – D steals V's car and crashes it into a fence (damage to car and to fence)
- ▶ Police recover the car and return it to V
- ▶ V notices several items missing from vehicle
- ▶ V takes vehicle to auto shop and gets quote for \$5600 to fix vehicle
- ▶ Kelley Blue Book says V's vehicle is worth \$3000
- ▶ Who is/are the victim(s)?
- ▶ What's the restitution?

Hypothetical

- ▶ Auto theft case – D steals V's car and crashes it into a fence (damage to car and to fence)
- ▶ Police recover the car and return it to V
- ▶ V notices several items missing from vehicle
- ▶ V takes vehicle to auto shop and gets quote for \$5600 to fix vehicle
- ▶ Kelley Blue Book says V's vehicle is worth \$3000
- ▶ V's insurance pays V \$3000 and waives the deductible
- ▶ Who is/are the victim(s)?
- ▶ What's the restitution?

Hypothetical

- ▶ PC 288.5 case – D molests V (8 years old) over the course of 3 years
- ▶ V undergoes mental health counseling for 2 years
- ▶ V's mother had to leave work to take V to forensic interviews, counseling, and court several times
- ▶ Who is/are the victim(s)?
- ▶ What's the possible restitution?

»» Questions??