

RESTITUTION LAW & PRACTICE: AN OVERVIEW

This resource answers common questions about restitution law and practice. It is designed to provide an overview of key topics related to a victim's right to restitution. Within each answer, there are references to relevant sections of the *Restitution Law & Practice Guide for Legal Practitioners (Legal Practitioner Guide)*, a companion resource that contains additional information and legal analysis. The *Legal Practitioner Guide* is available in the [Victim Law Library](#) of the [National Crime Victim Law Institute \(NCVLI\)](#).

HOW TO USE THIS RESOURCE

Throughout this *Overview*, sample statutory language is included to illustrate the types of laws being discussed. In some instances, this language is directly pulled from an existing federal or state law. In other instances, this language is modeled off one or more existing laws, but it does not directly replicate an existing law. Such sample language is designed to be illustrative; it should not be relied upon for legal purposes.

Specific jurisdictions are identified in this resource to provide examples of laws or practices that exist at the time of publication/release. Each such reference is followed by an endnote containing a citation to a relevant statute, rule, and/or court decision in that jurisdiction. Practitioners can use these citations as a starting point when researching current restitution law in their jurisdiction.

Throughout this resource references are made to various written court submissions. For samples of such documents, please consider joining the [National Alliance of Victims' Rights Attorneys & Advocates \(NAVRA\)](#). For additional information relating to victims' right to restitution, visit the portion of NCVLI's website dedicated to [Restitution & Other Financial Recovery](#). In addition, throughout this resource there are references to complexities in the law; for assistance regarding how to understand and apply restitution laws in a particular situation, please contact NCVLI for [technical assistance](#).

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COMMON QUESTIONS

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1. What state and federal laws address restitution?

Every state and the federal code have laws related to restitution for crime victims. These laws delineate when and how courts can order restitution and to whom. Multiple restitution laws within a single jurisdiction may interact with one another, which makes understanding restitution a complicated endeavor. The relevant sources of the laws are, generally: constitutional and statutory victims' rights provisions; other criminal statutes and procedural rules addressing restitution; and court decisions. Each of these sources of law is briefly addressed in this Answer. To learn more about these sources of law and for additional examples, please consult the *Legal Practitioner Guide* at Part I ("Where You Can Find the Law of Restitution").

Constitutional and Statutory Victims' Rights Provisions. The federal government, all states, the District of Columbia and most U.S. territories have a constitutional and/or statutory body of law dedicated to affording broad, participatory rights to crime victims. These laws may afford victims a range of restitution-related rights, including:

- ***express rights to restitution*** (e.g., "victims have the right to full and timely restitution," "crime victims have the right to restitution, as provided by law," "victims have the right to request restitution");
- ***rights expressly tied to the right to restitution*** (e.g., "victims have the right to be informed about restitution," "victims have the right to confer with the prosecution regarding restitution," "victims have the right to enforce a restitution order in the same manner as a civil judgment"); and
- ***rights that relate to effectuating the right to restitution*** (e.g., "victims have the right to be present and heard at proceedings implicating their rights," "victims have the right to confer with the prosecution," "victims have the right to be treated with fairness and respect for their dignity and privacy," "victims have the right to be free from intimidation, harassment and abuse").

Criminal Statutes and Procedural Rules Addressing Restitution. Jurisdictions generally have restitution-specific statutes and rules that address restitution law and procedure. These provisions often address: how and when restitution is ordered, collected and disbursed; the restitution-related obligations of different system actors; and what can be done when a convicted person fails to meet their restitution payment obligations. These laws primarily appear in the judgment and sentencing portion of a jurisdiction's criminal code and/or rules of criminal procedure. Restitution laws and practices also commonly appear in provisions regarding probation and supervised release (e.g., laws imposing obligations on probation officers to include restitution-related information in presentence investigation reports) and provisions related to

specific crimes (*e.g.*, human trafficking laws that require restitution and address how it is to be calculated for human trafficking victims).

Court Decisions Regarding Restitution. Court decisions interpreting a jurisdiction’s restitution laws and practices also control when, how, and to whom courts can order restitution within a particular jurisdiction.

2. Are courts required to order restitution?

Whether a court must order restitution in a specific case depends upon whether the controlling restitution law is [mandatory](#) or [permissive](#). What follows is a brief overview of the differences between these two categories of restitution laws, as well as how laws from each of these categories can interact with one another in a single jurisdiction; for additional examples of mandatory and permissive restitution laws, more information about these categories and further discussion of how mandatory and permissive restitution laws function together within the same jurisdiction, please consult the *Legal Practitioner Guide* at Part III (“When Courts Must or May Order Restitution”).

What is a mandatory restitution law? A mandatory restitution law requires that courts order restitution when certain conditions are met. These laws often include the words “shall” or “must” in connection with ordering restitution (*e.g.*, “restitution shall be ordered from the convicted wrongdoer in every case in which a victim suffers a loss,” “when a defendant is convicted of a crime, the court must order restitution”). They may also contain language expressly stating a victim’s affirmative right to receive restitution (*e.g.*, “victims have the right to receive prompt restitution,” “victims have the right to an order of restitution”).

The federal government and many states afford victims some mandatory restitution. For example, the federal Mandatory Victims’ Rights Act (MVRA)¹ requires restitution in cases involving a wide variety of crimes, including crimes of violence and fraud, unless the court concludes that restitution would be impracticable or too complex. Other federal laws are mandatory but narrower in their approach, requiring restitution for specific crimes, such as those involving human trafficking, child abuse and exploitation, domestic violence and stalking, and telemarketing and email marketing fraud.²

Some states mandate restitution in all adult criminal cases where the victim suffered certain losses. Arizona,³ California,⁴ Florida,⁵ Illinois,⁶ Kentucky,⁷ Michigan,⁸ and Ohio⁹ are among the states that have such mandatory restitution laws. Other states broadly require full restitution for all victims, subject to certain limitations. These limitations generally include situations where: the victim declines restitution (*e.g.*, Alaska¹⁰); the victim does not request restitution (*e.g.*, Connecticut,¹¹ Hawaii,¹² New York,¹³ Texas¹⁴); the court finds that the defendant lacks the ability to pay (*e.g.*, Connecticut,¹⁵ New Jersey,¹⁶ West Virginia,¹⁷ Wyoming¹⁸); or the court concludes that ordering restitution would be inappropriate or unjust under the facts of the case (*e.g.*, Idaho,¹⁹ Kansas,²⁰ Maine,²¹ New York,²² Washington,²³ Wisconsin²⁴).

Additionally, like the federal government, some states also mandate restitution for specific crimes. For instance, in some jurisdictions where restitution is otherwise [permissive](#), restitution is required in cases involving human trafficking (*e.g.*, Indiana,²⁵ Mississippi,²⁶ New Hampshire,²⁷ Vermont²⁸).

What is a permissive restitution law? A permissive restitution law allows courts discretion regarding whether to order restitution. These laws often include “may” or “consider” in connection with ordering restitution (*e.g.*, “a defendant who is found guilty may be ordered to pay restitution,” “a court may enter a judgment of restitution that orders a defendant to make restitution,” “the court shall consider restitution to the victim of the crime and may require restitution as a part of the sentence”). In jurisdictions where restitution is permissive, a victim’s right to restitution is often articulated as the right to request restitution (*e.g.*, “a victim has the right to pursue an order of restitution,” “victims have the right to request that restitution be an element of the final disposition”).

Jurisdictions where restitution is permissive include Arkansas,²⁹ Indiana,³⁰ Massachusetts,³¹ Mississippi,³² Missouri,³³ Nebraska,³⁴ New Hampshire³⁵ and Vermont.³⁶ A jurisdiction with permissive restitution laws may mandate that a court *consider* whether to order restitution, but still give the court discretion regarding whether and how to order it. Vermont³⁷ is an example of such a jurisdiction. Generally, if a court exercises its discretion and declines to order restitution, it must state its reasons for doing so on the record; the restitution laws in Arkansas,³⁸ New Hampshire³⁹ and Vermont⁴⁰ expressly contain provisions to this effect.

How do mandatory and permissive restitution laws work together within one jurisdiction? Within one jurisdiction, restitution may be [mandatory](#), [permissive](#) or a combination of the two. In some jurisdictions with both mandatory and permissive restitution laws, the laws do not overlap and can operate without conflict. For example, in Kentucky⁴¹ and Iowa,⁴² restitution is mandatory in cases involving adult offenders but discretionary in cases involving juvenile offenders. Another example is in jurisdictions where restitution is permissive under the general restitution statute and mandatory under a crime-specific restitution provision. For instance, in Maryland,⁴³ restitution is generally subject to the court’s discretion, but is required in cases of theft.

There are instances, however, where a jurisdiction’s mandatory and permissive restitution laws directly conflict. An example of this is when a jurisdiction’s victims’ rights laws afford victims a broad right to full restitution but its criminal procedure laws provide courts with discretion regarding whether to order restitution (*e.g.*, under a jurisdiction’s victim’s rights laws, “all victims have right to full and timely restitution in every case” but, under the jurisdiction’s sentencing statute, “courts shall order the defendant to make restitution to the victim unless it finds a clear and compelling reason not to”). Florida⁴⁴, Ohio,⁴⁵ Texas⁴⁶ and Washington, D.C.,⁴⁷ are among the jurisdictions with such conflicting laws. When a jurisdiction has mandatory and permissive restitution laws that seem to be in conflict in this way, it can be difficult to know which law controls. A general principle of legal analysis is that constitutional rights prevail over statutory laws. This means that restitution is generally considered mandatory in jurisdictions like Florida⁴⁸, Ohio⁴⁹ and Texas,⁵⁰ where victims have a constitutional right to restitution and courts have statutory – not constitutional – discretion regarding whether to order restitution. In

jurisdictions where restitution is mandatory under one statute and permissive under another, the analysis is more complicated.

3. How and when do victims request restitution?

How and when victims request restitution varies by jurisdiction and requires understanding the answers to several additional questions, which are included below. The question of what [documentation or other evidence is necessary to support a restitution request](#) is addressed in Answer 4. To learn more about the procedures involved in requesting restitution and examples of laws and court decisions governing such requests, please consult the *Legal Practitioner Guide* at Part IV.A (“Procedures and Requirements Prior to the Court’s Consideration of Restitution”), Part IV.B (“Procedures and Requirements for Gathering and Presenting Restitution-Related Information”), and Part IV.C (“Procedures and Requirements for Whether Courts *May* or *Must* Order Restitution”).

Who requests restitution? In general, restitution requests come from prosecutors and/or victims; in some instances, courts may order restitution even when no one requests it. Typically, prosecutors have authority to request restitution for crime victims, with or without a request from the victim. Some jurisdictions expressly require prosecutors to submit restitution requests to the court (*e.g.*, Illinois,⁵¹ New York,⁵² Wyoming⁵³). Generally, victims may request restitution themselves and/or they may make such a request through privately retained counsel; in some jurisdictions, the individual tasked with preparing the presentence investigation report (often a probation officer) may request restitution for the victim. A victim’s ability to pursue restitution independently may come from laws that afford victims the right to be heard regarding restitution, (*e.g.*, Alabama,⁵⁴ Arizona,⁵⁵ Oregon,⁵⁶ South Carolina⁵⁷). This ability may also come from a victim’s right to assert their own rights, including the right to restitution (*e.g.*, federal jurisdictions,⁵⁸ Arizona,⁵⁹ Illinois⁶⁰). Court decisions in Arizona,⁶¹ Oregon⁶² and Utah⁶³ also reflect victims’ ability to independently pursue a restitution order. Some state court decisions and local practices may discourage or otherwise prevent victims from independently pursuing restitution; for instance, in 2020 an intermediate appellate court in Idaho⁶⁴ concluded that victims in that state *cannot* request restitution without going through the prosecutor.

How is restitution requested? Typically, restitution laws and practices direct victims to request restitution through one or more of the following methods or procedures:

- **Restitution Forms, Affidavits, and Itemized Lists.** Some jurisdictions provide victims with forms to complete when requesting restitution (*e.g.*, Delaware,⁶⁵ Oklahoma⁶⁶). In other jurisdictions, victims submit information of their losses to the court in other formats, such as an affidavit or an itemized list (*e.g.*, federal jurisdictions,⁶⁷ Minnesota,⁶⁸ South Carolina⁶⁹). Victims may prepare such materials independently or with the help of an advocate, attorney, or other victim services provider. Under some restitution laws, completed forms, affidavits, or other submissions are a prerequisite to obtaining restitution; for instance, South Carolina⁷⁰ requires that any victim who wishes to receive restitution must submit an itemized list of their losses within a time frame set by the prosecutor or court. Additionally in jurisdictions such as Delaware⁷¹ and Oklahoma,⁷² if the victim does not provide the required

information regarding restitution, they may not later appeal or seek to amend a restitution order. Familiarity with the established requirements and procedures for requesting restitution is, therefore, critical to maximizing victims' financial rights.

- Presentence Investigation Reports. Probation officers or other members of law enforcement may be tasked with conducting presentence investigations and drafting presentence reports which inform courts regarding sentencing. A victim's financial losses and/or restitution requests are often included in these reports. Such information is collected directly from the victim and/or prosecutor. It is a required component of a presentence investigation report in many jurisdictions, including federal jurisdictions,⁷³ Arizona,⁷⁴ California,⁷⁵ Hawaii,⁷⁶ Michigan⁷⁷ and Utah.⁷⁸
- Victim Impact Statements. In some jurisdictions, victims may request restitution and/or otherwise present the information necessary to support a restitution claim in a victim impact statement. Depending on the jurisdiction, victim impact statements are submitted to the court as part of a presentence investigation report or as a separate written or oral submission. Ohio,⁷⁹ New York⁸⁰ and South Carolina⁸¹ are among the states where victims may document their losses for restitution purposes within their victim impact statement.
- Plea Proceedings. Restitution is often included in a [plea agreement](#). Some jurisdictions, like Illinois,⁸² require that the prosecutor request restitution as part of a plea agreement if the victim asks them to.
- Sentencing Memoranda by the Victim and/or Prosecutor and Sentencing Proceedings. Restitution is a part of the sentencing process and may be ordered either at sentencing or at a separate restitution hearing. Victims and/or prosecutors may submit a restitution request through a general sentencing memorandum or through a verbal request at sentencing. Even when restitution is requested prior to sentencing, victims and/or the government may present materials and testimony in support of a restitution claim at a sentencing proceeding. For instance, some jurisdictions provide victims with the right to present the court, at sentencing, with information regarding their need for restitution (*e.g.*, Oregon⁸³); some jurisdictions require that the prosecutor request restitution at sentencing, if the victim has asked them to pursue restitution (*e.g.*, Illinois⁸⁴).
- Restitution Memoranda by the Victim and/or Prosecutor and Restitution Proceedings. When a victim has an attorney representing them in the criminal case, the attorney may file, prior to sentencing, an independent request for restitution and a supporting memorandum. Such materials detail the victim's restitution claims and provide supporting evidence. Prosecutors may also submit restitution memoranda. When restitution-related information is not presented to a court at sentencing, some jurisdictions require that the court hold a restitution hearing (*e.g.*, Arizona,⁸⁵ New York,⁸⁶ Vermont⁸⁷). When evidence of a victim's losses is not submitted prior to a restitution hearing, the testimony and evidence presented at the hearing may be sufficient to support a restitution order; for instance, a court in Montana⁸⁸ upheld a

restitution order on appeal where the victim provided testimony at a restitution hearing instead of following the preferred procedure of attaching an affidavit to a court-ordered presentence investigation report.

Why is early conferral with the prosecution important to the preparation of a restitution request? Conferring with the prosecution about restitution early in the case is important because [plea agreements](#), [deferred prosecutions and other forms of pretrial diversion](#) can occur quickly and affect restitution. Additionally, early conferral can provide victims with timely notice of the types of [documentation and other evidence](#) that they will need to retain or collect to support a restitution request. Such conferral can also aid victims in determining whether they want or need to pursue restitution independently or whether they would prefer to rely on the prosecution to request it on their behalf.

What is the relationship between a victim's right to be heard and their right to request restitution? Some jurisdictions expressly afford victims the right to be heard at restitution proceedings; Alabama,⁸⁹ Arizona,⁹⁰ and South Carolina⁹¹ are among the states with such laws. Some jurisdictions – such as California⁹² and Oregon⁹³ – directly afford victims the right to be heard during sentencing proceedings regarding their views on the need for restitution. In some jurisdictions – such as federal jurisdictions,⁹⁴ Arizona,⁹⁵ and Florida⁹⁶ – a victim's right to be heard regarding restitution stems from a general right to be heard at sentencing. A victim may also have a right to be heard regarding restitution based on laws affording them the right to be heard at procedural moments at which their rights are implicated; Arizona,⁹⁷ Florida,⁹⁸ and Wisconsin⁹⁹) are among the states that have laws to this effect. The right to be heard at restitution, sentencing and other proceedings includes the right to submit filings in advance of the proceeding.

What role do victim advocates, prosecutors and other victim services providers play in the preparation of restitution requests? When preparing restitution requests and/or the documentation underlying such requests, victims may request assistance from victim advocates, prosecutors and other victim services providers. In fact, a number of jurisdictions provide victims with the right to some form of such assistance; Connecticut,¹⁰⁰ Indiana,¹⁰¹ Massachusetts,¹⁰² Oklahoma¹⁰³ and Vermont¹⁰⁴ are among the jurisdictions that provide victims with such a right. One tool for victims to use to record their financial losses is a [restitution log](#); victim services providers can provide victims with such a tool and assist them in completing it.

When must restitution be requested? Some restitution laws do not specify when a victim must submit their request for restitution; in such jurisdictions, requests that are made after sentencing may still be considered timely (*e.g.*, Arizona¹⁰⁵). Other restitution laws do specify a deadline by which restitution requests and the information supporting the requests must be submitted to the court (*e.g.*, federal jurisdictions,¹⁰⁶ Alaska,¹⁰⁷ Colorado,¹⁰⁸ Illinois,¹⁰⁹ Oregon¹¹⁰). Some laws provide express exceptions to such deadlines. For example, federal law,¹¹¹ Colorado¹¹² and Illinois¹¹³ have an exception when the amount of restitution is unknown by the deadline. Colorado¹¹⁴ and Oregon¹¹⁵ provide an exception to their request deadlines upon a showing of good cause for the delay; and Alaska¹¹⁶ allows for an exception where strict adherence to the deadline would work an injustice. Additionally, in jurisdictions where victims have a constitutional right to restitution, victims do not necessarily lose their opportunity to

request restitution once the deadline for such a request has passed; an Oregon¹¹⁷ court has recognized this to be the case. Additionally, if the prosecution fails to submit its restitution request before a deadline passes, a court may retain jurisdiction to hear the victim's request based on its authority [to remedy violations of the victim's restitution rights](#). Likewise, if a victim misses the request deadline because one of their rights was violated – such as their right to notice of their right to request restitution – the court might be able to accept a late restitution request under its authority [to remedy a rights violation](#).

Do courts still order restitution even if the victim and/or prosecutor do not request it or if the victim affirmatively wants to decline or otherwise waive restitution? In some jurisdictions courts may or must order restitution even when the victim or the government does not request it. For instance, courts in California¹¹⁸ and Minnesota¹¹⁹ have concluded that a victim's failure to request restitution does not strip the court of its authority to order restitution. Other state courts have gone further, concluding that when a jurisdiction's law requires restitution (*i.e.*, restitution is [mandatory](#)), the court must order restitution, regardless of whether the victim has requested it; Arizona,¹²⁰ Florida¹²¹ and Maryland¹²² court decisions reflect this conclusion. Notably, federal courts disagree with one another on this point. Some federal courts¹²³ have found that, when restitution is required under the MVRA, the court must order it, even if the victim does not want it. Other federal courts have found that is not the case. For instance, one federal court¹²⁴ concluded that restitution cannot be ordered when the victim does not want it because victims have a right under the MVRA to not be required to participate in any phase of a restitution order; another federal court¹²⁵ recommended that mandatory restitution not be ordered when neither the victim's attorney nor the prosecutor requested it because no evidence had been presented from which the court could make a restitution determination.

4. What documentation or other evidence do victims need to support a restitution claim?

To request and receive restitution, victims provide the government and/or the court with information regarding their losses. Restitution statutes and court decisions largely control the nature and format of such information. An overview of key aspects is in this Answer. For further information on these topics and for examples of relevant laws and court decisions, please consult the *Legal Practitioner Guide* at Part IV.B (“Procedures and Requirements for Gathering and Presenting Restitution-Related Information”) and Part IV.C (“Procedures and Requirements for Whether Courts *May* or *Must* Order Restitution”).

In general, what type of information and evidence is necessary to support a restitution claim? In general, a restitution request must be supported by a “preponderance of the evidence.” This means that the evidence must show that it is more likely than not that the restitution claim is true. Typically, there are fewer formal requirements for evidence in the restitution context than at other points in a criminal case, such as trial. This means that evidence that would be excluded at trial – such as certain out of court statements or documents that have not been formally authenticated – can be used for restitution purposes in many jurisdictions, as long as there some demonstration of that this evidence is reliable, which is often referred to as a “minimal indicia of reliability.” Federal jurisdictions,¹²⁶ Colorado,¹²⁷ South Carolina,¹²⁸ Utah¹²⁹ and Vermont¹³⁰ are among the jurisdictions that do not apply traditional rules of evidence in the restitution context;

Minnesota¹³¹ is an example of a jurisdiction that does apply the rules of evidence to a restitution hearing.

Restitution laws in some jurisdictions may provide a non-exclusive list of the types of evidence or information necessary to support a restitution claim (e.g., “restitution may be based on documentary evidence, including bills, receipts, repair estimates, insurance payment statements, payroll stubs, business records and other similar documents relevant to the value of the stolen or damaged property, medical expenses and wages and profits lost”). California¹³² and Ohio¹³³ are examples of jurisdictions with such non-exclusive lists. On the other hand, restitution laws in jurisdictions like New Hampshire¹³⁴ and Vermont¹³⁵ identify the specific documentation necessary to support certain restitution claims (e.g., “the amount of restitution owed to a victim assistance fund must be established by copies of the bills submitted to the victims’ assistance fund and a statement that the services for which payment was made were for uninsured pecuniary losses”). In these jurisdictions, restitution likely will not be ordered in the absence of such documentation.

What are common types of documentation and/or testimony used to support a restitution claim? Common forms of documentation supporting restitution claims include affidavits, agreements, business records, contracts, canceled checks, credit card statements, insurance payment statements, payroll stubs, receipts and repair estimates. Testimony from victims or others at a restitution proceeding may also serve as evidence to support a restitution claim. In some jurisdictions, such as Iowa,¹³⁶ documentary evidence may be required in addition to such testimony. Where a restitution calculation is particularly complex, courts may rely upon testimony from experts (e.g., economists testifying in support of restitution for the future lost income of a homicide victim; insurance agents testifying in support of restitution for the present value of a homicide victim’s projected estate). Additionally, in some jurisdictions, information about the victim’s losses already on the record may be sufficient to support a restitution request (e.g., trial testimony and documentary evidence); federal jurisdictions¹³⁷ and Arizona¹³⁸ are examples of jurisdictions where this can be the case.

Jurisdictions vary greatly in what types of documentary evidence are sufficient to support a restitution claim. For instance, in Oregon,¹³⁹ a victim’s medical bills, on their own, may not be sufficient to meet the state’s requirement that, for the purposes of restitution, a victim’s medical costs be reasonable and necessary. In other jurisdictions – such as Maryland¹⁴⁰ and Washington, D.C.¹⁴¹ – medical bills are considered, for the purposes of restitution, sufficient evidence of reasonableness of the victim’s medical costs and the need for such services.

How can victim advocates, victim attorneys and other victim service providers assist victims in the preparation of restitution documentation? Compiling and keeping track of restitution-related information can be overwhelming for victims and their families. It may take time to compile a list of expenses and financial losses caused by criminal conduct. Letting victims know, at the outset of a case, of the need to record and track their past and anticipated future losses is critical to protecting victims’ access to full recovery. Victim services providers can further protect such access by offering to assist victims in collecting and maintaining their records. Some jurisdictions recognize the benefit of such assistance and afford victims the right to help from victim advocates, prosecutors and/or other victim services providers in documenting

their financial losses for restitution purposes (e.g., Indiana,¹⁴² Massachusetts,¹⁴³ Oklahoma,¹⁴⁴ Vermont¹⁴⁵). Starting the documentation process early with victims can help create the space needed to process the information, compile the right materials and assess what it is that a victim wants and needs to get in restitution. One tool that victim service providers might use in assisting victims in the documentation of their losses is a [restitution log](#).

How can victim advocates, victim attorneys and other victim service providers assist victims in protecting their privacy, privilege and confidentiality interests in materials documenting their financial losses? Documentation of a victim’s losses may contain private, privileged, or confidential victim information (e.g., records reflecting the cost of the victim’s mental health treatment may contain privileged and otherwise private information about the treatment itself). Consideration should be given as to whether submitting such materials to the prosecution or the court in support of a request for restitution places a victim’s privacy, privilege or confidentiality at risk. The redaction of private information from these materials before they are submitted may offer some privacy protection. For additional guidance on protecting victim privacy, privilege and confidentiality in the restitution context, please consult the *Legal Practitioner Guide* at Part II.B (“Restitution-Related Privacy and Confidentiality Rights and Protections”).

5. How does a deferred prosecution agreement or a pretrial diversion program affect restitution?

Deferred prosecution agreements and pretrial diversion programs may control a defendant’s restitution obligations. A deferred prosecution agreement is an agreement that the prosecutor enters into with a defendant, under which the prosecutor agrees to defer prosecution for an agreed to amount of time, in exchange for the defendant meeting certain requirements, such as the payment of restitution. If the defendant does not meet such requirements within the time period, the government may pursue the original criminal charges against the defendant. Statutes and court rules authorize and establish eligibility requirements for pretrial diversion programs, which also provide an alternative to criminal sentencing conditioned on a defendant’s completion of certain program requirements, such as the payment of restitution.

Some jurisdictions require restitution as a condition of a deferred prosecution agreement or pretrial diversion program (e.g., Illinois,¹⁴⁶ Kentucky,¹⁴⁷ Michigan¹⁴⁸). Other jurisdictions authorize inclusion of restitution as such a condition (e.g., Colorado,¹⁴⁹ Montana,¹⁵⁰ Oregon¹⁵¹). Jurisdictions may expressly require that prosecutors consider victims’ wishes prior to entering into a deferred prosecution agreement or referring a defendant to a pretrial diversion program (e.g., Minnesota,¹⁵² Oklahoma¹⁵³). In other jurisdictions, victims may have an opportunity to communicate their thoughts on such agreements, programs and restitution under victims’ rights laws and restitution provisions that require prosecutors to consult with victims prior to entering into or authorizing these sentencing alternatives (e.g., Florida,¹⁵⁴ Delaware,¹⁵⁵ Kentucky,¹⁵⁶ South Carolina,¹⁵⁷ Utah¹⁵⁸).

If restitution is a condition of pretrial diversion, failure to pay within a set time frame may result in the prosecutor pursuing the original criminal charges. Some laws expressly allow for the extension of deferral or diversion when the only outstanding condition is restitution

payment, although these laws usually cap the duration of such extensions at one or two years (e.g., Colorado,¹⁵⁹ Missouri,¹⁶⁰ New Mexico¹⁶¹).

To learn more about the relationship between restitution and deferred prosecution agreements and pretrial diversion programs, as well as examples of relevant laws and court decisions, please consult the *Legal Practitioner Guide* at Part IV.C.2 (“Deferred Prosecution Agreements and Pretrial Diversion Programs”).

6. How do plea agreements affect restitution?

Plea agreements can affect the amount of restitution that a victim receives in a few ways.

First, although a defendant may agree to pay restitution as a binding part of a plea agreement, the amount that the defendant agrees to pay may be different than the amount they would be ordered to pay if they were found guilty of the crimes with which they have been or would be charged.

Second, plea agreements may be silent as to restitution. Depending on the jurisdiction, the absence of restitution from a plea agreement may prevent the court from ordering it. In jurisdictions where the court is required to consider and/or order restitution, silence in a plea agreement regarding restitution does not alter the court’s obligations because these obligations and the rights to which they correspond are not something that the prosecution can bargain away during plea negotiations. Courts in California,¹⁶² Idaho,¹⁶³ Indiana¹⁶⁴ and Vermont¹⁶⁵ have recognized the authority of courts to order restitution even when it is not an express term of a plea agreement; relatedly, one Maryland court¹⁶⁶ has recognized that the state’s failure to expressly include the issue of restitution in a plea agreement does not waive the victim’s right to request restitution. Alabama¹⁶⁷ courts may not accept a plea agreement unless reasonable efforts were made to give the victim notice of plea proceedings and the terms of any sentence agreed to as part of the negotiated plea.

Finally, the specific charges underlying the plea agreement may limit the total amount of restitution ordered for the victim. In the plea context, defendants generally may only be ordered to pay restitution for charges to which they have admitted guilt or for which they have agreed to pay restitution. This means that when a defendant is charged with some crimes for which restitution is applicable and other crimes for which it is not, but only pleads to the charges for which restitution is not applicable, the victim may not be able to claim restitution for the dismissed charges absent clear language in the plea agreement. Illinois¹⁶⁸ and Washington¹⁶⁹ are among the states that expressly authorize, in the context of plea agreements, restitution for dismissed charges where restitution is a clear term of the plea. To protect their restitution rights and interests, victims should ask that restitution for dismissed claims be a part of a plea agreement.

Because of the ramifications plea agreements have on victims’ restitution rights and interests, advance notice of plea negotiations and [early conferral between victims and prosecutors](#) about restitution is essential to the protection and enforcement of victims’ rights. Indeed, a plea agreement may be rejected if it is entered into in violation of the victim’s right to

confer, where such a violation results in the victim’s restitution interests not being taken into account; as one federal court¹⁷⁰ has reasoned, the administration of justice does not support the acceptance of such a plea.

To learn more about the relationship between restitution and plea agreements and how the terms of a plea agreement can affect restitution and for examples of laws and court decisions that connect restitution and plea agreements, please consult the *Legal Practitioner Guide* at Part IV.C.3 (“Plea Agreements”).

7. Who is eligible for restitution?

Whether a victim can request and receive restitution in a jurisdiction depends, in part, on whether they meet the legal definition of “victim” within that jurisdiction’s laws. A review of various laws governing victim eligibility is a good place to begin when determining who is eligible for restitution within a specific jurisdiction. Familiarity with the persons and entities commonly treated as eligible for restitution can provide additional guidance. An overview of these topics is included in this Answer. For more information about restitution eligibility and for examples of statutes and court decisions addressing victim eligibility, please consult the *Legal Practitioner Guide* at Part IV.C.4.i (“Victim Eligibility”).

What types of laws govern restitution eligibility? A jurisdiction may address restitution eligibility in various laws, including those that expressly define the term “victim” and those that do not. For example, a jurisdiction may address restitution eligibility in restitution laws that define “victim” for the purposes of restitution; such laws might include language like, “the term ‘victim’ used in any provision of law related to restitution means . . .” or “for the purposes of the statutes governing restitution, the term ‘victim’ means . . .”. Restitution laws may also expressly rely upon the definition of “victim” that is contained in a jurisdiction’s general victims’ rights provisions; sample language from such a law might look like: “for the purposes of the statutes governing restitution, the term ‘victim’ has the same meaning as under the Victims’ Rights Act.” Some restitution laws may define “victim” for the limited purpose of compensating victims of a certain crime (*e.g.*, “as used in the law governing restitution in cases of white collar crime, the term ‘victim’ means . . .”). Victims’ rights provisions that define “victim” for the purposes of all rights, including the right to restitution, may also establish restitution eligibility (*e.g.*, “for the purposes of the Victims’ Rights Act, which includes the right to restitution, the term ‘victim’ means . . .”).

Restitution eligibility may also be determined by provisions addressing what losses are [compensable in restitution](#). For example, a restitution law might provide that “the court shall order restitution to a public, private or nonprofit organization that has provided or will be providing counseling, medical or shelter services to the victim.” Under such a law, public, private or nonprofit organizations are eligible for restitution if they have provided or will provide services (*e.g.*, counseling, medical, shelter) to the victim. Likewise, a restitution statute that provides “if a defendant is convicted of domestic battery, the defendant must pay restitution to any domestic violence shelter in which the victim lived because of the domestic battery,” establishes that a domestic violence shelter is eligible for restitution when a victim lives in the shelter due to the domestic battery for which the defendant is convicted. Additionally, some

restitution laws expressly extend restitution to individuals who were injured by an offense, but are not otherwise “victims” under that jurisdiction’s laws (*e.g.*, “the court shall order a defendant convicted of an offense to make restitution to the victim or other person injured by the offense,” “when a defendant is convicted of domestic battery and a person under 18 years of age witnesses the domestic battery of the victim, the defendant may be required to pay restitution for the cost of any counseling that the child-witness requires”).

Multiple statutory provisions detailing eligibility for restitution may apply within a single jurisdiction. The scope of restitution eligibility can only be understood once all of the provisions defining the term are read together.

What persons and entities are commonly eligible for restitution? The persons and entities commonly designated as eligible for restitution include natural persons; corporations and other legal entities; estates; and institutions (*e.g.*, “for the purposes of restitution, a ‘victim’ is a person directly and proximately harmed as a result of the commission of an offense,” “for the purposes of restitution, a ‘victim’ is a natural person or their personal representative or, if the victim is deceased, their estate; or any firm, partnership, association, public or private corporation, or governmental entity,” “for the purposes of restitution, ‘victim’ means a person who suffers loss of property, bodily injury or death as the result of the commission of an offense; the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim; a governmental entity that suffered a loss of property as the result of the commission of an offense or incurred costs during the investigation of an escape from custody; an insurer or surety with a right of subrogation that has reimbursed the victim for their loss; the crime victims compensation program; and any person or entity the offender voluntarily agrees to reimburse as part of a plea agreement”).

Many jurisdictions also specify that when a victim is a child, incompetent, incapacitated, or deceased, restitution eligibility extends to certain family members, guardians and legal representatives (*e.g.*, “for the purposes of restitution, when a victim is under 18 years of age, incompetent, incapacitated or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, may assume the victim’s restitution rights, but in no event shall the defendant be named as such representative or guardian”). Crime victim compensation programs are also commonly recognized as eligible for restitution (*e.g.*, “when the crime victim compensation program has reimbursed the victim for their out-of-pocket expenses, the court shall order restitution be paid to the program”). Other entities that reimburse direct victims for their losses or otherwise cover a direct victim’s costs, such as insurance companies and hospitals, may also be eligible for restitution, depending on the jurisdiction.

8. What losses are compensable in restitution?

Jurisdictions vary in how they define the types of losses that are compensable. The language of restitution laws and the court decisions interpreting these laws largely control the scope of compensable losses within a jurisdiction. Additional understanding can be found in a review of losses that are commonly treated as subject to restitution and those that are not. Overviews of these topics are included in this Answer. For more information about restitution

eligibility and for examples of relevant statutes and court decisions, please consult the *Legal Practitioner Guide* at Part IV.C.4.ii (“Compensable Losses”).

How do laws articulate what losses may be compensated through restitution? Many jurisdictions provide that a victim is entitled to restitution for the [full amount](#) of the victim’s losses (*e.g.*, “victims have the right to full and timely restitution,” “restitution shall be in a dollar amount that is sufficient to reimburse any victim fully for their losses,” “victims have the right to full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct”). Some jurisdictions define what this broad term means in terms of specific compensable losses (*e.g.*, “for the purposes of restitution, the ‘full amount of the victim’s losses’ means . . .”).

In general, restitution laws specify that the losses that are recoverable are those that are financial in nature. Terms like “financial loss,” “economic loss,” “material loss” or “pecuniary loss” are often used within a restitution law to make this point (*e.g.*, “the court shall order restitution for every determined economic loss incurred as a result of the defendant’s criminal conduct,” “the court shall consider restitution in every case where the victim has suffered a material loss,” “‘restitution’ means the payment of pecuniary damages and ‘pecuniary damages’ means all demonstrable economic injury, losses, and expenses regardless of whether the economic injury, losses, and expenses have yet been incurred”). Some laws expressly define what these terms mean within the definition section or the body of their restitution laws (*e.g.*, “for the purposes of restitution, ‘economic loss’ means . . .”).

Jurisdictions often provide a non-exclusive list of examples of compensable losses (*e.g.*, “restitution shall be a dollar amount that is sufficient to reimburse any victim fully for their losses, including but not limited to the full value of stolen or damaged property, medical expenses, funeral and burial expenses, and lost earnings,” “the court shall order restitution for the victims economic losses, where ‘economic loss’ means out-of-pocket losses or other expenses incurred as a result of a criminal offense, including: medical care costs, loss of income by the victim or the victim’s dependents, the value of damaged, destroyed or lost property and reasonable funeral expenses”). These jurisdictions articulate that their list of examples is not exclusive through language such as “including,” or “including but not limited to” before the items are listed (*e.g.*, “the court shall order restitution for every determined economic loss incurred as a result of the defendant’s criminal conduct, including, but not limited to [examples of losses]”, “as used in the section governing restitution, ‘economic loss’ means out-of-pocket losses or other expenses incurred as a direct result of a criminal offense, including [examples of losses]”). Jurisdictions may also include a catchall provision in their restitution statute to capture losses that are not expressly identified within the statute; terms like “other losses” and “other expenses” indicate this (*e.g.*, “restitution means any form of compensation paid by a convicted person to a victim for counseling, medical expenses, lost wages due to injury, or property damages and other expenses suffered by a victim because of a criminal act,” “the court may order the defendant to pay the victim restitution for lost income; the cost of transportation; temporary housing; and child care costs incurred because of the offense, attorney fees and costs incurred as a result of the victim assisting in the investigation of an offense and attendance at trial; and other losses suffered by the victim as a proximate result of the offense”).

Other jurisdictions provide an exclusive list of categories of compensable loss. Under these laws, victims generally are not compensated for losses that fall outside the listed categories (e.g., “restitution shall be for damages for injury to or loss of property, actual expenses incurred for treatment of injury to persons and for lost wages resulting from injury,” “restitution shall be considered in every case where the victim has suffered an uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses”).

Crime-specific restitution provisions may include a unique set of compensable losses for victims of certain crimes, in addition to the losses that are generally compensable in that jurisdiction (e.g., “when restitution is ordered in a human trafficking case, it shall include the victim’s economic losses under the general restitution statute and also attorney’s fees and costs and the greater of either the gross income or value of the labor performed by the victim for the offender or the value of the labor performed by the victim for the offender as guaranteed by state minimum wage and overtime laws,” “restitution for the crime of the rape of a child, in which the victim becomes pregnant, shall include medical expenses related to the rape and pregnancy and child support if it is otherwise ordered”).

What categories of loss are commonly compensated in restitution? Common categories of loss that can be compensated in restitution include losses related to:

- Attorneys’ fees and related costs.
- Childcare costs, including those incurred by the victim because of the offense or due to their participation in criminal investigations, prosecutions or court proceedings.
- Funeral and related services.
- Past and future lost income, including income lost in the aftermath of crime or due to participation in criminal investigations, prosecutions and court proceedings.
- Past and future medical services related to physical and mental health care.
- Post-crime relocation costs and other safety and security measures.
- Property loss or damage.
- Temporary housing costs incurred by the victim because of the offense.
- Transportation costs, including those incurred by the victim because of the offense or due to their participation in criminal investigations, prosecutions, or court proceedings.

These categories of compensable loss may apply to losses a victim has already incurred, as well as those that they are reasonably likely to incur in the future.

What are categories of loss that are commonly excluded from restitution? In general, restitution does not extend to non-economic losses like pain and suffering, punitive damages or consequential damages. Although this is the general rule, at least one jurisdiction does authorize noneconomic damages in a limited setting. For example, in California,¹⁷¹ in cases involving sex offenses against a child, restitution includes reimbursement for noneconomic losses, including psychological harm.

9. What causal connection must be shown between a victim’s losses and a convicted person’s criminal conduct before restitution can be ordered?

To support a request for restitution, the government and/or the victim must show that the defendant’s conduct caused the victim’s losses. This is known as the “causation standard” and jurisdictions vary greatly in their approach to it. Some jurisdictions expressly identify in their restitution laws the causation standard used in that jurisdiction. Jurisdictions that include such language often incorporate it into provisions that address who is eligible for restitution and what types of losses may be covered by a restitution order. In many instances, these may be in the section of the restitution law that defines terms such as “victim,” “economic loss” and/or “pecuniary loss.” Case law also plays a significant role in establishing a jurisdiction’s causation standard(s) and court interpretation of these standards can expand causation analysis beyond a law’s express text.

The causation standards that commonly appear in restitution laws include: direct causation; but-for causation; and proximate causation. Direct causation requires that the victim’s losses were a direct consequence of the offense and/or related criminal conduct (*e.g.*, a defendant is liable in restitution for losses the victim incurred “as a direct result of” the crime and/or related activity). But-for causation requires that the victim would not have incurred their losses but-for the offense and/or related criminal conduct (*e.g.*, a defendant is liable for restitution for losses the victim incurred “as a result of” the crime and/or related criminal activity). Proximate cause requires that the victim’s losses were a foreseeable consequence of the defendant’s conduct (*e.g.*, a defendant is liable for restitution for losses the defendant “caused” or that the victim incurred “as a result of” the crime and/or related criminal activity, where such results were natural and foreseeable).

For more information about different causation standards, examples of the causation requirements found in restitution laws and relevant court decisions, please consult the *Legal Practitioner Guide* at Part IV.C.4.iii (“Causation”).

10. Is there a deadline for ordering restitution?

Jurisdictions vary in how they approach deadlines for ordering restitution. Such deadlines may be broad. For instance, in some jurisdictions, victims’ rights laws may require that restitution be “timely” or “prompt” (*e.g.*, “victims have the right to receive prompt restitution,” “victims have the right to full and timely restitution”); Arizona,¹⁷² Florida,¹⁷³ Oregon¹⁷⁴ and South Carolina¹⁷⁵ have laws to this effect. Restitution and/or sentencing laws may also control the timing of restitution orders. For instance, in some jurisdictions – such as California¹⁷⁶ and Illinois¹⁷⁷ – courts are directed to order restitution at sentencing, if the amount of restitution is known at that time (*e.g.*, “the court must order restitution at the time of sentencing, if the amount of restitution is known”). Some of these and other jurisdictions specify that restitution must be ordered within a certain time period after sentencing (*e.g.*, “restitution may be imposed at sentencing or within sixty days thereafter,” “the prosecutor must investigate the victim’s restitution claims at the time of sentencing or within 90 days after entry of the judgment”); Colorado¹⁷⁸ and Florida¹⁷⁹ have such laws. For a survey of federal and state laws that address restitution timing and deadlines, please consult *Survey of Select Laws Governing*

Timelines for Entry of Initial Restitution Order in a Criminal Case, NCVLI (2020), available at <https://law.lclark.edu/live/files/29859-ncvlinational-surveyrestitution-timelinespdf>. [Modifications to a final restitution order](#) may be subject to the same or different deadlines, depending on the jurisdiction.

Jurisdictions vary in how they approach the effects of such deadlines passing. Some courts have found that restitution ordered outside of an expressly identified time frame is not necessarily unlawful; the United States Supreme Court¹⁸⁰ and state courts in Florida,¹⁸¹ Kentucky¹⁸² and Oregon¹⁸³ are among the courts that have reached such a conclusion. Courts in other states, such as Washington,¹⁸⁴ have concluded that restitution must be ordered within a statutory time frame. In jurisdictions where victims have a constitutional right to restitution, this right might overcome statutory limitations on when restitution may be ordered; Oregon¹⁸⁵ has recognized this to be the case.

To learn more about the timeliness of restitution, examples of laws containing timeframes in which restitution must be ordered and relevant court decisions, please consult the *Legal Practitioner Guide* at Part IV.C.5 (“Timeliness of Restitution Order”).

11. When must courts order full restitution and when can they order partial restitution?

Some jurisdictions require that victims receive full restitution for their losses (*e.g.*, “victims have the right to full and timely restitution,” “the court must order full restitution for the victim”). Full restitution means restitution for all of the compensable/eligible losses that the victim and/or government can prove. California,¹⁸⁶ Florida,¹⁸⁷ Michigan¹⁸⁸ and South Carolina¹⁸⁹ are among the states that require full restitution. Federal law requires full restitution for victims of certain crimes, such as human trafficking¹⁹⁰ and child abuse and exploitation.¹⁹¹

Some jurisdictions authorize restitution in a lesser amount than full restitution owed to a victim. In some of these jurisdictions, courts have general authority to order partial restitution (*e.g.*, “the court shall order the offender to make financial restitution under terms that it determines are appropriate,” “the court shall order the defendant to pay all or part of the restitution claimed”); Connecticut,¹⁹² Wisconsin,¹⁹³ and Wyoming¹⁹⁴ are examples of jurisdiction where the court has discretion to order partial restitution.

In other jurisdictions, courts can only order partial restitution based upon certain considerations or circumstances (*e.g.*, “victims are entitled to full restitution in all cases, except those involving a juvenile offender,” “the court shall order full restitution, unless it finds the defendant does not have the ability to pay”). Some jurisdictions require partial restitution when the full amount of the victims’ losses exceed a particular dollar amount (*e.g.*, Kentucky,¹⁹⁵ Mississippi,¹⁹⁶ New York¹⁹⁷) or when the court concludes that full restitution is not practicable given the defendant’s financial circumstances (*e.g.*, West Virginia¹⁹⁸). Additionally, some jurisdictions authorize partial restitution in juvenile cases (*e.g.*, Kentucky¹⁹⁹) or when the court concludes that full restitution would be unjust or otherwise inappropriate under the facts of the case (*e.g.*, Mississippi,²⁰⁰ Washington²⁰¹). Notably, even jurisdictions that authorize partial restitution, a court’s exercise of its discretion in awarding restitution may be guided by a

presumption in favor of full restitution for victims; one West Virginia court²⁰² has recognized this.

To learn more about full and partial restitution and for examples of relevant laws and court decisions, please consult the *Legal Practitioner Guide* at Part IV.D (“Procedures and Requirement for the Final Restitution Calculation and Determination of the Manner of Payment”).

12. What factors can courts consider or not consider when deciding the amount of restitution to order and the manner and method of payment?

When making a final restitution calculation and/or decisions about the manner and method of restitution payment, courts consider a range of factors. Some restitution laws specify what factors the court may, must, or must not consider; others do not. Common factors for consideration include the interests and resources at stake for victims and defendants; whether nonmonetary restitution is appropriate; and whether there are multiple victims entitled to restitution or other circumstances complicating these determinations. An overview of these factors follows. For an in-depth discussion of these and additional factors, please consult the *Legal Practitioner Guide* at Part IV.D.1 (“Factors Courts Consider When Determining the Amount of Restitution and the Manner of Payment”).

What interests and resources of victims and/or defendants can courts consider when making restitution determinations? The consideration of specific factors regarding the interests of victims and defendants is mandatory in some jurisdictions, such as Alaska,²⁰³ Arizona²⁰⁴ and Wisconsin.²⁰⁵ Consideration of these factors is discretionary in other jurisdictions, such as Alabama²⁰⁶ and South Carolina.²⁰⁷

With respect to victims’ interests, all restitution laws require or authorize consideration of the victims’ financial losses when determining the amount of restitution. Regarding the manner and method of payment, some jurisdictions allow or require courts to base the manner and method of restitution payment on any burden or hardship that the victim has suffered and/or the victim’s mental, physical and financial well-being; Alabama²⁰⁸ and South Carolina²⁰⁹ are states where such laws exist. A victim’s burdens, well-being and other interests can also be considered under restitution provisions in other jurisdictions that expressly allows courts to consider any factors that they deem appropriate; Wisconsin²¹⁰ is an example of a jurisdiction with such a law.

Some courts may or must consider defendants’ interests. Notably, some jurisdictions expressly forbid the consideration of a defendant’s ability to pay when deciding the amount of restitution to order (*e.g.*, federal jurisdictions,²¹¹ Alaska,²¹² Arizona,²¹³ California,²¹⁴ Hawaii²¹⁵) and some provide that restitution may be ordered regardless of the defendant’s ability to pay (*e.g.*, New Hampshire²¹⁶). Other jurisdictions expressly require or allow courts to consider a defendant’s ability to pay when making a restitution determination (*e.g.*, Vermont,²¹⁷ Wyoming²¹⁸); in some of these jurisdictions, a court can refuse to order restitution altogether based on its conclusion that the defendant lacks the ability to pay and that there is no reasonable probability of them being able to pay in the future (*e.g.*, Wyoming²¹⁹). Importantly, even in jurisdictions where courts cannot consider a defendant’s financial resources when determining

the amount of restitution owed, courts may still be authorized or required to consider a defendant's ability to pay when determining whether restitution will be paid in a lump sum or on an [installment basis](#) (e.g., federal jurisdictions,²²⁰ Arizona,²²¹ Hawaii²²²).

What is nonmonetary restitution and when is appropriate for courts to order it? In some instances, restitution may be nonmonetary. Examples of nonmonetary restitution include the return or replacement of property; the repair of property; or other services rendered to the victim. Restitution laws allowing for such nonmonetary restitution can be found in federal jurisdictions,²²³ as well as in Florida,²²⁴ Illinois,²²⁵ Kentucky,²²⁶ Michigan²²⁷ and Montana²²⁸ (e.g., “restitution may be monetary or nonmonetary,” “the court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim,” “the court shall determine whether the property may be restored in kind to the possession of the owner or the person entitled to possession thereof; or whether the defendant is possessed of sufficient skill to repair and restore property damaged; or whether the defendant should be required to make restitution in cash”). Victims are not necessarily required to accept nonmonetary forms of restitution; for example, in jurisdictions like Michigan,²²⁹ Montana²³⁰ and Vermont,²³¹ victims need to consent before restitution can be made through services or other in-kind payments (e.g., “if the victim or victim’s estate consents, the order of restitution may require that the defendant make restitution in services in lieu of money,” “when ordered, restitution may include payments in kind, if acceptable to the victim”).

What happens when the calculation of restitution is especially difficult? Courts often order restitution for multiple victims and in other situations where restitution calculations are complicated, such as cases involving large-scale securities fraud and money laundering. Yet, some restitution laws, such as those that apply in federal jurisdictions,²³² expressly provide that when the number of crime victims is so large as to render individual restitution calculations impracticable, the court is not required to order restitution, even if it is otherwise mandatory (e.g., “restitution is required unless the court finds, from the facts on the record, that the number of identifiable victims is so large as to make restitution impracticable”). Courts in some jurisdictions may also decline to order restitution because calculations of the victims’ losses would be complicated for the court and the burden on the sentencing process outweighs the victim’s need for restitution (e.g., “restitution is required unless the court finds, from the facts on the record that determining complex issues of fact related to the cause or amount of the victim’s losses would complicate or prolong the sentencing process and the need to provide restitution to any victim is outweighed by the burden on the sentencing process,” “the court shall impose an order of restitution to the extent that the order is as fair as possible to the victim and the imposition of the order will not unduly complicate or prolong the sentencing process”); there is a law to this effect in federal jurisdictions²³³ and in West Virginia.²³⁴

13. When do courts order a restitution payment schedule?

When a court issues a restitution order, it may require the immediate payment of a single lump sum payment or it may establish a payment schedule, under which the defendant makes partial payments of restitution at specified intervals. Some restitution laws expressly address when and how a court is to set such a restitution payment schedule.

Some restitution laws, such as those in Alaska,²³⁵ address these topics broadly by giving courts discretion to authorize that restitution be paid within a specified period of time or in specified installments. In other jurisdictions, restitution laws may require or authorize the consideration of certain factors in setting such a schedule. Restitution laws in Arizona,²³⁶ Illinois²³⁷ and Vermont²³⁸ demonstrate one common factor that courts may or must consider: the defendant's current and reasonably foreseeable future ability to pay, including consideration of all of the defendant's assets (*e.g.*, real and personal property, workers' compensation, social security benefits). The victim's views and preferences may be another factor that courts consider in setting restitution payment schedules; Arizona²³⁹ is one of the jurisdictions that requires consideration of this factor.

Restitution laws may also require that restitution be paid within the shortest reasonable time frame and/or within a certain time period. For instance, federal law requires that courts setting restitution payment schedules make the length of time over which the scheduled payments "the shortest time in which full payment can reasonably be made";²⁴⁰ and, in Arizona,²⁴¹ courts may issue "any reasonable order necessary to accomplish" victims' prompt receipt of full restitution. Illinois,²⁴² which also requires that restitution be paid in the shortest time period possible, generally limits the overall period of time within which restitution is to be paid to five years, not including incarceration; this five year limitation can only be extended if the court deems it necessary and in the victim's best interest. In other jurisdictions, such as Florida²⁴³ and South Carolina,²⁴⁴ the restitution procedure statute requires that restitution be paid within a specific time period (*e.g.*, the end of the period of probation; five years after the term of imprisonment; five years after sentencing; by the end of eighty percent of the offender's supervision period). Importantly, the victims' rights provisions in many of these jurisdictions, including Florida²⁴⁵ and South Carolina,²⁴⁶ afford victims the right to the "prompt" or "timely" payment of restitution. This means that these jurisdictions must take victims' interests into account when setting a payment schedule, even if the restitution procedure does not specify the need for such consideration.

Even when a court implements a payment schedule, there may be ways for a victim to receive payment before the schedule requires. For instance, in some jurisdictions, the government may intercept certain funds that the state owes to the defendant to enforce a restitution order (*e.g.*, lottery winnings, tax refunds); jurisdictions like Vermont²⁴⁷ expressly provide that the interception of such funds may occur without regard to an established payment schedule. Additionally, in some jurisdictions, if the defendant fails to make one or more restitution payments, the victim or the government, on the victim's behalf, may enforce the total amount of outstanding restitution (*e.g.*, Alaska²⁴⁸).

To learn more about the different factors that courts consider when establishing a restitution payment schedule and examples of relevant laws and court decisions, please consult the *Legal Practitioner Guide* at Part IV.D.1.ix ("Payment Schedule"). To learn about the modification of restitution payment schedules, please consult Answer 15.

14. What are the procedures for challenging a final restitution order?

After a court has entered a final restitution order, the order can only be modified through certain procedures and under limited circumstances. There are three main processes for challenging a final restitution decision: requests to modify a final restitution order, including [requests to modify the final restitution amount](#) and [requests to modify the final restitution payment schedule](#); [petitions by victims to compel enforcement of their right to restitution](#); and [appeals of a restitution order or of a court's failure to order restitution](#). To learn more about the procedures for challenging a final restitution order and for examples of laws specifying such procedures, please consult the *Legal Practitioner Guide* at Part IV.F (“Procedures and Requirement Regarding Challenges and Changes to Final Restitution Orders”).

15. When and why will courts modify the amount of a final restitution order?

Restitution laws often specify who may request modification of the amount of restitution contained in a restitution order. Such requests may be described as requests to modify a sentence. Depending on the jurisdiction, requests for such modification may be brought by the victim, the government, the defendant and/or the court itself. Once a convicted person completes their sentence, the court may lack the authority to impose restitution through a sentence modification. Therefore, to the extent that they have the resources to do so, victims and the individuals assisting them should bring any requests to modify a restitution order as soon as possible after the order is issued.

Although the reasons why the amount of restitution ordered may be modified vary by jurisdiction, common reasons exist. For example, in general, courts have authority to modify sentences to correct clerical or other clear errors. Some restitution laws – such as those in federal jurisdictions²⁴⁹ and Oregon²⁵⁰ expressly address the modification of such errors in the restitution context. In other jurisdictions, courts rely on similar procedural provisions regarding error correction that are not specific to restitution. Courts generally also have authority to correct invalid or incomplete sentences. In jurisdictions and circumstances where restitution is required, a sentence is invalid or incomplete if it does not provide for restitution and, therefore, subject to modification; California²⁵¹ is an example of a jurisdiction that expressly supports this conclusion.

Additional restitution-specific reasons for modifying a restitution order include the acquisition of additional information regarding a victims’ losses or other changes in circumstances. Some jurisdictions authorize courts to modify restitution based upon any new, relevant information related to the victim’s losses; Michigan²⁵² and Pennsylvania²⁵³ are states that authorize restitution modification under such circumstances. Federal law²⁵⁴ takes a narrower approach and authorizes victims to petition courts for an amended restitution order where the victim’s losses were not ascertainable earlier and the victim can show good cause for failing to include the losses in the initial restitution claim. Some jurisdictions are narrower still in their approach; for example, Illinois²⁵⁵ and Wyoming²⁵⁶ authorize the modification of restitution orders that cover a victim’s long term physical and mental health care costs based on changes to these costs or to the defendant or the victim’s financial circumstances; and California²⁵⁷ provides that defendants convicted of certain crimes against children and the elderly may seek to modify

the amount of restitution ordered to pay the victim’s medical and psychological treatment costs based on the costs of such treatment that the victim incurs.

Some of the modification provisions in restitution laws are only focused on when the amount of restitution can be decreased. For instance, in Colorado,²⁵⁸ restitution can be decreased if the prosecutor and the victim consent to such a reduction or if, after restitution was ordered, the defendant compensated the victim through a civil damages award, insurance payment or another form of compensation. Other jurisdictions authorize restitution modifications in the defendant’s favor or even complete revocation based upon the court’s conclusion that the “interests of justice” no longer support payment of restitution as ordered (*e.g.*, Hawaii,²⁵⁹ Montana,²⁶⁰ New Hampshire,²⁶¹ North Carolina²⁶²). The restitution provisions in some of these jurisdictions expressly provide that the prosecutor and/or the victim has a right to be heard prior to such revocation or modification (*e.g.*, Hawaii,²⁶³ Montana,²⁶⁴ North Carolina²⁶⁵).

To learn more about requests to modify the amount of a restitution order, common reasons why restitution may be modified, and common changes in circumstance that *do not* warrant modification of restitution, and for examples of relevant laws and court decisions, please consult the *Legal Practitioner Guide* at Part IV.F.1 (“Requests for Modification of Final Restitution Orders”).

16. When and why will courts modify a final restitution payment schedule?

Restitution laws may provide that the victim, the government, and/or the defendant can request modification of a restitution payment schedule. These laws may also authorize the court, under certain circumstances, to make such changes on its own initiative. Typically, the grounds supporting modification of a restitution payment schedule involve changes in the defendant’s finances or circumstances after the payment schedule was initially established. Some restitution laws – such as those that apply in federal jurisdictions²⁶⁶ and Vermont²⁶⁷ – expressly authorize victims, the government or the defendant to request adjustments to the restitution schedule on these grounds. Other restitution laws, such as those in place in Alaska,²⁶⁸ limit such modification requests to defendants whose circumstances have changed such that they can no longer meet the payment schedule. To learn more about requests to modify restitution payment schedules and for examples of relevant laws, please consult the *Legal Practitioner Guide* at Part IV.F.1.i (“Grounds Upon Which Final Restitution Orders May be Modified”).

17. When and why can victims challenge a sentence or a final restitution order through a petition to compel enforcement of their restitution rights?

Some jurisdictions expressly authorize victims to challenge a denial of their right to restitution by filing a petition for appellate review to compel enforcement of this right. A petition for a writ of mandamus is one tool that victims use to bring such a challenge. The authority to challenge the denial of their restitution rights in this way is found in a jurisdiction’s victims’ rights provisions; such provisions can be found in federal,²⁶⁹ Ohio²⁷⁰ and Utah²⁷¹ law. Federal courts,²⁷² as well as courts in California²⁷³ and Ohio,²⁷⁴ have recognized that victims may file writs to enforce their restitution rights. When victims prevail on these claims, the appellate courts may remand the case to the trial court for a restitution hearing. To learn more about such

petitions for appellate review and examples relevant laws and court decisions, please consult the *Legal Practitioner Guide* at Part IV.F.2 (“Petitions for Review by the Victim”).

18. When and why can a final restitution order be appealed?

Laws governing victims’ rights and/or appeals in criminal cases may specify procedures for who can appeal a restitution issue, as well as when and how such appeals can be raised. For example, some jurisdictions expressly provide victims with legal authority to appeal a restitution order that was issued in violation of their rights (*e.g.*, Maryland,²⁷⁵ Utah²⁷⁶). Some jurisdictions give the government express authority to appeal a restitution order on a victim’s behalf (*e.g.*, federal jurisdictions,²⁷⁷ Florida²⁷⁸). In these jurisdictions, the victim and/or the government can appeal an existing restitution order or the failure to issue such an order. Laws that give prosecutors the ability to appeal unlawful criminal sentences may also provide the government with the ability to appeal the denial of a restitution order in circumstances where restitution is [mandatory](#).

Notably, courts have found that, in the absence of laws providing express authority for victims and/or prosecutors to appeal a restitution order or its denial, direct appeals of a restitution award are unavailable. For example, federal,²⁷⁹ California,²⁸⁰ Iowa²⁸¹ and Washington²⁸² courts have held that victims may not directly appeal a restitution order. In these jurisdictions, victims must use other procedural mechanisms, such as a [petition to compel enforcement of their rights](#), to challenge restitution orders and other restitution-related decisions.

Defendants may also challenge certain aspects of a restitution order through an appeal. When a defendant appeals a restitution order or employs procedures related to the filing of an appeal, a victim may have legal authority to respond, even if the jurisdiction’s laws do not directly authorize the victim’s participation in the appellate process. For instance, as one court in Arizona²⁸³ has concluded, a victim may respond to a defendant’s appeal or attempt to appeal a restitution order based on the victim’s rights to be heard, to due process, to fair treatment and/or to restitution.

To learn more about appeals of restitution orders and examples of relevant laws and court decisions, please consult the *Legal Practitioner Guide* at Part IV.F.3 (“Appeals by the Victim, the Government and/or the Defendant”).

19. Who collects restitution? How and when is restitution collected?

Once restitution is ordered, it must be collected. Certain government entities and/or victims may be responsible for restitution collection, depending on the nature of the crime, the convicted person’s status within the correctional system, the victim’s identity and/or whether restitution is overdue. The methods available for restitution collection vary by jurisdiction and by who is responsible for such collection. Depending on the jurisdiction, restitution must be claimed by a certain date or it will be forfeited. It is important that victim advocates, victim attorneys, and other service providers understand and can explain to victims the processes associated with the collection of restitution, including who within the government is responsible for collection, when and how victims themselves become responsible for collection, and whether

there are any limits on when restitution can be collected. Overviews of each of these topics are included in this Answer. To learn more about restitution collection and for examples of relevant laws, please consult the *Legal Practitioner Guide* at Part IV.G.1 (“Restitution Collection”).

Who is responsible for restitution collection? The parties responsible for restitution collection vary by jurisdiction. The parties that restitution laws commonly identify as responsible for restitution collection include: courts, clerks of court; government restitution units; departments of corrections; parole, probation and restitution officers; prosecutors’ offices; nonprofit organizations; and victims.

What are the means of restitution collection that are only available to the government? There are certain means of restitution collection that are only available when a government entity is responsible for collecting restitution. Government-only means of restitution collection may include applying certain funds already in government possession to the defendant’s restitution obligations, such as: bail and bond funds that the defendant previously deposited or forfeited; funds that the government confiscated at the time of the defendant’s arrest; proceeds from the sale of assets that the government obtained as evidence through civil or criminal forfeiture; criminal fines; restitution funds; and monies that the state owes to the defendant (*e.g.*, lottery winnings, tax refunds, unclaimed property and civil damages awarded as the result of an offender’s lawsuit against a correctional facility or its employees). The government may also directly collect restitution from an incarcerated person’s inmate account, earnings while in prison or on work release, and other resources (*e.g.*, inheritance, civil settlement or other civil judgment). Finally, restitution collection may occur through the clerk of court or certain court mechanisms.

What are the means of restitution collection that are available to the government and to victims? A restitution order in a criminal case is a final judgment, which has the force and effect of a final judgment in a civil action. Enforcement of a civil money judgment for the purposes of obtaining court-ordered criminal restitution is no different than pursuing any other civil money judgment. As such, a victim is entitled to all the rights and remedies related to the restitution order that they would be entitled to as a plaintiff in a civil action. In most jurisdictions, victims may initiate civil collection proceedings independently. In some jurisdictions, such proceedings may also be brought by the prosecutor (*e.g.*, Hawaii,²⁸⁴ New York²⁸⁵). When a government restitution unit is tasked with restitution collection, they may pursue civil charges against the defendant (*e.g.*, Vermont²⁸⁶). Civil enforcement of a restitution order may require locating the defendant’s assets through Internet searches; requesting information from government offices (*e.g.*, the Department of Motor vehicles, the county clerk in the county where the defendant is thought to own land); hiring an asset search company; or subpoenaing information from people and businesses that might have information about the defendant’s assets (*e.g.*, employers, landlords, banks). Once the defendant’s assets have been located, the victim or government entity may employ civil collection tools, such as property liens and wage garnishment.

Are there any time limitations on restitution collection? A victim’s access to full restitution recovery may depend on whether a jurisdiction imposes any time limits on when restitution can be collected. These limitations take a few forms. One form is restrictions on

when a restitution order may be enforced. Some jurisdictions are clear that a restitution order does not expire until it is paid in full (*e.g.*, California,²⁸⁷ Illinois,²⁸⁸ Michigan,²⁸⁹ Montana,²⁹⁰ Vermont²⁹¹). Other jurisdictions impose limitations on a convicted person's restitution liability. For example, federal law²⁹² provides that a convicted person is no longer required to pay restitution 20 years from the date the judgment was entered against them or 20 years after they were released from prison, whichever comes first; in Oregon,²⁹³ remedies for enforcing a restitution award expire 50 years after the entry of judgment. Another form of restrictions are laws that limit when the government has the ability to collect restitution on the victim's behalf. In some jurisdictions the government's ability to collect restitution on the victim's behalf terminates once a convicted person is no longer in custody or under court-ordered supervision (*e.g.*, Ohio,²⁹⁴ Kentucky²⁹⁵); in other jurisdictions, the government retains its ability to collect restitution under such circumstances (*e.g.*, Georgia,²⁹⁶ Maryland²⁹⁷). How the government may collect restitution from a convicted person may change based on that person's status within the criminal justice system; for instance, if a jurisdiction provides that the government loses its ability to collect restitution through the probation office once the person is no longer under the office's supervision, the government may still be able to use other methods of collection, such as wage garnishment or tax offsets. Even where the government loses its ability to collect restitution entirely upon the conclusion of probation, victims may still rely on civil methods of restitution enforcement. Yet, civil statutes of limitations on money judgments may limit a victim's ability to enforce their restitution order in civil court. For instance, in New York,²⁹⁸ there is a 20 year statute of limitations on money judgments; this means that, after 20 years, a victim in New York loses the ability to enforce restitution civilly.

20. When and how is restitution distributed to victims?

Once restitution is collected from a convicted person through means other than the victim's civil enforcement of a money judgment, it must be disbursed to the victim. A restitution order will specify to whom restitution payments should be made. Depending on the jurisdiction and other aspects of a defendant's sentence, the order may require that the defendant pay restitution directly to the victim in open court or that they make payments to other entities that will then disburse the funds to the victims. Examples of such entities include the clerk of court, the department of corrections, the department of probation and government restitution units. The manner of restitution disbursement can depend upon numerous factors, including restitution payment schedules, timing requirements related to disbursement, how restitution payments are allocated when there are multiple victims and the order in which a convicted person must pay their court-ordered debts. Understanding these issues and being able to explain them to victims is critical to ensuring that victims have realistic expectations of when they will receive the money they are owed. Brief overviews of these topics are included in this Answer. To learn more about restitution disbursement and the factors that influence disbursement procedure and for examples of relevant laws, please consult the *Legal Practitioner Guide* at Part IV.G.2 ("Restitution Disbursement").

How do restitution payment schedules affect restitution disbursement? The timing of restitution disbursement is subject to any [restitution payment schedules](#) created by a court or probation department. In some jurisdictions, when there are multiple victims in a case, the court may create different payment schedules for each victim. For example, under federal law,²⁹⁹ a

court may provide a different payment schedule for different victims in the same case “based on the type and amount of each victim’s loss and accounting for the economic circumstances of each victim.” Additional information about [restitution payment schedules](#) and the [modification of payment schedules](#) may also be helpful in understanding this issue.

Are there any time limitations on restitution disbursement? Restitution laws often specify that, once restitution has been [collected](#), it must be disbursed within a certain time frame. In some instances, these time frames are short (*e.g.*, “restitution funds must be disbursed to the victim within 15 days of collection”); in other instances, these time frames are phrased broadly (*e.g.*, “victims have a right to receive prompt restitution”). Examples of laws with express deadlines for restitution disbursement upon receipt can be found in Alabama,³⁰⁰ Arizona³⁰¹ and California.³⁰²

What happens to unclaimed restitution? In cases where victims cannot be located or they otherwise do not claim restitution collected on their behalf, courts, clerks and other relevant agencies responsible for restitution disbursement may reallocate collected restitution to other government funds (*e.g.*, general revenue funds, victim compensation and assistance funds, restitution funds that pool unclaimed restitution to disburse to victims who have been unable to collect their restitution). If a victim’s location is later determined or if the victim chooses to claim the funds, such funds may become available to them. In some jurisdictions, such as Michigan,³⁰³ victims may claim reallocated restitution at any time. In other jurisdictions, victims only have a certain amount of time to claim reallocated restitution; for example, in Georgia³⁰⁴ and Texas,³⁰⁵ victims have five years to claim reallocated funds.

When a convicted person has multiple payment obligations in a criminal case, what priority is given to the payment of restitution? Some jurisdictions specify the order in which a convicted person must make various payments that the court has ordered in a criminal case (*e.g.*, restitution, penalties, fines, costs, assessments, surcharges). In Arizona,³⁰⁶ California,³⁰⁷ Hawaii,³⁰⁸ Florida,³⁰⁹ Nevada³¹⁰ and New Hampshire,³¹¹ any payment the convicted person makes to the court in connection with their criminal case must be applied first to the amount that the person owes in restitution. Other jurisdictions do not prioritize full payment of restitution. For example, Michigan,³¹² Montana³¹³ and Oregon³¹⁴ specify that when a convicted person pays their financial obligations in a criminal case, half of the payment goes to restitution and the other half to all other payment obligations. Federal,³¹⁵ Kentucky³¹⁶ and Ohio³¹⁷ laws provide that a convicted person’s payments are applied first to special assessments and/or court costs and then to outstanding restitution.

When a convicted person owes restitution to multiple victims, how are the restitution payments prioritized? Restitution laws may also specify the priority of restitution payments among multiple victims. For instance, some jurisdictions require that restitution is first paid to private victims and then to the government (*e.g.*, federal jurisdictions,³¹⁸ Kentucky,³¹⁹ Montana³²⁰); more generally, some jurisdictions give private victims priority over all institutional victims (*e.g.*, Arizona,³²¹ Michigan³²²). In some instances, courts may apportion distribution among multiple victims based on the total amount of the convicted person’s obligations, thereby allowing for the same priority of payment to multiple victims (*e.g.*, Oregon³²³).

21. When does a restitution order expire?

In some jurisdictions, a restitution order does not expire until it is paid in full (*e.g.*, California,³²⁴ Illinois,³²⁵ Michigan,³²⁶ Montana,³²⁷ Vermont³²⁸). Other jurisdictions impose limitations on a convicted person's restitution liability; under such laws, a restitution award may expire after a set number of years from the entry of judgment (*e.g.*, federal jurisdictions,³²⁹ Oregon³³⁰). Even if the order itself does not expire, there may be some [time limits on the ability of the government and/or the victim to collect restitution](#). Understanding the time limits on when a restitution order may be enforced and communicating such information to victims is important to ensuring that victims are able to enforce their restitution rights. To learn more about the expiration of restitution orders and for examples of relevant laws, please consult the *Legal Practitioner Guide* at Part IV.G.1.iii (“Timing of Restitution Collection”).

22. What are the consequences of a defendant's failure to pay restitution?

Restitution laws often contain provisions that expressly address the consequences of a defendant's failure to meet their restitution obligations. Jurisdictions vary as to what actions a victim may take when a defendant fails to meet their restitution obligations, as well as to the consequences of nonpayment. To learn more about restitution enforcement when a convicted person fails to meet their restitution obligations, please consult the *Legal Practitioner Guide* at Part IV.G.4 (“Payment Delinquency or Default”).

What actions can victims take when a defendant fails to meet their restitution obligations? When a defendant fails to make restitution payments, the victim may pursue [civil enforcement of the restitution order](#) or they may request the [creation](#) or [modification of a restitution payment schedule](#). Some jurisdictions also directly authorize victims to file a motion requesting that the defendant face consequences for their restitution delinquency or default (*e.g.*, Alabama,³³¹ Arizona,³³² South Carolina³³³). Even in jurisdictions that do not expressly authorize such motions, victims may want to alert the sentencing court, the prosecutor, the probation officer or another relevant government entity of the defendant's delinquency or default. Prosecutors and courts themselves may also initiate proceedings against defendants who have failed to meet their restitution obligations; Alabama,³³⁴ Arizona,³³⁵ Hawaii,³³⁶ Oregon³³⁷ and South Carolina³³⁸ are among the states with statutes to this effect. Some jurisdictions provide victims and/or the government with the right to notice of a defendant's default in their restitution obligations (*e.g.*, Arizona,³³⁹ Michigan³⁴⁰).

What are the common consequences for convicted persons when they fail to meet their restitution obligations? Most commonly, defaulting on restitution may result in: the [adjustment](#) or [entry of a restitution payment schedule](#) (*e.g.*, federal jurisdictions,³⁴¹ Arizona,³⁴² Oregon,³⁴³ Vermont³⁴⁴); the modification or revocation of probation or supervised release (*e.g.*, federal jurisdictions,³⁴⁵ Arizona,³⁴⁶ Illinois,³⁴⁷ Michigan³⁴⁸); imprisonment, where the failure to pay restitution was willful (*e.g.*, federal jurisdictions,³⁴⁹ Arizona,³⁵⁰ California,³⁵¹ Florida,³⁵² Hawaii,³⁵³ Michigan,³⁵⁴ Oregon³⁵⁵). Some jurisdictions also authorize courts to take any other action necessary to ensure compliance with restitution obligations (*e.g.*, federal jurisdictions,³⁵⁶ Arizona,³⁵⁷ Michigan,³⁵⁸ Vermont³⁵⁹). To determine which action to take, a court may hold a hearing. A defendant may be able to demonstrate “good cause” for their nonpayment (*e.g.*,

involuntary unemployment, costs incurred as the result of medical circumstances or a natural disaster) at such a hearing or otherwise to avoid the more severe consequences of their failure to pay restitution.

Does the nonpayment of restitution affect the termination of probation or supervised release? In some jurisdictions, the termination of a defendant's probation can only occur after the defendant's restitution obligations are paid in full (*e.g.*, Kentucky,³⁶⁰ South Carolina³⁶¹). Other jurisdictions allow for the formal conclusion of probation or supervised release prior to the complete payment of restitution, but expressly provide that the convicted person's restitution obligations are not terminated upon such conclusion (*e.g.*, Arizona,³⁶² California,³⁶³ Hawaii,³⁶⁴ Ohio³⁶⁵). Because courts may lose the ability to modify a restitution order once probation has concluded, awareness of how nonpayment affects the termination of probation may influence [how and when victims respond to nonpayment](#).

23. What is the relationship between criminal restitution and civil damages awards/settlements?

A restitution order in a criminal case may reimburse a victim for many of the same losses that they could recover if they were to file a civil suit against their offender. In general, victims may bring a civil suit after restitution has been ordered in their favor; likewise, the victim's receipt of financial compensation from a civil damages award or civil settlement does not automatically prevent the court from ordering restitution in a related criminal case. The ability of victim advocates, victim attorneys and other victim service providers to assist victims in accessing full financial recovery depends upon understanding three issues that the relationship between criminal restitution and civil recovery implicate: how criminal restitution orders affect future civil damages awards; how civil damages awards or civil settlements affect future or existing restitution orders; and how a civil release of liability affects future restitution orders. An overview of these common issues is included in this Answer. For more information about the relationship between criminal restitution and civil damages awards/settlements and examples of relevant laws and court decisions, please consult the *Legal Practitioner Guide* at Part V ("Relationship Between Criminal Restitution and Civil Damages Awards and Civil Settlements").

How do criminal restitution orders affect future civil damages awards? If a criminal court issues a restitution order *before* the civil case resolves, some jurisdictions require the amount of restitution a defendant has already paid be deducted from a judgment awarded in a civil case against the same defendant and based on the same facts (*e.g.*, if a defendant convicted of assault and battery pays the victim court-ordered restitution for the victim's medical expenses and a civil court later awards the victim medical expenses as actual damages plus punitive damages in a case involving the same assault and battery, the court can credit the restitution that has been paid against the actual damages award); Alabama,³⁶⁶ California,³⁶⁷ Kentucky,³⁶⁸ New Hampshire³⁶⁹ and Ohio³⁷⁰ are examples of jurisdictions that have laws to this effect. If a civil damages award is paid *after* restitution is ordered and covers the same losses, there is a risk that the victim will receive restitution in an amount that exceeds their losses, which is an outcome that restitution laws typically forbid. Therefore, when civil damages are awarded after restitution is ordered, but before it is paid in full, courts may reduce the amount of restitution that the

defendant owes (*e.g.*, if a defendant convicted of assault and battery is ordered to pay the victim court-ordered restitution for the victim's medical expenses, but has yet to meet their restitution obligations, the amount of restitution owed may be reduced by a later civil damages award covering the same expenses, if that civil award has been paid); this conclusion finds support in federal³⁷¹ and Indiana³⁷² court decisions.

How do civil damages awards or civil settlements affect future or existing restitution orders? When a civil damages award is made *before* a restitution order is issued, some jurisdictions, such as Colorado,³⁷³ authorize courts to decrease the final restitution amount by the amount of a civil award covering the same losses (*e.g.*, if a civil damages award in a vehicular homicide case award covers the victim's funeral expenses, a later restitution for the victim's funeral expenses will be reduced by the amount covered in the civil award). Additionally, when a civil settlement is reached between the defendant and the victim, courts in some jurisdictions have found that the expenses ordered in restitution may be subject to an offset or credit if the defendant can show that specific portions of the settlement payment were directed to cover economic losses outlined in a restitution order (*e.g.*, if it is clear that a settlement agreement in an assault and battery is compensating the victim for their medical costs, the settlement may be used to offset a subsequent restitution order for the victim's medical expenses); courts in California³⁷⁴ and Utah³⁷⁵ have reached this conclusion. Along these lines, if a defendant's insurer has made payments to the victim for losses that would otherwise be compensable as restitution, those payments generally may be offset against the defendant's restitution obligation. On the other hand, defendants typically are not entitled to an offset against a victim restitution order for payments by the victim's insurance company, a victim compensation program or a worker's compensation program. Although criminal restitution generally may not result in a windfall for the victim, one court in California³⁷⁶ has reasoned that, if a victim's insurance company does not seek recovery from the victim once the victim receives restitution from the defendant, the victim may be compensated by both their insurer and the defendant.

How does a civil release of liability affect future restitution orders? Courts in some jurisdictions have found that a victim's release of a defendant from civil liability in a settlement does not bear on a criminal court's duty and authority to order restitution (*e.g.*, South Carolina,³⁷⁷ Vermont³⁷⁸). This means that, in such jurisdictions, if a victim signs a document in a civil case that releases the defendant from any future actions that the victim might bring against them, a criminal court may still order restitution for the victim. One reason for this is that a victim's release does not affect the court's obligations regarding restitution or the government's interest in imposing a restitution obligation. Courts in some jurisdictions have likewise found that a civil settlement between a victim and a defendant cannot prevent the prosecution from seeking restitution in a related case because the government is not a party to the settlement (*e.g.*, Florida,³⁷⁹ Kansas³⁸⁰).

24. What other victims' rights are at issue in the restitution context?

Victims have a range of procedural and substantive rights that arise before, during and after a court's restitution determination. A victim's ability to meaningfully enforce their right to restitution often hinges on the protection and enforcement of these other rights. The nature and scope of a victim's restitution-related rights vary by jurisdiction. For information about the other

victims' rights commonly at issue in the restitution context, please consult the *Legal Practitioner Guide* at Part II, Section A (“Restitution-Related Rights”).

¹ 18 U.S.C. § 3663A(a), (c).

² 18 U.S.C. § 1593(a) (human trafficking); 18 U.S.C. § 2259(a) (child abuse and exploitation); 18 U.S.C. § 2264(a) (domestic violence and stalking); 18 U.S.C. § 2327(a) (telemarketing and email fraud).

³ Ariz. Const. art. II, § 2.1(A)(8).

⁴ Cal. Const. art. I, § 28(b)(13); Cal. Penal Code § 1202.4(f)(3).

⁵ Fla. Const. art. I, § 16(b)(9).

⁶ Ill. Const. art. I, § 8.1(a)(12); 725 Ill. Comp. Stat. Ann. 120/4(a)(10); 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(12)(A).

⁷ Ky. Const. § 26A.

⁸ Mich. Const. art. I, § 24(1); Mich. Comp. Laws Ann. § 780.766(2).

⁹ Ohio Const. art. I, § 10a(A)(7).

¹⁰ Alaska Stat. Ann. § 12.55.045(a).

¹¹ Conn. Gen. Stat. Ann. § 53a-28(c).

¹² Haw. Rev. Stat. Ann. § 706-646(2).

¹³ N.Y. Penal Law § 60.27(1).

¹⁴ Tex. Const. art. I, § 30(b)(4).

¹⁵ Conn. Gen. Stat. Ann. § 53a-28(c).

¹⁶ N.J. Stat. Ann. § 2C:44-2(b).

¹⁷ W. Va. Code § 61-11A-4(a).

¹⁸ Wyo. Stat. Ann. § 7-9-102.

¹⁹ Idaho Code Ann. § 19-5304(2).

²⁰ Kan. Stat. Ann. § 21-6604(b)(1).

²¹ Me. Rev. Stat. Ann. tit. 17-A, § 2003(1).

²² N.Y. Penal Law § 60.27(1).

²³ Wash. Rev. Code Ann. § 9.94A.753(5).

²⁴ Wis. Stat. Ann. § 973.20(1r).

²⁵ Ind. Stat. Ann. § 35-42-3.4-2.

²⁶ Miss. Code Ann. § 97-3-54.6(2).

²⁷ N.H. Stat. Ann. § 633:10(I).

²⁸ Vt. Stat. Ann. tit. 13, § 2657.

²⁹ Ark. Code Ann. § 5-4-205(a)(1).

³⁰ Ind. Code Ann. § 35-50-5-3(a).

³¹ Mass. Gen. Laws Ann. ch. 258B, § 3(o).

³² Miss. Code Ann. § 99-37-3(1).

³³ Mo. Ann. Stat. § 559.105(1).

³⁴ Neb. Rev. Stat. Ann. § 29-2280.

³⁵ N.H. Rev. Stat. Ann. § 651:63(I).

³⁶ Vt. Stat. Ann. tit. 13 § 7043.

³⁷ Vt. Stat. Ann. tit. 13 § 7043(a), (g).

³⁸ Ark. Code Ann. § 5-4-205(a)(2).

³⁹ N.H. Rev. Stat. Ann. § 651:63(I).

⁴⁰ Vt. Stat. Ann. tit. 13 § 7043(g)(1).

⁴¹ Ky. Const. § 26A.

⁴² Iowa Code Ann. § 915.100(2)(a)–(b).

⁴³ Md. Code Ann., Crim. Law § 7-104(g)(1).

⁴⁴ Fla. Const. art. I, § 16(b)(9); Fla. Stat. Ann. § 775.089(1)(a).

⁴⁵ Ohio Const. art. I, § 10a(A)(7); Ohio Rev. Code Ann. § 2919.18(A).

⁴⁶ Tex. Const. art. I, § 30(b)(4); Tex. Code Crim. Proc. Ann. art. 42.037(a).

⁴⁷ D.C. Code § 23-1901(b)(6); D.C. Code Ann. § 16-711(a).

⁴⁸ Fla. Const. art. I, § 16(b)(9); Fla. Stat. Ann. § 775.089(1)(a).

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- ⁴⁹ Ohio Const. art. I, § 10a(A)(7); Ohio Rev. Code Ann. § 2919.18(A).
- ⁵⁰ Tex. Const. art. I, § 30(b)(4); Tex. Code Crim. Proc. Ann. art. 42.037(a).
- ⁵¹ 725 Ill. Comp. Stat. Ann. § 120/4.5(b)(11).
- ⁵² N.Y. Penal Law § 60.27(1).
- ⁵³ Wyo. Stat. Ann. § 7-9-103(a).
- ⁵⁴ Ala. Code § 15-23-74.
- ⁵⁵ Ariz. Rev. Stat. Ann. § 13-4426(A)–(B).
- ⁵⁶ Or. Rev. Stat. Ann. § 137.013.
- ⁵⁷ S.C. Code Ann. § 17-25-322(A).
- ⁵⁸ 18 U.S.C. § 3771(d)(1).
- ⁵⁹ Ariz. Rev. Stat. Ann. § 13-4437(A).
- ⁶⁰ 725 Ill. Comp. Stat. Ann. § 120/4.5(c-5)(3).
- ⁶¹ *E.H. v. Slayton in & for Cty. of Coconino*, 491 P.3d 396, 399 (Ariz. Ct. App. 2021).
- ⁶² *State v. Castillo*, 495 P.3d 191, 195 (Or. Ct. App. 2021).
- ⁶³ *State v. Brown*, 342 P.3d 239, 240 (Utah 2014).
- ⁶⁴ *State v. Johnson*, 470 P.3d 1263, 1268 (Idaho Ct. App. 2020).
- ⁶⁵ Del. R. Super. Ct. Rule 32(g).
- ⁶⁶ 21 Okla. Stat. Ann. § 142A-5.
- ⁶⁷ 18 U.S.C. § 3664(d)(2)(A)(iv).
- ⁶⁸ Minn. Stat. Ann. § 611A.04(1)(a).
- ⁶⁹ S.C. Code Ann. § 16-3-1515(B).
- ⁷⁰ S.C. Code Ann. § 16-3-1515(B).
- ⁷¹ Del. R. Super. Ct. Rule 32(g)(2).
- ⁷² 21 Okla. Stat. Ann. § 142A-5.
- ⁷³ 18 U.S.C. § 3664(a); Fed. R. Crim. Proc. Rule 32(c)(1)(B), (d)(2)(D).
- ⁷⁴ Ariz. Rev. Stat. Ann. § 12-253(4).
- ⁷⁵ Cal. Penal Code § 1203(b), (h).
- ⁷⁶ Haw. Rev. Stat. Ann. § 706-602(1).
- ⁷⁷ Mich. Comp. Laws Ann. § 780.767(2).
- ⁷⁸ Utah Code Ann. § 77-18-103(2)(b).
- ⁷⁹ *State v. Collins*, 41 N.E.3d 899, 908 (Ohio Ct. App.).
- ⁸⁰ N.Y. Penal Law § 60.27(1)–(2).
- ⁸¹ S.C. Code Ann. § 16-3-1515(B).
- ⁸² 725 Ill. Comp. Stat. Ann. 120/4.5(b)(11).
- ⁸³ Or. Rev. Stat. Ann. § 137.013.
- ⁸⁴ 725 Ill. Comp. Stat. Ann. 120/4.5(b)(11).
- ⁸⁵ Ariz. Rev. Stat. Ann. § 13-804(G).
- ⁸⁶ N.Y. Penal Law § 60.27(2).
- ⁸⁷ Vt. Stat. Ann. tit. 13, § 7043(d).
- ⁸⁸ *See, e.g., State v. Dodge*, 408 P.3d 510, 514 (Mont. 2017).
- ⁸⁹ Ala. Code § 15-23-74.
- ⁹⁰ Ariz. Rev. Stat. Ann. § 13-4437(E).
- ⁹¹ S.C. Code Ann. § 17-25-322(A).
- ⁹² Cal. Penal Code § 1191.1.
- ⁹³ Or. Rev. Stat. Ann. § 137.013.
- ⁹⁴ 18 U.S.C. § 3771(3)–(4).
- ⁹⁵ Ariz. Const. art. II, § 2.1(A)(4).
- ⁹⁶ Fla. Const. art. I, § 16(b)(6)b.
- ⁹⁷ *Fay v. Fox in & for Cty. of Maricopa*, 494 P.3d 1105, 1106, 1110 (Ariz. 2021).
- ⁹⁸ Fla. Const. art. I, § 16(b)(6)b.
- ⁹⁹ Wis. Const. art. I, § 9m(2)(i).
- ¹⁰⁰ Conn. Gen. Stat. Ann. § 54-220(a)(7).
- ¹⁰¹ Ind. Code Ann. § 35-40-6-4(10).
- ¹⁰² Mass. Gen. Laws Ann. ch. 258B, § 3(o).
- ¹⁰³ 22 Okla. Stat. § 991f(D).

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- ¹⁰⁴ Vt. Stat. Ann. tit. 13, § 5304(d)(1).
- ¹⁰⁵ *E.H. v. Slayton in & for Cty. of Coconino*, 491 P.3d 396, 398–99 (Ariz. Ct. App. 2021).
- ¹⁰⁶ 18 U.S.C. § 3664(d)(1); 18 U.S.C. § 3664(d)(5).
- ¹⁰⁷ *O'Dell v. State*, 366 P.3d 555, 559 (Alaska Ct. App. 2016).
- ¹⁰⁸ Colo. Rev. Stat. Ann. § 18-1.3-603(2).
- ¹⁰⁹ 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(12).
- ¹¹⁰ Or. Rev. Stat. Ann. § 137.106(1)(a).
- ¹¹¹ 18 U.S.C. § 3664(d)(5).
- ¹¹² Colo. Rev. Stat. Ann. § 18-1.3-603(2).
- ¹¹³ 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(12)(B).
- ¹¹⁴ Colo. Rev. Stat. Ann. § 18-1.3-603(2).
- ¹¹⁵ Or. Rev. Stat. Ann. § 137.106(1)(a).
- ¹¹⁶ *O'Dell v. State*, 366 P.3d 555, 559 (Alaska Ct. App. 2016).
- ¹¹⁷ *State v. Lynch*, 469 P.3d 800, 805 (Or. Ct. App. 2020).
- ¹¹⁸ *People v. Lehman*, 202 Cal. Rptr. 3d 386, 394 (Cal. Ct. App. 2016).
- ¹¹⁹ *State v. Gaiovik*, 794 N.W.2d 643, 650 (Minn. 2011); *State v. Miller*, 842 N.W.2d 474, 479 (Minn. Ct. App. 2014).
- ¹²⁰ *State v. Contreras*, 885 P.2d 138, 142 (Ariz. Ct. App. 1994).
- ¹²¹ *State v. Castro*, 965 So. 2d 216, 219 (Fla. Dist. Ct. App. 2007).
- ¹²² *Ingram v. State*, 197 A.3d 14, 17 (Md. 2018).
- ¹²³ *United States v. Johnson*, 378 F.3d 230, 244 (2d Cir. 2004); *United States v. Brandner*, No. 3:13-CR-00103-SLG, 2016 WL 4644463, at *4 (D. Alaska Sept. 6, 2016).
- ¹²⁴ *United States v. Speakman*, 594 F.3d 1165, 1177 (10th Cir. 2010).
- ¹²⁵ *United States v. Norton*, No. 4:10-CR-5-RLV-WEJ, 2012 WL 950015, at *2 (N.D. Ga. Feb. 22, 2012), *report and recommendation adopted*, No. 4:10-CR-5-RLV, 2012 WL 950578 (N.D. Ga. Mar. 19, 2012).
- ¹²⁶ *United States v. Gushlak*, 728 F.3d 184, 197 n.10 (2d Cir.2013).
- ¹²⁷ *People v. Vasseur*, 409 P.3d 524, 528 (Colo. App. Div. 2016).
- ¹²⁸ *State v. Gullede*, 487 S.E.2d 590, 594 (S.C. 1997).
- ¹²⁹ Utah Admin. Code R671-403-6(4).
- ¹³⁰ *State v. Morse*, 106 A.3d 902, 906 (Vt. 2014).
- ¹³¹ *State v. Willis*, 898 N.W.2d 642, 648 (Minn. 2017).
- ¹³² Cal. Penal Code § 1203.1d(d).
- ¹³³ Ohio Rev. Code Ann. § 2929.18(A)(1).
- ¹³⁴ N.H. Rev. Stat. § 21-M:8-1(II).
- ¹³⁵ Vt. Stat. Ann. tit. 13, § 7043(c)(2).
- ¹³⁶ *State v. Jauregui*, 964 N.W.2d 358, at *4 (Iowa Ct. App. 2021) (table).
- ¹³⁷ *United States v. Pickett*, 387 F. App'x 32, 36 (2d Cir. 2010).
- ¹³⁸ Ariz. Rev. Stat. Ann. § 13-804(I).
- ¹³⁹ *State v. Gastiaburu*, 508 P.3d 592, 595 (Or. Ct. App. 2022).
- ¹⁴⁰ Md. Crim. Proc. § 11-615.
- ¹⁴¹ D.C. Code § 16-2320.01(e).
- ¹⁴² Ind. Code Ann. § 35-40-6-4(10).
- ¹⁴³ Mass. Gen. Laws Ann. ch. 258B, § 3(o).
- ¹⁴⁴ 22 Okla. Stat. § 991f(D).
- ¹⁴⁵ Vt. Stat. Ann. tit. 13, § 5304(a)(3)(C).
- ¹⁴⁶ 730 Ill. Comp. Stat. Ann. 5/5-6-3.3(c)(3).
- ¹⁴⁷ Ky. Rev. Stat. Ann. § 532.032(2).
- ¹⁴⁸ Mich. Comp. Laws Ann. § 780.766(2).
- ¹⁴⁹ Colo. Rev. Stat. § 18-1.3-101(9)(b).
- ¹⁵⁰ Mont. Code Ann. § 46-16-130(1)(a)(iv).
- ¹⁵¹ Or. Rev. Stat. Ann. § 135.891(1).
- ¹⁵² Minn. Stat. Ann. § 611A.031.
- ¹⁵³ Okla. Stat. tit. 22, § 991f-1.1(B)(3)(g).
- ¹⁵⁴ Fla. Const. art. I, § 16(b)(6)(c).
- ¹⁵⁵ Del. Code Ann. tit. 11, § 9405.

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- ¹⁵⁶ Ky. Rev. Stat. Ann. § 421.500(6).
¹⁵⁷ S.C. Code Ann. § 17-22-80.
¹⁵⁸ Utah Code Ann. § 77-2-5(4)(b).
¹⁵⁹ Colo. Rev. Stat. Ann. § 18-1.3-101(2).
¹⁶⁰ Mo. Ann. Stat. § 557.014(2).
¹⁶¹ N.M. Stat. Ann. § 31-16A-7(A).
¹⁶² *People v. Valdez*, 30 Cal. Rptr. 2d 4, 9 (Cal. Ct. App. 1994).
¹⁶³ *State v. Keys*, 369 P.3d 313, 315 (Idaho Ct. App. 2016).
¹⁶⁴ *Morris v. State*, 2 N.E.3d 7, 8 (Ind. Ct. App. 2013).
¹⁶⁵ *State v. Thomas*, 14 A.3d 961, 966 (Vt. 2010).
¹⁶⁶ *Lafontant v. State*, 13 A.3d 56, 67 (Md. Ct. Spec. App. 2011).
¹⁶⁷ Ala. Code § 15-23-71(2).
¹⁶⁸ 730 Ill. Comp. Stat. Ann. 5/5-5-6(d).
¹⁶⁹ Wash. Rev. Code Ann. § 9.94A.753(5).
¹⁷⁰ *United States v. Stevens*, 239 F. Supp. 3d 417, 425 (D. Conn. 2017).
¹⁷¹ Cal. Penal Code § 1202.4(f)(3)(F).
¹⁷² Ariz. Const. art. II, § 2.1(A)(8).
¹⁷³ Fla. Const. art. I, § 16(b)(9).
¹⁷⁴ Or. Const. art. I, § 42(1)(d).
¹⁷⁵ S.C. Const. art. I, § 24(A)(9).
¹⁷⁶ Cal. Penal Code § 1202.4(f).
¹⁷⁷ 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(12)(A).
¹⁷⁸ Colo. Rev. Stat. Ann. § 18-1.3-603(1)(b).
¹⁷⁹ *Ridley v. State*, 890 So.2d 1261, 1262 (Fla. Ct. App. 2005).
¹⁸⁰ *Dolan v. United States*, 560 U.S. 605, 608 (2010).
¹⁸¹ *L.O. v. State*, 718 So. 2d 155, 157 (Fla. 1998).
¹⁸² *Commonwealth v. Steadman*, 411 S.W.3d 717, 724 (Ky. 2013).
¹⁸³ *State v. Rieker*, 461 P.3d 1083, 1085 (Or. Ct. App. 2020).
¹⁸⁴ *State v. Chipman*, 309 P.3d 669, 673 (Wash. Ct. App. 2013).
¹⁸⁵ *State v. Rieker*, 461 P.3d 1083, 1085 (Or. Ct. App. 2020).
¹⁸⁶ Cal. Penal Code § 1202.4(f).
¹⁸⁷ Fla. Const. art. I, § 16(b)(9).
¹⁸⁸ Mich. Comp. Laws Ann. § 780.766(2).
¹⁸⁹ S.C. Const. art. I, § 24(A)(9).
¹⁹⁰ 18 U.S.C. § 1593(b).
¹⁹¹ 18 U.S.C. § 2259(b)(1).
¹⁹² Conn. Gen. Stat. Ann. § 53a-28(c).
¹⁹³ Wis. Stat. Ann. § 973.20(1r).
¹⁹⁴ Wyo. Stat. Ann. § 7-9-103(c).
¹⁹⁵ Ky. Rev. Stat. Ann. § 533.030(3).
¹⁹⁶ Miss. Code Ann. § 99-37-3(1).
¹⁹⁷ N.Y. Penal Code § 60.27(5).
¹⁹⁸ W. Va. Code § 61-11A-4(a).
¹⁹⁹ Ky. Const. § 26A.
²⁰⁰ Miss Code Ann. § 99-37-3(4).
²⁰¹ Wash. Rev. Code Ann. § 9.94A.753(5).
²⁰² *State v. Wasson*, 778 S.E.2d 687, 690 (W. Va. 2015).
²⁰³ Alaska Stat. Ann. § 12.55.045(a).
²⁰⁴ Ariz. Rev. Stat. Ann. § 13-804(E).
²⁰⁵ Wis. Stat. Ann. § 973.20(13)(a).
²⁰⁶ Ala. Code § 15-18-68(a).
²⁰⁷ S.C. Code Ann. § 17-25-322(B).
²⁰⁸ Ala. Code § 15-18-68(a)(4)–(5).
²⁰⁹ S.C. Code Ann. § 17-25-322(B)(4)–(5).
²¹⁰ Wis. Stat. Ann. § 973.20(13)(a).

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- ²¹¹ 18 U.S.C. § 2248(b)(4)(B)(i); 18 U.S.C. § 2259(b)(4)(B)(i); 18 U.S.C. § 2264(b)(4)(B)(ii); 18 U.S.C. § 2327(b)(4)(B)(ii); 18 U.S.C. § 3664(f)(1)(A).
- ²¹² Alaska Stat. Ann. § 12.55.045(g).
- ²¹³ Ariz. Rev. Stat. Ann. § 13-804(C).
- ²¹⁴ Cal. Penal Code § 1202.4(g).
- ²¹⁵ Haw. Rev. Stat. Ann. § 706-605(7).
- ²¹⁶ N.H. Rev. Stat. Ann. § 651:63(I).
- ²¹⁷ Vt. Stat. Ann. tit. 13, § 7043(d).
- ²¹⁸ Wyo. Stat. Ann. § 7-9-102.
- ²¹⁹ Wyo. Stat. Ann. § 7-9-102.
- ²²⁰ 18 U.S.C. § 3664(f)(2).
- ²²¹ Ariz. Rev. Stat. Ann. § 13-804(E).
- ²²² Haw. Rev. Stat. Ann. § 706-605(7).
- ²²³ 18 U.S.C. § 3664(f)(3)(A), (4).
- ²²⁴ Fla. Stat. Ann. § 775.089(1)(a)2.
- ²²⁵ 730 Ill. Comp. Stat. Ann. 5/5-5-6(a).
- ²²⁶ Ky. Rev. Stat. Ann. § 533.030(3).
- ²²⁷ Mich. Comp. Laws Ann. § 780.766(6).
- ²²⁸ Mont. Code Ann. § 46-18-244(3)(b), (4).
- ²²⁹ Mich. Comp. Laws Ann. § 780.766(6).
- ²³⁰ Mont. Code Ann. § 46-18-244(4).
- ²³¹ Vt. Stat. Ann. tit. 13, § 7043(b).
- ²³² 18 U.S.C. § 3663A(c)(3)(A).
- ²³³ 18 U.S.C. § 3663A(c)(3)(B).
- ²³⁴ W. Va. Code Ann. § 61-11A-4(d).
- ²³⁵ Alaska Stat. Ann. § 12.55.045(c).
- ²³⁶ Ariz. Rev. Stat. Ann. § 13-804(E).
- ²³⁷ 730 Ill. Comp. Stat. Ann. 5/5-5-6(f).
- ²³⁸ Vt. Stat. Ann. tit. 13, § 7043(e)(1).
- ²³⁹ Ariz. Rev. Stat. Ann. § 13-804(E).
- ²⁴⁰ 18 U.S.C. § 3572(d)(2).
- ²⁴¹ Ariz. Rev. Stat. Ann. § 13-804(E).
- ²⁴² 730 Ill. Comp. Stat. Ann. 5/5-5-6(f).
- ²⁴³ Fla. Stat. Ann. § 775.089(3)(a).
- ²⁴⁴ S.C. Code Ann. § 17-25-322(C)
- ²⁴⁵ Fla. Const. art. I, § 16(b)(9).
- ²⁴⁶ S.C. Const. art. I, § 24(A)(9).
- ²⁴⁷ Vt. Stat. Ann. tit. 13, § 7043(n)(1).
- ²⁴⁸ Alaska Stat. Ann. § 12.55.045(c).
- ²⁴⁹ Fed. R. Crim. Proc. Rule 35(a).
- ²⁵⁰ Or. Rev. Stat. Ann. § 137.107.
- ²⁵¹ Cal. Penal Code § 1202.46; *People v. Brown*, 54 Cal. Rptr. 887, 896 (Cal. Ct. App. 2007).
- ²⁵² Mich. Comp. Laws Ann. § 780.766(22).
- ²⁵³ 18 Pa. Stat. § 1106(c)(3).
- ²⁵⁴ 18 U.S.C. § 3664(d)(5).
- ²⁵⁵ 730 Ill. Comp. Stat. Ann. 5/5-5-6(f-1)(3).
- ²⁵⁶ Wyo. Stat. Ann. § 7-9-115.
- ²⁵⁷ Cal. Penal Code § 1203.1g; Cal. Penal Code § 1203.1j.
- ²⁵⁸ Colo. Stat. Ann. § 18-1.3-603(3)(b).
- ²⁵⁹ Haw. Rev. Stat. Ann. § 706-645(2).
- ²⁶⁰ Mont. Code Ann. § 46-18-246.
- ²⁶¹ N.H. Rev. Stat. § 651:66.
- ²⁶² N.C. Gen. Stat. Ann. § 15A-1340.39(b).
- ²⁶³ Haw. Rev. Stat. Ann. § 706-645(2).
- ²⁶⁴ Mont. Code Ann. § 46-18-246.

²⁶⁵ N.C. Gen. Stat. Ann. § 15A-1340.39(a).
²⁶⁶ 18 U.S.C. § 3664(k).
²⁶⁷ Vt. Stat. Ann. tit. 13, § 7043(l).
²⁶⁸ Alaska R. 32.6(d).
²⁶⁹ 18 U.S.C. § 3771(d)(3).
²⁷⁰ Ohio Const. art. I, § 10a(B).
²⁷¹ Utah Code Ann. § 77-38-11(2)(a)(i).
²⁷² *In re Brown*, 932 F.3d 162, 170 (4th Cir. 2019); *United States v. Monzel*, 641 F.3d 528, 540 (D.C. Cir. 2011).
²⁷³ *Crump v. Appellate Division of Superior Court*, 249 Cal. Rptr. 3d 611, 616 (Cal. Ct. App. 2019).
²⁷⁴ *State ex rel. Howery v. Powers*, 154 N.E.3d 146, 148–51 (Ohio Ct. App. 2020).
²⁷⁵ Md. Crim. Proc. § 11-103(b).
²⁷⁶ Utah Code Ann. § 77-38-11(2)(b).
²⁷⁷ 18 U.S.C. § 3771(d)(4).
²⁷⁸ Fla. Stat. Ann. § 924.07(1)(k).
²⁷⁹ *United States v. Kovall*, 857 F.3d 1060, 1063 (9th Cir. 2017).
²⁸⁰ *Crump v. Appellate Division of Superior Court*, 249 Cal. Rptr. 3d 611, 616 (Cal. Ct. App. 2019).
²⁸¹ *State v. Doehler*, 844 N.W.2d 469, at *3 (Iowa Ct. App. Jan. 23, 2014) (table).
²⁸² *State v. Olson*, No. 77627-4-I, 2019 WL 7373499 (Wash. Ct. App. Dec. 30, 2019).
²⁸³ *Fay v. Fox in & for Cty. of Maricopa*, 494 P.3d 1105, 1106, 1110 (Ariz. 2021).
²⁸⁴ Haw. Rev. Stat. Ann. § 706-644(5).
²⁸⁵ N.Y. Crim. Proc. L. § 420.10(6)(b).
²⁸⁶ Vt. Stat. Ann. tit. 13 § 7043(j).
²⁸⁷ Cal. Penal Code § 1202.4(l); Cal. Penal Code § 2085.6(b)–(c).
²⁸⁸ 730 Ill. Comp. Stat. Ann. 5/5-5-6(n).
²⁸⁹ Mich. Comp. Laws Ann. § 780.766(13).
²⁹⁰ Mont. Code Ann. § 27-2-201(5); Mont. Code Ann. § 46-18-241(1).
²⁹¹ Vt. Stat. Ann. tit. 13, § 7043(p)(2).
²⁹² 18 U.S.C. § 3613(b).
²⁹³ Or. Rev. Stat. Ann. § 18.194(3).
²⁹⁴ *State v. Brasher*, 170 N.E.3d 920, 922 (Ohio 2021).
²⁹⁵ *Commonwealth v. Adams*, 566 S.W.3d 225, 233 (Ky. Ct. App. 2018).
²⁹⁶ Ga. Code Ann. § 17-10-1(A)(i).
²⁹⁷ Md Crim. Ann., Crim. Proc. § 11-616(a)(2).
²⁹⁸ N.Y. Civ. Prac. L. R. § 211(b).
²⁹⁹ 18 U.S.C. § 3664(i).
³⁰⁰ Ala. Code § 15-18-72(c).
³⁰¹ Ariz. Code of Jud. Admin. § 5-204(K)(2).
³⁰² Cal. Penal Code § 1203.1(b); Cal. Penal Code § 2085.5(n)(1).
³⁰³ Mich. Comp. Laws Ann. § 780.766(21).
³⁰⁴ Ga. Code Ann. § 17-14-18.
³⁰⁵ Tex. Gov’t Code Ann. § 508.322(e).
³⁰⁶ Ariz. Rev. Stat. Ann. § 13-809(A).
³⁰⁷ Cal. Const. art. I, § 28(b)(13)(C); Cal. Penal Code § 1203.1d(b); Cal. Penal Code § 2085.5(j)–(k).
³⁰⁸ Haw. Rev. Stat. Ann. § 706-642(3); Haw. Rev. Stat. Ann. § 706-651.
³⁰⁹ Fla. Stat. Ann. § 948.09(6).
³¹⁰ Nev. Const. art. I, § 8A(1)(p).
³¹¹ N.H. Rev. Stat. § 651:63(VI).
³¹² Mich. Comp. Laws Ann. § 775.22.
³¹³ Mont. Code Ann. § 46-18-251(2).
³¹⁴ Or. Rev. Stat. Ann. § 137.153.
³¹⁵ 18 U.S.C. § 2259A(d)(2); 18 U.S.C. § 3612(c)(1).
³¹⁶ Ky. Rev. Stat. Ann. § 534.020(2)(c).
³¹⁷ Ohio Rev. Code Ann. § 2949.111(B)(3).
³¹⁸ 18 U.S.C. § 3664(i).
³¹⁹ Ky. Rev. Stat. Ann. § 533.030(3).

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- ³²⁰ Mont. Code Ann. § 46-18-248; Mont. Code Ann. 46-18-251(3).
³²¹ Ariz. Code of Jud. Admin § 3-401(D).
³²² Mich. Comp. Laws Ann. § 780.766(8).
³²³ Or. Rev. Stat. Ann. § 137.153(3).
³²⁴ Cal. Penal Code § 1202.4(1); Cal. Penal Code § 2085.6(b)–(c).
³²⁵ 730 Ill. Comp. Stat. Ann. 5/5-5-6(n).
³²⁶ Mich. Comp. Laws Ann. § 780.766(13).
³²⁷ Mont. Code Ann. § 27-2-201(5); Mont. Code Ann. § 46-18-241(1).
³²⁸ Vt. Stat. Ann. tit. 13, § 7043(p)(2).
³²⁹ 18 U.S.C. § 3613(b).
³³⁰ Or. Rev. Stat. Ann. § 18.194(3).
³³¹ Ala. Code § 15-18-72(b).
³³² Ariz. Rev. Stat. Ann. § 13-810.
³³³ S.C. Code Ann. § 17-25-323(B).
³³⁴ Ala. Code § 15-18-72(b).
³³⁵ Ariz. Rev. Stat. Ann. § 13-810.
³³⁶ Haw. Rev. Stat. Ann. § 70-644(1).
³³⁷ Mont. Code Ann. § 46-18-247(1).
³³⁸ S.C. Code Ann. § 17-25-323(B).
³³⁹ Ariz. Rev. Stat. Ann. § 13-804(N).
³⁴⁰ Mich. Comp. Laws Ann. § 780.766(18).
³⁴¹ 18 U.S.C. § 3613A(a)(1).
³⁴² Ariz. Rev. Stat. Ann. § 13-810(F)(1).
³⁴³ Or. Rev. Stat. Ann. § 161.685(5).
³⁴⁴ Vt. Stat. Ann. tit. 13, § 7043(m)(2)(A).
³⁴⁵ 18 U.S.C. § 3613A(a)(1).
³⁴⁶ Ariz. Code of Jud. Admin. § 6-103(E)(8)(h).
³⁴⁷ 730 Ill. Comp. Stat. Ann. 5/5-6-2(e).
³⁴⁸ Mich. Comp. Laws Ann. § 780.766(11).
³⁴⁹ 18 U.S.C. § 3614(b)–(c).
³⁵⁰ Ariz. Rev. Stat. Ann. § 13-810(E)(1).
³⁵¹ Cal. Penal Code § 1203.2(a).
³⁵² Fla. Stat. Ann. § 948.06(5).
³⁵³ Haw. Rev. Stat. Ann. § 706-644(1).
³⁵⁴ Mich. Comp. Laws Ann. § 780.766(11).
³⁵⁵ Or. Rev. Stat. Ann. § 161.685(4).
³⁵⁶ 18 U.S.C. § 3613A(a)(1).
³⁵⁷ Ariz. Rev. Stat. Ann. § 13-810(F)(2).
³⁵⁸ Mich. Comp. Laws Ann. § 780.766(18).
³⁵⁹ Vt. Stat. Ann. tit. 13, § 7043(m)(2).
³⁶⁰ Ky. Rev. Stat. § 439.552(1)(a)(4); Ky. Rev. Stat. § 439.563(5); Ky. Rev. Stat. § 532.033(8).
³⁶¹ S.C. Code Ann. § 24-21-550.
³⁶² Ariz. Rev. Stat. Ann. § 13-805(E).
³⁶³ Cal. Penal Code § 1202.4(m); Cal. Penal Code § 2085.6(b)–(c).
³⁶⁴ Haw. Rev. Stat. § 706-630.
³⁶⁵ Ohio Rev. Code Ann. § 2929.25(E).
³⁶⁶ Ala. Code § 15-18-75.
³⁶⁷ Cal. Civ. Proc. Code § 340.3(e).
³⁶⁸ Ky. Rev. Stat. Ann. § 533.030(3)(d).
³⁶⁹ N.H. Rev. Stat. § 652:65.
³⁷⁰ Ohio Rev. Code Ann. § 2929.18(A)(1).
³⁷¹ *United States v. Bryant*, 655 F.3d 232, 254 (3rd Cir. 2011).
³⁷² *Kelley v. State*, 11 N.E.3d 973, 979 (Ind. Ct. App. 2014).
³⁷³ *People v. Gregory*, 469 P.3d 507, 512 (Colo. Ct. App. 2019).
³⁷⁴ *People v. Vasquez*, 119 Cal. Rptr. 3d 29, 35–39 (Cal. Ct App. 2010).

³⁷⁵ *State v. Bruun*, 443 P.3d 756, 760–64 (Utah Ct. App. 2019), *cert. granted* 455 P.3d 1061.

³⁷⁶ *People v. Hume*, 126 Cal. Rptr. 3d 824, 827–28 (Cal. Ct. App. 2011); *People v. Duong*, 103 Cal. Rptr. 3d 678, 681 (Cal. Ct. App. 2010).

³⁷⁷ *State v. Morgan*, 790 S.E.2d 27, 30–31 (S.C. Ct. App. 2016).

³⁷⁸ *State v. Blake*, 174 A.3d 126, 133–36 (Vt. 2017).

³⁷⁹ *State v. Kirby*, 818 So. 2d 689, 691 (Fla. Dist. Ct. App. 2002), *approved*, 863 So. 2d 238 (Fla. 2003).

³⁸⁰ *State v. Applegate*, 976 P.2d 936, 938 (Kan. 1999).