

## **RESTITUTION LAW & PRACTICE GUIDE FOR LEGAL PRACTITIONERS**

Restitution is financial compensation that an offender pays to a crime victim for losses that the victim suffered as a result of the offender’s crime. Depending upon a jurisdiction’s restitution laws, restitution may be full or partial, mandatory or discretionary. It is ordered as a condition of pretrial diversion, part of a criminal sentence following plea or trial, or as a condition of probation or supervised release.

Restitution has long been a component of criminal justice in the United States,<sup>1</sup> and is recognized as serving a range of objectives, including punishment, deterrence, rehabilitation and compensation.<sup>2</sup> With respect to the compensatory objective, restitution is designed to make victims financially “whole” in the aftermath of crime, compensating them for their losses to restore them to their pre-crime financial state.<sup>3</sup>

Restitution is distinguishable from other avenues of recovery for victims’ financial losses. Unlike crime victim compensation, restitution allows victims to recover a broad range of losses and does not impose a strict timeline on when a victim reports a crime;<sup>4</sup> and, unlike damages obtained through civil litigation, restitution is part of the criminal justice proceedings initiated by the government rather than proceedings occurring in the civil justice system, which can be initiated by the victim or the accused.<sup>5</sup>

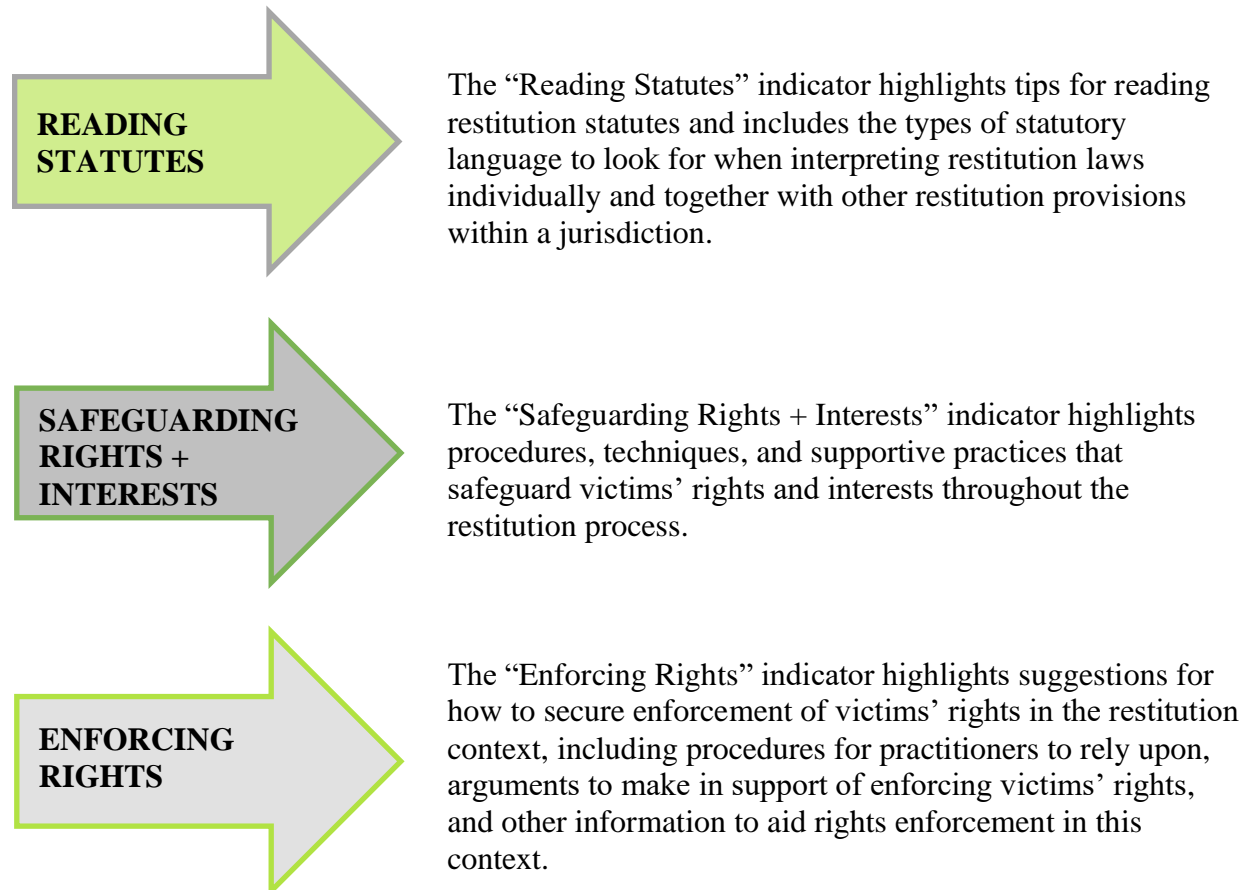
Because the right to restitution and other restitution-related rights belong to the victim,<sup>6</sup> others – including the government – cannot bargain these rights away or otherwise limit them.<sup>7</sup> Depending on the jurisdiction, victims may assert their rights themselves,<sup>8</sup> through privately retained counsel<sup>9</sup> and/or through the prosecutor.<sup>10</sup>

This resource explores the law and practices of restitution by (I) identifying the bodies of law governing restitution rights and procedures; (II) detailing victims’ restitution-related rights; (III) describing the mandatory and/or permissive nature of restitution laws; (IV) exploring the procedures and requirements underlying the issuance of a restitution order and its enforcement; and (V) discussing the relationship between criminal restitution and civil damages awards and settlements.

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## HOW TO USE THIS RESOURCE

This *Guide* is designed as a resource for restitution practitioners – from pretrial through post-conviction – as well as policymakers. Information in this *Guide* was collected by researching and analyzing select federal and state laws and interviewing practitioners. This *Guide* provides an overview of key components of restitution laws and procedures but does not detail all restitution-related laws or issues. It does not offer an exhaustive analysis of case law. Specific jurisdictions and laws are referenced throughout to provide examples of laws and practices that exist at the time of publication/release. These references are designed to be illustrative and should not be relied upon for legal purposes. This *Guide* focuses on restitution in criminal cases involving adult offenders; restitution in juvenile cases is generally outside its scope. Three types of practice pointers appear in call-out boxes throughout this *Guide*:



For additional information and samples of court submissions related to restitution, 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](#) and/or contact NCVLI for [technical assistance](#)

## TABLE OF CONTENTS

<b>I. WHERE YOU CAN FIND THE LAW GOVERNING RESTITUTION .....</b>	<b>6</b>
A. Constitutional and Statutory Victims’ Rights Laws .....	6
B. Restitution-Specific Statutory Provisions, Rules and Guidelines .....	6
1. General Restitution Laws .....	7
2. Crime-Specific Restitution Laws .....	8
<b>II. RESTITUTION-RELATED RIGHTS AVAILABLE TO VICTIMS .....</b>	<b>9</b>
A. Restitution-Related Rights .....	9
B. Restitution-Related Privacy and Confidentiality Rights and Protections .....	10
<b>III. WHEN COURTS MUST OR MAY ORDER RESTITUTION .....</b>	<b>12</b>
A. Mandatory Restitution Laws .....	12
1. Broad Mandatory Restitution Laws .....	12
2. Limited Mandatory Restitution Laws .....	12
B. Permissive Restitution Laws .....	13
C. Operation of Mandatory and Permissive Restitution Laws in the Same Jurisdiction .....	13
<b>IV. RESTITUTION IN PRACTICE .....</b>	<b>14</b>
A. Procedures and Requirements Prior to the Court’s Consideration of Restitution .....	14
1. Pre-Conviction Preservation of Defendants’ Assets .....	14
2. Who Requests Restitution .....	14
i. Restitution Requests by the Victim .....	14
ii. Restitution Requests by the Government .....	14
3. Victims’ Rights Implicated Prior to the Consideration of Restitution .....	15
B. Procedures and Requirements for Gathering and Presenting Restitution-Related Information .....	15
1. Sources of Restitution-Related Information .....	15
i. Restitution Forms, Affidavits and Other Submissions Regarding Loss .....	16
ii. Presentence Investigation Reports .....	16
iii. Victim Impact Statements .....	17
iv. Sentencing and/or Restitution Memoranda .....	17
v. Sentencing Hearings .....	17
vi. Restitution Hearings .....	17
a. Subpoenas for Document Production and/or Victim or Witness Testimony Prior to Restitution Hearing .....	18
1. Subpoenas for the Production of Victim Records .....	18
2. Subpoenas for the Presence of Victims and Related Third Parties .....	18
2. Timeliness of Restitution Request .....	18
3. Victims’ Rights Implicated by Gathering and Presenting Restitution-Related Information .....	19
C. Procedures and Requirements for Whether Courts <i>May</i> or <i>Must</i> Order Restitution .....	20
1. Degree to Which the Court May or Must Consider Restitution .....	20

2.	Deferred Prosecution Agreements and Pretrial Diversion Programs .....	20
3.	Plea Agreements .....	22
4.	Three Principal Criteria of Restitution .....	22
i.	Victim Eligibility .....	23
a.	Person Victims .....	23
b.	Victim’s Estate .....	23
c.	Institutional Victims .....	24
d.	Victims of Uncharged Conduct .....	24
ii.	Compensable Losses .....	24
a.	Categories of Compensable Loss .....	24
1.	Common Categories of Loss .....	25
2.	Crime-Specific Categories of Loss .....	26
b.	Noncompensable Losses .....	26
c.	Proof Necessary to Establish Loss .....	26
1.	Victims’ Rights Implicated in Proving Loss .....	27
iii.	Causation .....	28
a.	Causation Standards .....	28
b.	Causal Connection to Offense of Conviction .....	28
5.	Timeliness of Restitution Order .....	28
D.	Procedures and Requirements for the Final Restitution Calculation and Determination of the Manner of Payment .....	30
1.	Factors Courts Consider When Determining the Amount of Restitution and the Manner of Payment .....	30
i.	Interests and Resources at Stake for Victims and Defendants .....	30
a.	Victims’ Interests and Resources .....	30
b.	Defendants’ Interests and Resources .....	30
ii.	Methods of Loss Calculation .....	31
iii.	Nonmonetary Restitution .....	31
iv.	Multiple Victims and Otherwise Complicated Calculations .....	31
v.	Set Range or Amount of Restitution .....	32
vi.	Liability Apportionment .....	32
vii.	Interest .....	33
viii.	Credits and Offsets .....	32
ix.	Payment Schedule .....	33
x.	Objections Before a Restitution Order is Issued .....	33
2.	Victims’ Rights Implicated in Courts’ Determination of Final Restitution Amount and Manner of Payment .....	34
E.	Procedures and Requirements Related to the Issuance of a Restitution Order .....	34
1.	Information Contained in a Restitution Order .....	34
2.	Nature of the Defendant’s Sentence or Terms of Release .....	35
3.	Victims’ Rights Implicated Upon Issuance of a Restitution Order .....	35
F.	Procedures and Requirements Regarding Challenges and Changes to Final Restitution Orders .....	35
1.	Requests for Modification of Final Restitution Orders .....	36
i.	Grounds Upon Which Final Restitution Orders May Be Modified .....	36

a.	Modifications Regarding Amount of Restitution .....	36
b.	Modifications Regarding Restitution Payment Schedule .....	37
ii.	Victims' Rights Implicated Before a Final Restitution Order is Modified.....	37
2.	Petitions for Review by the Victim.....	37
3.	Appeals by the Victim, the Government and/or the Defendant.....	37
G.	Procedures and Requirements Related to Restitution Enforcement .....	38
1.	Restitution Collection .....	38
i.	Parties Responsible for Restitution Collection .....	38
ii.	Methods and Means of Restitution Collection.....	39
1.	Government-Only Means of Collection.....	39
2.	Government and/or Victim-Initiated Collection .....	40
iii.	Timing of Restitution Collection .....	41
2.	Restitution Disbursement.....	41
i.	Timing of Restitution Disbursement.....	41
ii.	Priority of Payments .....	42
iii.	Payment Schedules .....	42
iv.	Locating Victims to Disburse Funds.....	42
v.	Unclaimed Funds .....	42
3.	Effect of Pending Appeal on Restitution Collection and Disbursement.....	43
4.	Payment Delinquency or Default.....	43
i.	Consequences of Delinquency or Default.....	43
a.	Consequences of Delinquency or Default.....	44
b.	Effect of Nonpayment when Defendant is a Corporation.....	45
c.	Effect of Nonpayment on Termination of Probation or Supervised Release..	45
ii.	Victims' Rights Implicated in Restitution Noncompliance .....	45
<b>V.</b>	<b>RELATIONSHIP BETWEEN CRIMINAL RESTITUTION AND CIVIL DAMAGES</b>	
	<b>AWARDS AND CIVIL SETTLEMENTS.....</b>	<b>46</b>
A.	Effect of Criminal Restitution Order on Subsequent Civil Damages Awards.....	46
B.	Effect of Civil Damages Award or Civil Settlement on Criminal Restitution Order .....	46
C.	Effect of Civil Release of Liability on Criminal Restitution Order .....	46

## I. WHERE YOU CAN FIND THE LAW GOVERNING RESTITUTION

The laws governing criminal restitution vary greatly by jurisdiction but generally have two main sources: (A) constitutional and statutory victims' rights provisions, which guarantee victims numerous participatory rights and generally include the right to restitution and other restitution-related rights; and (B) restitution-specific statutory provisions and rules, which afford victims restitution-specific rights, impose restitution obligations on system actors, and govern how and when restitution is ordered. Understanding restitution in any jurisdiction requires reviewing these sources of law, as well as developing an understanding of local practices relating to restitution.

### **An example: Florida**

*Florida is a state with multiple laws governing restitution. Callout boxes containing relevant Florida laws appear in this section to provide examples of the different types of laws that can govern restitution.*

### **A. Constitutional and Statutory Victims' Rights Laws**

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.<sup>11</sup> These laws provide one source of a victim's right to restitution by explicitly affording a right to restitution<sup>12</sup> and/or affording victims a range of restitution-related rights. Victims' restitution-related rights are explored in more detail in Part II.

*Constitutional right to restitution. Fla. Const. art. I, § 16(b)(9).*

*Statutory right to information about restitution. Fla. Stat. Ann. § 960.001(1)(j).*

*Civil restitution liens as a form of victim assistance. Fla. Stat. Ann. §§ 960.29 through 960.928.*

### **B. Restitution-Specific Statutory Provisions, Rules and Guidelines**

In addition to the restitution and restitution-related rights contained in general victims' rights provisions, jurisdictions have statutory provisions, rules and guidelines expressly dedicated to restitution. These laws fall into two principal groups: (1) general restitution laws and (2) crime-specific restitution laws.

## 1. General Restitution Laws

General restitution laws are typically found within the portion of a jurisdiction's criminal code related to criminal judgments and/or sentencing.<sup>13</sup> There may also be restitution-specific provisions in laws and rules regarding probation, supervised release, and community/work release.<sup>14</sup> The procedures for restitution collection and disbursement may be found in a jurisdiction's criminal procedure laws,<sup>15</sup> rules,<sup>16</sup> judicial administration rules,<sup>17</sup> administrative code,<sup>18</sup> and local court orders.<sup>19</sup> In the federal context, sentencing guidelines also contain restitution-specific provisions.<sup>20</sup>

In some jurisdictions, a victim's right to restitution is found in general restitution laws.<sup>21</sup> These laws also contain restitution-related rights, which overlap with and complement rights contained in a jurisdiction's body of victims' rights laws, such as the right to submit information to the court regarding a victim's financial losses, the right to nonparticipation in the restitution process, and the rights to be present and heard at restitution proceedings. These and other restitution-related rights are detailed below in Part II.

General restitution laws often govern topics such as:

- the exercise of victims' restitution rights;<sup>22</sup>
- the method and manner of restitution calculation;<sup>23</sup>
- the issuance of restitution orders;<sup>24</sup>
- restitution enforcement;<sup>25</sup> and
- restitution-related rights and obligations of other participants within the criminal justice system.<sup>26</sup>

*Criminal statute governing restitution as a part of a sentence. Fla. Stat. Ann. § 775.089.*

*Criminal procedure statutes governing restitution as a condition of parole, Fla. Stat. Ann. § 947.181, and probation, id. § 948.032.*

*Administrative rule regarding restitution procedures in community release programs. Fla. Admin. R. 330601.602(12).*

*Criminal procedure law establishing restitution collection and disbursement procedures. Fla. Stat. Ann. § 945.31.*

*Local court order establishing how unclaimed restitution is disbursed. Fla. Stat. 15 J. Cir. 4.407.*

## 2. Crime-Specific Restitution Laws

Restitution rights and procedures may also be crime-specific. Crime-specific restitution laws may broadly govern certain classifications of crime, such as felonies/misdemeanors<sup>27</sup> or multiple categories of crime.<sup>28</sup> These broad crime-specific restitution laws are typically part of a jurisdiction's general restitution provisions. Crime-specific restitution laws may also focus on a certain crime or set of related crimes,<sup>29</sup> such as human trafficking<sup>30</sup> or child abuse and exploitation.<sup>31</sup> These provisions are found within the body of law governing those criminal acts. In many instances, these narrower, crime-specific restitution provisions rely on the restitution issuance and enforcement mechanisms present in a jurisdiction's general restitution laws.<sup>32</sup> In other instances, crime-specific restitution laws contain unique procedural provisions, which may be used in conjunction with more general restitution procedures.<sup>33</sup>

*Criminal statute governing white collar crime, including provision for restitution. Fla. Stat. Ann. § 775.0844(8).*

*Criminal statute governing obtaining property by false personation, including provision for restitution. Fla. Stat. Ann. § 817.02(2)(a).*



## II. RESTITUTION-RELATED RIGHTS AVAILABLE TO VICTIMS

Victims have a range of procedural and substantive rights that arise in restitution processes. The nature and scope of these rights vary by jurisdiction; examples of such rights are listed in Section (A) below. Section (B) focuses on restitution-related privacy rights and protections. Throughout Part IV, this *Guide* highlights when in the restitution process particular restitution-related rights are implicated.

### A. Restitution-Related Rights

Restitution-related rights may be at issue before, during and/or 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.<sup>34</sup> In fact, violations of these rights can deprive victims of their ability to obtain the restitution to which they are entitled. The nature and scope of a victim's restitution-related rights vary by jurisdiction and may include the rights to:

- Access certain restitution-related documents and information, including: contact information for the officer or entity tasked with supervising restitution payments (*e.g.*, Massachusetts);<sup>35</sup> information upon which victims may base their restitution claims (*e.g.*, federal);<sup>36</sup> information regarding a defendant's assets, income, liabilities (*e.g.*, California);<sup>37</sup> information regarding material changes in a defendant's economic circumstances (*e.g.*, federal);<sup>38</sup> information regarding a defendant's bankruptcy (*e.g.*, Michigan);<sup>39</sup> a presentence report (*e.g.*, Arizona, Florida, Illinois);<sup>40</sup> a defendant's restitution payment history (*e.g.*, Arizona);<sup>41</sup> and the restitution payment schedule (*e.g.*, Iowa, Massachusetts, South Dakota, Virginia).<sup>42</sup>
- Access justice (*e.g.*, federal, Ohio).<sup>43</sup>
- Apply for crime victim compensation (*e.g.*, all states).<sup>44</sup>
- Assistance in preparing restitution requests and documenting financial losses (*e.g.*, Connecticut, Indiana, Massachusetts, Oklahoma, Vermont).<sup>45</sup>
- Confer with the prosecution (*e.g.* federal, Alaska, Arizona, Florida, Illinois, Louisiana, New Mexico, Tennessee).<sup>46, 47</sup>
- A copy of the restitution order (*e.g.*, federal, California, South Dakota).<sup>48</sup>
- Enforce the restitution order (*e.g.*, Alabama, Alaska, California, Hawaii, Iowa, Nebraska, New York),<sup>49</sup> including the right not to pay fees associated with enforcement (*e.g.*, Alaska, Hawaii, Florida, Michigan, South Dakota)<sup>50</sup> and the right to certain enforcement tools, such as civil liens (*e.g.*, Florida).<sup>51</sup>
- Be free from harassment, intimidation and abuse in restitution matters (*e.g.*, (Arizona, California, Colorado, Illinois, New Jersey, Nevada, South Carolina, Tennessee, Utah).<sup>52</sup>
- Information about their right to restitution and restitution-related rights and procedures (*e.g.*, federal, Alabama, Arizona, California, Florida, Hawaii, Kentucky, Mississippi, New Hampshire, Nevada, South Carolina, Utah,

- Vermont);<sup>53</sup> or, more generally, information about their rights (*e.g.*, federal, Arizona, Florida, Kentucky, Wisconsin).<sup>54</sup>
- Justice and due process and to be treated with fairness and respect for the victim’s dignity regarding restitution requests and procedures (*e.g.*, federal, Alaska, Arizona, California, Colorado, Connecticut, Florida, Idaho, Illinois, Michigan, Rhode Island, Virginia).<sup>55</sup>
  - Language access and assistance in restitution matters (*e.g.* Arizona, Oregon).<sup>56</sup>
  - Nonparticipation in the restitution process (*e.g.* federal, Arizona, California).<sup>57</sup>
  - Notice of restitution-related events, including: the right to apply for restitution (*e.g.* Hawaii, Utah);<sup>58</sup> defaults in restitution payments (*e.g.*, Arizona, Michigan, Montana);<sup>59</sup> the issuance of a restitution order (*e.g.*, Arizona, Florida);<sup>60</sup> requests for restitution modification (*e.g.*, California, Massachusetts, Montana, North Carolina);<sup>61</sup> sentencing and/or restitution proceedings (federal, Utah, Vermont).<sup>62</sup>
  - Be present and/or heard at restitution-related proceedings, including: restitution proceedings (*e.g.*, Alabama, Arizona, California, Oregon, South Carolina, Utah);<sup>63</sup> restitution modification proceedings (*e.g.*, Arizona, California, Massachusetts, Montana, North Carolina, Utah);<sup>64</sup> sentencing (Alabama, Arizona, Florida, Illinois, Wisconsin, New Hampshire, Vermont);<sup>65</sup> proceedings regarding a defendant’s nonpayment of restitution (*e.g.*, Montana);<sup>66</sup> and other procedural moments implicating their restitution rights (*e.g.*, Arizona, Florida, Utah).<sup>67</sup>
  - Retain private counsel to represent the victim’s restitution-related interests (*e.g.*, federal, Arizona, Florida, Illinois).<sup>68</sup>
  - Privacy and confidentiality in restitution matters.<sup>69</sup>
  - Pursue civil damages against the defendant (*e.g.* Alabama, Arizona, Florida, Idaho, Illinois, Iowa, Kentucky, New Hampshire, New York, Ohio, South Carolina).<sup>70</sup>
  - Refuse requests for interviews, depositions and discovery (*e.g.*, Arizona, California, Oregon).<sup>71</sup>
  - Request a preconviction restitution lien (*e.g.*, Arizona).<sup>72</sup>
  - Submit information to the court regarding victims’ financial losses through a presentence investigation report, victim impact statement and/or other presentations of evidence and information (*e.g.*, federal, Alabama, Arizona, California, Florida, Hawaii, Kentucky, Michigan, Ohio).<sup>73</sup>

## **B. Restitution-Related Privacy and Confidentiality Rights and Protections**

Victims have a range of privacy and confidentiality rights and protections in the restitution setting. Some of these rights and protections are expressly tied to restitution, such as rights related to the nondisclosure of records filed or testimony given in support of restitution.<sup>74</sup> Other privacy protections in the restitution setting stem from broader rights to the nondisclosure of personal information. For instance, the federal constitution and many state constitutions

guarantee people – including victims of crime – a right to privacy in matters of a personal nature.<sup>75</sup> Some jurisdictions provide crime victims in particular with a broad right to privacy.<sup>76</sup> These broad privacy rights can protect victims against the compelled disclosure of their private information in the restitution setting.<sup>77</sup>

Depending on the jurisdiction, a victim may also refuse to disclose private information in the restitution context based on their rights:

- to refuse to disclose their identifying or locating information absent a court order (*e.g.*, Arizona, Utah);<sup>78</sup>
- to prevent the disclosure of their personal information when such disclosure jeopardizes their safety or well-being (*e.g.*, federal, California, Florida, Nevada);<sup>79</sup>
- to refuse requests for an interview, deposition or discovery (*see, e.g.*, Arizona, California, Oregon);<sup>80</sup>
- to be free from intimidation, harassment and abuse (Arizona, California, Colorado, Illinois, New Jersey, Nevada, South Carolina, Tennessee, Utah);<sup>81</sup> and
- to be treated with fairness, dignity and respect throughout the criminal justice process (*e.g.*, federal, Alabama, Arizona, California, Florida, Hawaii, Kentucky, Mississippi, New Hampshire, Nevada, South Carolina, Utah, Vermont).<sup>82</sup>

Other examples of how jurisdictions broadly guard against the disclosure of victims' personal information in the restitution context include the evidentiary privileges and confidentiality protections that limit certain professionals – such as psychotherapists, victim advocates and social workers – from disclosing victims' private communications and records.<sup>83</sup> These privileges and protections can also prevent victims from being compelled to disclose their privileged and/or confidential communications. Related to these protections, some jurisdictions have rules governing the procedure for the production of victims' personal, confidential and/or privileged records from third-parties;<sup>84</sup> though courts disagree as to whether such rules apply in the post-trial context.<sup>85</sup> A victim who seeks restitution for services from professionals with whom they share a privileged relationship does not waive their privilege in requesting restitution or by providing non-substantive information to support a restitution claim.<sup>86</sup>

Statutes and rules governing court filings – such as requirements that certain filings be redacted or filed under seal – can also protect victims' privacy in the restitution context.<sup>87</sup> These express filing protections may work with victims' other privacy rights to protect any private victim information contained in restitution-related court papers from disclosure.<sup>88</sup>

### III. WHEN COURTS MUST OR MAY ORDER RESTITUTION

A jurisdiction's restitution laws can be mandatory, permissive or a combination of the two.

#### A. Mandatory Restitution Laws

Some level of mandatory restitution is afforded to victims under federal law,<sup>89</sup> as well as under the laws of many states, including Alabama, Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Montana, Ohio, Oklahoma, New Jersey, Nevada, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Texas, Virginia, West Virginia, Wisconsin and Wyoming.<sup>90</sup> The promise of mandatory restitution can broadly apply to all crimes in which victims suffer a loss or be limited to certain crimes, defendants, victims and/or circumstances.

##### 1. Broad Mandatory Restitution Laws

In their broadest form, mandatory restitution laws provide victims with a straightforward right to restitution. This right can be articulated as a guarantee of restitution in any case where a defendant is convicted of a crime and the victim suffers a related loss (*e.g.*, Arizona, California, Florida, Oregon);<sup>91</sup> or as a right that is subject to a jurisdiction's other laws and procedures (federal, Georgia, Idaho, Kentucky, New Hampshire, Wisconsin).<sup>92, 93</sup>

##### 2. Limited Mandatory Restitution Laws

Some jurisdictions afford victims a limited, mandatory restitution right. In such jurisdictions, restitution is mandated in specific situations, but is otherwise permissive. Limited mandatory restitution laws may be based upon:

- categories of crime (*e.g.*, federal, Arizona, Hawaii, Illinois, Indiana, Maryland, Michigan, Mississippi, New Hampshire, New Mexico, South Carolina);<sup>94</sup>
- the defendant's status as an adult or a juvenile (*e.g.*, Hawaii, Iowa, Kentucky);<sup>95</sup>
- the defendant's ability to pay (*e.g.*, New Jersey, West Virginia, Wyoming);<sup>96</sup>
- certain action/inaction by the victim (*e.g.*, Alaska, Hawaii, New York, Texas);<sup>97, 98</sup> and
- the court's determination that restitution is impracticable, inappropriate or unworkable (*e.g.*, federal, Idaho, Kansas, Maine, Washington, Wisconsin).<sup>99</sup>

#### READING STATUTES

#### *Mandatory Restitution Laws*

*Mandatory restitution laws use language such as "shall" or "must" in connection with ordering restitution to victims. They may contain language 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").*

## B. Permissive Restitution Laws

In some jurisdictions, restitution is left to the court's discretion, including in prosecutions for certain federal crimes,<sup>100</sup> as well as in Arkansas, Indiana, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, and Vermont.<sup>101</sup>

Where restitution is permissive, a victim's right to restitution may be articulated as a right to seek restitution (e.g., Indiana, Massachusetts).<sup>102</sup> A jurisdiction with permissive restitution laws may require that a court consider restitution, but leave the ultimate decision of whether and how to order it up to the court (e.g., Vermont).<sup>103</sup> In some jurisdictions in which restitution is permissive, a presumption in favor of an award of full restitution guides courts' discretion regarding the issuance of a restitution order (e.g., New Hampshire).<sup>104</sup> Generally, if a court declines to exercise its discretion to order restitution, it must state its reasons on the record.<sup>105</sup>

## C. Operation of Mandatory and Permissive Restitution Laws in the Same Jurisdiction

Some jurisdictions have both mandatory and permissive restitution laws. In some instances, these laws do not conflict but merely assign different restitution schemes based on some of the categories detailed above,<sup>106</sup> such as the defendant's status as an adult or a juvenile (e.g., Hawaii, Kentucky, Iowa)<sup>107</sup> or the type of crime committed (e.g., federal, Arizona, Hawaii, Illinois, Indiana, Maryland, New Hampshire, New Mexico).<sup>108</sup>

In other instances, however, a jurisdiction may afford victims a broad right to mandatory restitution under constitutional and/or statutory victims' rights provisions, but provide the court with discretion in ordering restitution under separate restitution laws (e.g., Washington, D.C., Florida, Ohio, Texas).<sup>109</sup> Where a victim's right to mandatory restitution is constitutional, but state statutes and/or rules only provide for permissive restitution, the constitutional right supersedes the statutes and/or rules to the extent they conflict with one another (e.g., Florida, Ohio, Texas).<sup>110</sup>

### READING STATUTES

#### *Permissive Restitution Laws*

*Permissive restitution laws use language like “may,” “consider” or “discretion” in connection with ordering restitution to victims. In jurisdictions where restitution is permissive, a victim's right to restitution is often articulated as the right to request restitution (e.g., “victims have the right to pursue a restitution order,” “victims have the right to request restitution”).*

### READING STATUTES

#### *Hierarchy of Laws*

*If a jurisdiction's constitution guarantees victims a mandatory right to restitution, a less robust statutory right cannot undermine the constitutional guarantee.*

## IV. RESTITUTION IN PRACTICE

In practice, restitution procedures and requirements can be broken down into the following stages:

### A. Procedures and Requirements Prior to the Court's Consideration of Restitution

The procedural steps that victims, law enforcement, prosecutors, courts and other participants in the criminal justice system follow before a court considers a restitution claim relate to the following issues:

#### 1. Pre-Conviction Preservation of Defendants' Assets

In some instances, courts have authority before a defendant is convicted to freeze or otherwise preserve the defendant's assets, in the event such assets are necessary to pay court-ordered restitution.<sup>111</sup> Depending on the jurisdiction, the government may need to make certain showings before a defendant's assets are frozen or otherwise preserved in this way.<sup>112</sup>

#### 2. Who Requests Restitution

A restitution request may come from the victim and/or the government.

##### *i. Restitution Requests by the Victim*

Depending on the jurisdiction, a victim may request restitution from the court: independent of and/or through the prosecutor;<sup>113</sup> or only through the prosecutor.<sup>114</sup> The format of a victim's restitution request varies by jurisdiction. Courts may obtain restitution information directly from the victim in support of their request<sup>115</sup> or such information may come from the government.<sup>116</sup> Depending on the jurisdiction, a victim who does not provide the government and/or the court with restitution information, may have difficulty later appealing or seeking to amend the restitution order.<sup>117</sup> For additional information regarding how a victim presents their restitution request to the court, *see infra* [Part IV.B.1.](#)

##### *ii. Restitution Requests by the Government*

Restitution requests are often made by the government on the victim's behalf.<sup>118</sup> This may be done with or without<sup>119</sup> an underlying request from the victim. Under some restitution laws, a victim must expressly request restitution before the government is required to pursue it on their behalf.<sup>120</sup> The form of a government's restitution request varies by jurisdiction. For additional information regarding how such restitution requests are presented to the court, *see infra* [Part IV.B.1.](#)

### 3. Victims' Rights Implicated Prior to the Consideration of Restitution

The lead-up to a court's consideration of restitution implicates a range of victims' restitution-related rights, including the rights to:

- Access a copy of a presentence report.<sup>121</sup>
- Access justice.<sup>122</sup>
- Apply for compensation.<sup>123</sup>
- Assistance in preparing restitution requests and documenting financial losses.<sup>124</sup>
- Confer with the prosecution.<sup>125</sup>
- Be free from harassment, intimidation and abuse.<sup>126</sup>
- Information.<sup>127</sup>
- Justice and due process and to be treated with fairness and respect for the victim's dignity.<sup>128</sup>
- Language access and assistance.<sup>129</sup>
- Nonparticipation in the restitution process.<sup>130</sup>
- Notice of sentencing and/or restitution proceedings.<sup>131</sup>
- Privacy and confidentiality in the information supporting a restitution request.<sup>132</sup>
- Retain private counsel.<sup>133</sup>
- Request a preconviction restitution lien.<sup>134</sup>
- Submit information to the court regarding the victim's financial losses.<sup>135</sup>

For additional information about victims' restitution-related rights, see *supra* [Part II](#).

#### **B. Procedures and Requirements for Gathering and Presenting Restitution-Related Information**

A court's determinations regarding whether to issue an order for restitution, the amount of the order, and the manner in which restitution is to be paid depend upon the information presented to the court regarding the victim's economic losses; when such requests are made; and the victims' rights that the presentation of such information implicates.

##### 1. Sources of Restitution-Related Information

To request and receive restitution, victims provide the government and/or the court with information regarding their losses.<sup>136</sup> In some jurisdictions, information related to the victims' losses that is already on the record – such as trial testimony – may be sufficient to support a restitution request.<sup>137</sup> In other jurisdictions, additional documentation and/or statements from the victim may be required.



### **SAFEGUARDING RIGHTS + INTERESTS**

#### ***Assistance Documenting Loss***

*Assisting victims with restitution requires thinking about and collecting loss-related information early in the process. It may take time to compose a list of the victim's expenses and financial losses. Victims may request assistance with compiling documentation of these losses. Gathering this information can feel overwhelming; starting early can help create the space needed to process the information, compile documentation and assess what it is that a victim wants and needs to be restored.*

The form of such documentation and/or statements vary by jurisdiction and may depend, in part, on whether the victim is proceeding *pro se* or is represented by counsel. Depending on these factors, a victim may document their losses using one, or a combination, of the following methods:

*i. Restitution Forms, Affidavits and Other Submissions Regarding Loss*

Depending on the jurisdiction, victims may provide the government and/or court with information regarding their losses through:

- a restitution form (*e.g.*, Delaware, Oklahoma);<sup>138</sup>
- an affidavit (*e.g.*, federal, Minnesota);<sup>139</sup>
- an itemized list (*e.g.*, South Carolina);<sup>140</sup> or
- another submission detailing their restitution claims (*e.g.*, Minnesota, South Carolina).<sup>141</sup>

These materials may be prepared independently or with the help of an advocate, attorney or other professional.<sup>142</sup>

Filing such forms, affidavits or other submissions are a prerequisite to obtaining restitution in some jurisdictions, such as Delaware, Oklahoma, and South Carolina.<sup>143</sup> They are not in other jurisdictions, such as federal judicial districts and in California.<sup>144</sup> Where there is a set amount of restitution mandated for the commission of a certain crime, a victim may not need to submit an affidavit of loss to obtain restitution for losses associated with such a crime.<sup>145</sup>

*ii. Presentence Investigation Reports*

In some jurisdictions, statutes and procedural rules direct probation officers and other relevant entities to investigate a victim's financial losses and submit a presentence investigation report containing sufficient information upon which a court may base its restitution determination.<sup>146</sup> Depending on the jurisdiction and circumstances of a case, presentence investigation reports may be mandatory,<sup>147</sup> subject to the court's discretion,<sup>148</sup> or not part of the sentencing process at all. Such reports may include a complete accounting of each victim's losses, any restitution owed pursuant to a plea agreement, and information related to the defendant's economic circumstances.<sup>149</sup> The information necessary to complete presentence reports is gathered directly from victims and/or prosecutors.<sup>150</sup> Courts may have an obligation to consider a victim's restitution interests, as articulated in such reports, prior to sentencing.<sup>151</sup>



**SAFEGUARDING  
RIGHTS +  
INTERESTS**

***Privacy When  
Documenting Loss***

*Some documentation relating to restitution may contain victims' private, privileged, or confidential information (e.g., information related to medical or mental health). When submitting evidence of losses, consider whether the evidence may place the victim's privacy, privilege or confidentiality at risk and take steps to protect privacy (e.g., redact information).*



iii. *Victim Impact Statements*

Depending on the jurisdiction, victims may present courts and/or the government with the information necessary to support a restitution claim in a victim impact statement.<sup>152</sup> In jurisdictions where presentence investigation reports are compiled, the impact statement may or must<sup>153</sup> be included as part of the report. In other jurisdictions, the victim and/or the government may submit the impact statement separately or the victim may present it orally at sentencing or a restitution proceeding.<sup>154</sup> System participants – such as probation officers, victim advocates and prosecutors – may bear responsibility for obtaining the statement from the victim<sup>155</sup> or otherwise assisting victims in the preparation of such statements.<sup>156</sup> Courts may be required to consider the contents of such statements before making a restitution determination.<sup>157</sup>

iv. *Sentencing and/or Restitution Memoranda*

When a victim is represented by private counsel, counsel may file, prior to sentencing, an independent sentencing or restitution memorandum that details the victim’s restitution claims and provides supporting evidence.<sup>158</sup> Prosecutors may also file sentencing memoranda in support of restitution and/or restitution memoranda to detail a victim’s losses and provide information in support of a restitution request.<sup>159</sup>

v. *Sentencing Hearings*

Restitution is part of the sentencing process and may be ordered either at sentencing or at a separate restitution hearing. Victims may provide courts with information regarding their needs for restitution at sentencing, even if the court holds a separate restitution hearing.<sup>160</sup> Additionally, victims and prosecutors may submit a restitution request through a general sentencing memorandum<sup>161</sup> or through a verbal request at sentencing.<sup>162</sup>

vi. *Restitution Hearings*

Some restitution laws require courts to hold a restitution hearing when the necessary restitution-related information cannot be gathered in sufficient time prior to sentencing<sup>163</sup> or when the parties cannot agree to an amount of restitution.<sup>164</sup> The victim, the government and the defendant typically have a right to be present and heard at restitution hearings.<sup>165</sup> Where evidence of a victims’ losses was not submitted prior to a restitution hearing, the testimony and evidence presented at such a hearing may be sufficient to support a restitution order.<sup>166</sup>

**ENFORCING RIGHTS**

*Requesting Restitution in Sentencing Memoranda*

*Restitution is a condition of sentencing that may be addressed in a sentencing memorandum, even if restitution has already been requested separately. If documentation and legal analysis supporting the restitution request has been or will be separately submitted to the court, the sentencing memorandum can reference those materials.*

a. Subpoenas for Document Production and/or Victim or Witness Testimony Prior to Restitution Hearing

Prior to a restitution hearing, a victim and third-parties in possession of information related to the victim – such as the victim’s psychologist or employer – may be subpoenaed to produce records and/or testify at the hearing. Such attempts to compel the production of victims’ records or testimony can often be opposed on multiple grounds.

1. Subpoenas for the Production of Victim Records

A victim and/or the government can move to quash a subpoena for a victims’ private records on many grounds, including that such a request violates the victim’s rights.<sup>167</sup>

2. Subpoenas for the Presence of Victims and Related Third Parties

A victim and/or the government can also move to quash a subpoena for the victim’s presence at a restitution proceeding for failure to comply with local rules regarding subpoena format or service.<sup>168</sup> Additionally, defendants do not have an unconditional right to compel a victim to testify at a restitution hearing.<sup>169</sup> In fact, some jurisdictions have recognized that a defendant’s constitutional rights are so limited in the restitution setting that the defendant cannot compel a victim or other witness to appear and testify at a restitution proceeding.<sup>170</sup> In jurisdictions where a defendant may seek to compel a victim’s presence at a restitution hearing,<sup>171</sup> victims and/or the government may oppose the subpoena or motion to compel on the grounds that the testimony defendant seeks is irrelevant and/or violates the victim’s constitutional or statutory rights.<sup>172</sup> Even when a victim appears at a restitution hearing, the victim’s attorney and/or the government may object to questioning that threatens the victim’s rights and/or privileges.<sup>173</sup> Courts may limit such questioning into a victim’s privileged and/or confidential communications with a professional to only those matters directly related to the issue of restitution for the costs of that professional’s services.<sup>174</sup>

2. Timeliness of Restitution Request

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.<sup>175</sup> Some restitution laws specify a deadline by which restitution requests and the information supporting the requests must be submitted to the court; such deadlines can be found in federal law<sup>176</sup> and in Alaska, Colorado, Illinois and Oregon.<sup>177</sup>

Some of these laws provide express exceptions to such deadlines. For example, federal law, Colorado and Illinois have an exception when the amount of restitution is unknown by the deadline;<sup>178</sup> Colorado and Oregon provide an exception to their request deadlines upon a showing of good cause for the delay;<sup>179</sup> and Alaska allows for an exception where strict adherence to the deadline would work an injustice.<sup>180</sup>

Even in the absence of such exceptions, victims do not necessarily lose the opportunity to request restitution once the statutory deadline has passed. This is especially so where the victim has a constitutional right to restitution; in such an instance, a statutory deadline to request restitution does not act as a jurisdictional bar to the court's ability to order restitution.<sup>181</sup> Such a conclusion is consistent with the intent of restitution statutes, which is to compensate victims for their financial losses, not to protect a defendant's interests in finality.<sup>182</sup>

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 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.

Where the right to restitution is constitutional in nature, filing deadlines related to the victim's claim of a rights violation may not act as a jurisdictional bar on the court's authority to hear an untimely claim.<sup>183</sup>

### 3. Victims' Rights Implicated by Gathering and Presenting Restitution-Related Information

The gathering of restitution-related information from victims implicates victims' restitution-related rights, as does victims' presentation of such information to the court and/or the government. These restitution-related rights include the rights to:

- Access a copy of a presentence report.<sup>184</sup>
- Access justice.<sup>185</sup>
- Assistance in preparing restitution requests and documenting financial losses.<sup>186</sup>
- Confer with the prosecution.<sup>187</sup>
- Be free from harassment, intimidation and abuse.<sup>188</sup>
- Information.<sup>189</sup>
- Justice and due process and to be treated with fairness and respect for the victim's dignity.<sup>190</sup>
- Language access and assistance.<sup>191</sup>
- Nonparticipation in the restitution process.<sup>192</sup>
- Notice of sentencing and/or restitution proceedings.<sup>193</sup>
- Be present and/or heard at sentencing and/or restitution proceedings.<sup>194</sup>

## ENFORCING RIGHTS

### *Supporting Restitution Requests Made After Request Deadline*

- Statutory exception(s) to deadline apply.*
- The prosecutor missed the deadline in violation of the victim's rights.*
- The victim missed the deadline due to a violation of their rights.*
- A filing deadline does not trump a constitutional right to restitution.*
- A filing deadline does not limit the court's authority to remedy a rights violation.*

- Pursue civil damages against the defendant.<sup>195</sup>
- Privacy and confidentiality in information gathered and presented in support of a restitution request.<sup>196</sup>
- Refuse requests for interviews, depositions and discovery.<sup>197</sup>
- Retain private counsel.<sup>198</sup>
- Submit information to the court regarding victims' financial losses.<sup>199</sup>

For additional information about victims' restitution-related rights, *see supra* [Part II](#).

### **C. Procedures and Requirements for Whether Courts *May* or *Must* Order Restitution**

Before restitution can be ordered, a court must conclude that it is required or otherwise allowable under the jurisdiction's restitution laws. The process of reaching such a conclusion entails a number of considerations, including the following:

#### **1. Degree to Which the Court May or Must Consider Restitution**

As detailed above, the amount of discretion that courts have in issuing restitution orders varies by jurisdiction and depends upon factors such as the nature of the jurisdiction's restitution laws, the criminal act at issue, the identity of the convicted person and the victim's articulated interest in restitution.<sup>200</sup> Whether restitution is mandatory, limited mandatory or permissive will guide a court's determination as to whether restitution is required or otherwise permitted, as will the particular restitution requirements and procedures at play in a specific jurisdiction.

#### **2. Deferred Prosecution Agreements and Pretrial Diversion Programs**

The existence of a deferred prosecution agreement and other forms of pretrial diversion may control a defendant's restitution obligations. Some jurisdictions, such as Oregon and Wyoming, require that the government consider restitution before entering into such agreements with defendants.<sup>201</sup> In jurisdictions like Kentucky, courts must consider restitution before approving a pretrial diversion agreement.<sup>202</sup> Additionally, some jurisdictions, like Oklahoma, Oregon and Cobb County, Georgia, require the government to consider the victims' wishes regarding entry into a deferred prosecution agreement or pretrial diversion program.<sup>203</sup> In jurisdictions that require the government to consult with the victim before entering into a deferred prosecution agreement or pretrial diversion program, victims also may have an opportunity to provide the prosecutor with their thoughts regarding restitution.<sup>204</sup>

The payment of full restitution must be an express condition of pretrial diversion agreements in certain jurisdictions, such as Kentucky, Michigan Mississippi, South Carolina and Utah.<sup>205</sup> In other jurisdictions, restitution is a permissive condition of such agreements; Colorado, Montana, Oregon, Utah, Washington, and Wyoming are jurisdictions where this is the case.<sup>206</sup> Additionally, payment of full restitution is often a required condition of certain pretrial diversion programs, such as those available in bad check cases in Arizona, California, Florida, and Oregon.<sup>207</sup> Pretrial diversion programs for certain criminal offenses may consider a

defendant's willingness to pay restitution when determining eligibility for the program, but may not ultimately require the payment of full restitution. For instance, in California, participation in a pretrial diversion program for persons who commit repeat theft offenses depends upon, *inter alia*, willingness to pay restitution and a deferred prosecution agreement can require the defendant to make restitution.<sup>208</sup> Additionally, in Oregon, when determining whether a defendant's participation in a general diversion program is in the best interests of justice, the district attorney must consider provisions for restitution.<sup>209</sup>

Some jurisdictions require that the prosecutor consult with victims about restitution prior to entry into a diversion agreement, such as Florida, Delaware, Kentucky, South Carolina, and Utah.<sup>210</sup> Other jurisdictions require that the government generally take the victims' wishes about diversion into account; Minnesota and Oklahoma are examples of such jurisdictions.<sup>211</sup> Victims may be required to disclose documentation of their losses and any prior reimbursements for the purposes of establishing the amount of restitution that is owed as part of a pretrial diversion agreement; for instance, such disclosure is required in Oklahoma.<sup>212</sup>

Some states protect victims' interests in timely restitution in the context of deferred prosecution agreements by requiring payment of restitution within a period of time specified in the agreement. For instance, in Arizona, when prosecution is deferred in a bad check case, one of the conditions of deferral is the full payment of restitution within a period to be decided by the prosecutor.<sup>213</sup> Similarly, in Kentucky, when restitution is a condition of pretrial diversion, the restitution order must specify the amount and frequency of each restitution payment.<sup>214</sup> Other states expressly allow for the extension of a diversion agreement when the only outstanding condition is restitution payment, though the duration of such extensions are statutorily capped; Colorado, Montana and New Mexico have laws to this effect.<sup>215</sup> Some jurisdictions take a different path, requiring the upfront payment of restitution as a condition of a deferred prosecution agreement; this is an approach that has been taken in Tennessee.<sup>216</sup> At least one state – Alabama – allows the restitution provision of a pretrial diversion program to remain open, if the amounts of restitution cannot be determined at the time the agreement is entered into;<sup>217</sup> and another state – Vermont – protects victims' interests in timely restitution in the pretrial diversion context by authorizing victims of offenders participating in diversion programs to apply to the state's Restitution Unit for an advance payment of the restitution owed to them.<sup>218</sup> As these various state laws demonstrate, prompt payment of restitution is one of the central objectives of pretrial diversion.<sup>219</sup>



## ENFORCING RIGHTS

### *Supporting Timely Restitution in Deferred Prosecution/ Pretrial Diversion*

- Victim has a constitutional/ statutory right to full and prompt/timely restitution.*
- Victim has a right to be consulted/heard regarding restitution and/or pretrial diversion/deferred prosecution.*
- Payment (upfront or in a set time) as a condition of participation.*

### 3. Plea Agreements

A defendant may agree to pay restitution as a binding part of a plea agreement. Plea agreements can provide for restitution for losses stemming from crimes other than those to which a defendant has plead guilty.<sup>220</sup> In the absence of an express provision in the plea agreement related to restitution for such losses, courts may be limited to ordering restitution to losses arising out of the offense of conviction.<sup>221</sup>

When a defendant agrees to pay restitution as part of a plea agreement, the final judgment must include a restitution order or the restitution component of the defendant's plea may be unenforceable.<sup>222</sup> When a defendant does not agree to a specific amount of restitution in the plea agreement, however, the court may be able to specify the amount of restitution to be paid after entry of the agreement.<sup>223</sup>

Signing a plea agreement containing a restitution order or remaining silent at a plea hearing regarding restitution does not waive the defendant's right to later challenge the legality of the restitution order.<sup>224</sup> Where the consideration and/or ordering of restitution is mandatory, defendants must be advised of this fact prior to entering into a plea agreement.<sup>225</sup>

At least one jurisdiction – Illinois – expressly requires that the prosecution request restitution as part of a plea agreement, if the victim has requested restitution.<sup>226</sup>

Even when a plea agreement is silent as to restitution, the court may still have the authority to order it at sentencing.<sup>227</sup> Indeed, some courts have found that restitution must be ordered regardless of the terms of the plea agreement because the prosecution cannot waive or bargain away a victim's right to restitution.<sup>228</sup> When a defendant agrees in the plea agreement to pay a specific amount of restitution, restitution generally may be ordered without making the same showing that is required outside of the plea context.<sup>229</sup>

### 4. Three Principal Criteria of Restitution

Before a restitution order can be issued, courts must make three principal findings under the relevant body of restitution law: (1) the victim is eligible for restitution; (2) the victim's losses are compensable in restitution; and (3) there is a sufficient causal connection between the victim's losses and the convicted person's criminal conduct.

#### **ENFORCING RIGHTS**

#### ***Protecting Restitution in the Plea Context***

- Victim-prosecutor conferral regarding restitution in plea negotiations and plea agreements.*
- Request restitution in the plea agreement.*
- File independent restitution request and/or sentencing memorandum with the government and/or court.*
- Be prepared to exercise rights to oppose plea entered in violation of the victim's rights.*

#### **ENFORCING RIGHTS**

#### ***3 Criteria of Restitution***

- Victim Eligibility*
- Compensable Loss*
- Causation*

### *i. Victim Eligibility*

Whether a specific victim is entitled to restitution depends, in part, on whether they are a “victim” under the relevant restitution law. Restitution laws may expressly define the term “victim” either with respect to general restitution provisions<sup>230</sup> or with respect to crime-specific restitution provisions.<sup>231</sup> Some jurisdictions rely upon the definition of “victim” that applies generally to their victims’ rights provisions.<sup>232</sup> Other jurisdictions expand upon such general definitions for the purposes of restitution, thereby broadening the pool of potential restitution recipients to include individuals who are not entitled to other victims’ rights.<sup>233</sup> Such broad definitions of “victim” may authorize restitution for individuals or entities who have suffered a loss as the result of what may otherwise be considered a “victimless” crime.<sup>234</sup> Some jurisdictions do not define the term “victim,” instead limiting the scope of who is eligible for restitution through definitions of compensable loss.<sup>235</sup>

A victim may<sup>236</sup> or may not<sup>237</sup> need to be named in the indictment or other charging document to be eligible for restitution. Some jurisdictions expressly incorporate a causation requirement into their definition of “victim.”<sup>238</sup> When an offense involves a scheme, conspiracy or pattern of criminal activity, the definition of “victim” may include those harmed by the defendant’s conduct in the course of the scheme, conspiracy or pattern.<sup>239</sup>

Restitution in one jurisdiction can depend upon multiple definitions of the term “victim” and the breadth of the definition can only be understood once all of the provisions defining the term are read together.<sup>240</sup>

#### *a. Person Victims*

Some restitution provisions employ a broad definition of “victim” for restitution purposes, such as any person<sup>241</sup> harmed as the result of the commission of a crime.<sup>242</sup> When the victim is a child, incompetent, incapacitated or deceased, many jurisdictions include within their definition of “victim” certain family members, guardians and legal representatives, while excluding the defendant and, in some instances, other persons that will not act in a victim’s best interest.<sup>243</sup> The term “victim” may include individuals who have suffered an economic loss as the result of good faith efforts of a person attempting to prevent or preventing the criminal conduct at issue.<sup>244</sup>

#### *b. Victim’s Estate*

Jurisdictions vary regarding whether they treat a deceased victim’s estate as a “victim” for the purposes of restitution. Some jurisdictions expressly provide that, when a victim is deceased, restitution may be claimed by the victim’s estate or a surviving family member.<sup>245</sup> Others limit restitution for a deceased victim to either the victim’s estate<sup>246</sup> or the victim’s surviving family.<sup>247</sup> In jurisdictions where restitution statutes do not expressly authorize payment of restitution to an estate, courts have found that the executor or administrator of an estate may collect restitution on a deceased’s victims behalf as the personal representative of that victim.<sup>248</sup> Where a victim’s estate is expressly included within the definition of “victim” for

restitution purposes, a court may not be able to award restitution to the decedent-victim's heirs instead of the estate.<sup>249</sup>

### c. Institutional Victims

Institutional victims may also be entitled to restitution under express restitution provisions or through case law.<sup>250</sup> In particular, jurisdictions commonly treat insurance companies<sup>251</sup> and crime victim compensation programs<sup>252</sup> as “victims” for the purposes of restitution, where such entities have already compensated the direct victim for some or all of their losses. A jurisdiction may also expressly include within its definition of “victim” public and/or private entities that have provided medical, counseling and shelter services to victims in the aftermath of crime.<sup>253</sup> Restitution may also be authorized for expenses associated with emergency and law enforcement services utilized in relation to the crime.<sup>254</sup>

### d. Victims of Uncharged Conduct

Depending on the language and construction of relevant restitution laws, victims who have suffered losses associated with dismissed charges or otherwise uncharged conduct may<sup>255</sup> or may not<sup>256</sup> be entitled to restitution. As noted above, in the plea context, restitution generally may be paid to persons other than the direct victim of the charged conduct, if agreed to by the parties to the plea.<sup>257</sup>

## ii. *Compensable Losses*

The second principal criteria for determining when restitution must or may be ordered is whether the losses and injuries that the victim suffered, or is reasonably anticipated to suffer, are compensable. Three key considerations with respect to compensable losses include:

### a. Categories of Compensable Loss

Restitution laws vary in how they define the types of losses that are compensable. Many provide that a victim is entitled to restitution for the full amount of the victim's losses; the federal government, California, Florida, Hawaii, Michigan, Ohio, Oregon, and South Carolina are among the jurisdictions that take this approach.<sup>258</sup>



Some restitution laws define what full restitution means through a non-exclusive list of narrow examples; this is the approach taken under certain federal laws and in the restitution laws of California, Hawaii, Montana, New Hampshire, and Ohio.<sup>259</sup> Other jurisdictions, like Utah, take a different approach by authorizing restitution broadly for any economic loss the victim incurred or is reasonably expected to incur as a result of the crime.<sup>260</sup>

Restitution laws may also provide a unique set of compensable losses for victims of certain types of crime.<sup>261</sup> Generally, restitution is limited to compensation for a victim's financial losses; however, restitution laws may cover noneconomic losses under certain circumstances.<sup>262</sup> Case law also plays a significant role in what is considered compensable loss within a certain jurisdiction.<sup>263</sup>

#### 1. Common Categories of Loss

Many restitution laws authorize compensation for a common set of losses.<sup>264</sup> Common categories of loss expressly include costs associated with:

- Accounting and auditing done to determine the extent of economic loss (e.g., Ohio, New Hampshire, Utah).<sup>265</sup>
- Attorneys' fees and related costs (e.g., federal, California, New Hampshire, Vermont).<sup>266</sup>
- Child care incurred during participation in criminal investigations, prosecutions, or court proceedings (e.g., federal, Michigan, New Hampshire, South Carolina).<sup>267, 268</sup>
- Costs a parent incurs in exercising a child-victim's rights (e.g., Michigan).<sup>269</sup>
- Credit monitoring and repair (e.g., federal, California, Montana, Virginia).<sup>270</sup>
- Funeral and related services (e.g., federal, Florida, Hawaii, Illinois, Michigan, Montana, New Hampshire, Ohio, South Carolina).<sup>271</sup>
- Past and future lost income (e.g., federal, Arizona, California, Florida, Hawaii, Kentucky, Michigan, Montana, New Hampshire, Ohio, Vermont),<sup>272</sup> including income lost during participation in criminal investigations, prosecutions and court proceedings (e.g., federal, Arizona, California, Idaho, Indiana, Montana).<sup>273, 274</sup>
- Lost interest (e.g., Arizona, California).<sup>275</sup>
- Lost profits (e.g., Michigan, Oregon, Vermont).<sup>276</sup>

## READING STATUTES

### *Non-Exclusive Lists and Catchall Provisions*

*A non-exclusive list of compensable losses uses language such as "including," or "including but not limited to" before the losses are listed. A catchall provision uses terms such as "other losses" and "other expenses" to capture economic losses that are not expressly identified as compensable (e.g., "restitution means any form of compensation paid by a convicted person to a victim for counseling, medical expenses, lost wages 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; temporary housing; and other losses suffered by the victim as a proximate result of the offense").*

- Past and future medical services related to physical and mental health care (*e.g.*, federal, California, Florida, Hawaii, Kentucky, Michigan, Montana, New Hampshire, Ohio, South Carolina, Vermont).<sup>277</sup>
- Physical and occupational therapy or rehabilitation (*e.g.*, federal, Florida, Michigan, New Hampshire).<sup>278</sup>
- Post-crime relocation costs (*e.g.*, California, Kentucky, New Hampshire, Vermont).<sup>279</sup>
- Post-crime safety and security measures (*e.g.*, California, Oregon).<sup>280</sup>
- Property loss or damage (*e.g.*, federal, California, Hawaii, Kentucky, Montana, New Hampshire, Ohio).<sup>281</sup>
- Temporary housing (*e.g.*, federal, New Hampshire, Ohio).<sup>282</sup>
- Transportation during participation in criminal investigations, prosecutions, or court proceedings (*e.g.*, federal, Arizona, Illinois, Michigan, New Hampshire, South Carolina).<sup>283, 284</sup>

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.<sup>285</sup>

Additionally, many restitution provisions contain a catchall provision to capture economic losses that are not expressly identified as compensable within the statute, but that are causally related to the defendant's acts.<sup>286</sup> These provisions allow for restitution for nonenumerated losses incurred as the result of a defendant's conduct.<sup>287</sup>

## 2. Crime-Specific Categories of Loss

Criminal and restitution laws can specify losses that are recoverable in restitution when a defendant is convicted of a particular crime.<sup>288</sup> In general, these crime-specific losses are in addition to those losses that are more commonly compensable in restitution.<sup>289</sup>

### b. Noncompensable Losses

In general, restitution is limited to a victim's actual economic losses; any additional compensation falls outside the scope of restitution.<sup>290</sup> Noneconomic losses typically are not compensable in restitution.<sup>291</sup> Additionally, losses suffered as a result of the victim's own illegal actions may not be compensable as restitution for public policy reasons.<sup>292</sup>

### c. Proof Necessary to Establish Loss

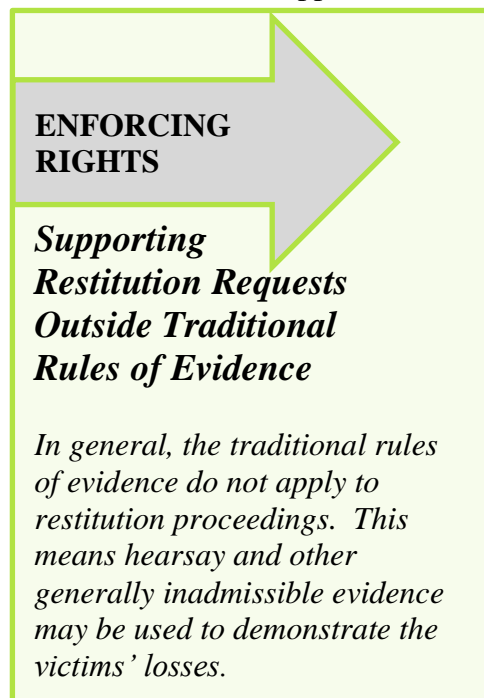
The proof necessary to establish a victim's losses for restitution purposes varies by jurisdiction. Generally, the amount of restitution owed must be established by a preponderance of the evidence.<sup>293</sup> Once a victim or the government makes such a showing of economic loss, the burden shifts to the defendant to disprove the amount of loss claimed.<sup>294</sup> The proof necessary to make this showing can come from a range of sources, including statements from victims, the contents of presentence investigations, and certain documentary and testimonial evidence.<sup>295</sup> In some jurisdictions – such as Iowa – testimonial evidence alone may be insufficient to support a

restitution claim and documentary evidence may be required.<sup>296</sup>

Jurisdictions vary greatly in what types of documentary evidence are sufficient to support a restitution claim. For instance, in Oregon, 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.<sup>297</sup> In other jurisdictions – such as Maryland and Washington, D.C. – 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.<sup>298</sup>

Courts in some jurisdictions, such as federal courts and courts in Arizona, may look to evidence already on the record – such as trial testimony – as sufficient proof of a victim’s losses.<sup>299</sup> Where a restitution calculation is particularly complex, courts may rely upon testimony from experts.<sup>300</sup>

In many jurisdictions, the traditional rules of evidence do not apply to restitution proceedings, which means that hearsay or other generally inadmissible evidence may be used to meet the burden of proof.<sup>301</sup> Although documentary and testimonial evidence cannot generally be excluded on hearsay grounds in the restitution context,<sup>302</sup> courts may require that certain indicia of reliability be present before relying on such materials.<sup>303</sup>



**ENFORCING RIGHTS**

***Supporting Restitution Requests Outside Traditional Rules of Evidence***

*In general, the traditional rules of evidence do not apply to restitution proceedings. This means hearsay and other generally inadmissible evidence may be used to demonstrate the victims' losses.*

## 1. Victims’ Rights Implicated in Proving Loss

Reliance on victims’ records and information to prove losses for restitution purposes implicates victims’ rights, including the rights to:

- Be free from harassment, intimidation and abuse.<sup>304</sup>
- Justice and due process and to be treated with fairness and respect for the victim’s dignity.<sup>305</sup>
- Language access and assistance.<sup>306</sup>
- Nonparticipation in proceedings related to proving loss.<sup>307</sup>
- Retain private counsel.<sup>308</sup>
- Privacy and confidentiality, including protections for victims’ identifying or locating information contained in records and information used to establish loss.<sup>309</sup>
- Submit information to the court regarding victims’ financial losses.<sup>310</sup>

For additional information about victims’ restitution-related rights, *see supra* [Part II](#).

### *iii. Causation*

Whether a victim is entitled to restitution for their losses also turns on whether the victim and/or the government can demonstrate a sufficient causal connection between the victim's loss and the convicted person's actions. Jurisdictions vary in the causation standards they employ to determine whether a sufficient causal connection exists and in the type of causal relationship between a victim's losses and the offense of conviction that is necessary.

#### *a. Causation Standards*

To support a request for restitution, the government or the victim must show a causal relationship between a defendant's conduct and the victim's losses. The standards used to determine such a causal connection vary by jurisdiction. Even within a single jurisdiction, more than one standard may be employed, depending on the circumstances of a case.<sup>311</sup>

One causation standard that commonly appears in restitution laws is direct or actual causation, which requires that the victim's losses were a direct consequence of the offense and/or related criminal conduct; Delaware, Kentucky, Maryland and New Hampshire have a direct causation standard written into their restitution laws.<sup>312</sup> But-for causation, which requires that the victim would not have incurred their losses but-for the offense and/or related criminal conduct, is another common standard; it is the standard used in states like Washington.<sup>313</sup> Proximate causation, which requires that the victim's losses were a natural and foreseeable consequence of the defendant's conduct, is another common restitution causation standard; a showing of proximate causation is a requirement for restitution in jurisdictions like Colorado, Illinois, and Utah.<sup>314</sup> Many jurisdictions use a direct causation standard in conjunction with a proximate causation standard; the federal government, Alabama, Arizona, California, Florida, Idaho, Ohio, and Vermont are among the jurisdictions that take this approach.<sup>315</sup>

#### *b. Causal Connection to Offense of Conviction*

Restitution is generally limited to losses that are causally linked to the offense of conviction.<sup>316</sup> Some restitution statutes include broad causation provisions with respect to the offense of conviction by providing for losses tied to a defendant's "criminal episode" or "course of conduct."<sup>317</sup> When the direct actions of a third party causes the victim's losses, these losses may still be recoverable in restitution, where they were the result of the defendant's criminal conduct.<sup>318</sup> Additionally, restitution may be ordered for attempt crimes where there is a causal connection between the crime of conviction and the victim's loss.<sup>319</sup> Under a plea agreement, a defendant may be ordered to pay restitution for losses beyond those caused by the conduct that is the specific basis of the plea.<sup>320</sup>

## **5. Timeliness of Restitution Order**

Restitution-specific laws and general sentencing provisions generally require that an initial restitution order be issued at sentencing or within a certain time frame after sentencing.<sup>321</sup> Jurisdictions vary regarding the level of specificity regarding the timing of an initial restitution

order and whether statutory timelines for restitution act as a jurisdictional bar to the entry of a restitution order.

Victims have a right to restitution that is prompt and/or timely in some jurisdictions, such as Arizona, Florida, Oregon and South Carolina.<sup>322</sup> These broad rights can influence the timing of restitution orders.<sup>323</sup> Restitution and/or sentencing laws control the timing of restitution orders more narrowly by specifying that restitution must be ordered at the time of sentencing or within a set timeframe after sentencing. For instance, restitution provisions in Alaska and Ohio direct courts to order restitution at sentencing;<sup>324</sup> and restitution provisions in California, Colorado, Illinois, and Washington require courts to order restitution at the time of sentencing, if the amount is known at that time.<sup>325</sup> In some jurisdictions, such as California and Utah, if restitution is not known at the time of sentencing, the restitution order will include a provision that the amount is to be determined at the discretion of the court.<sup>326</sup> In other jurisdictions, restitution must be ordered within a certain time period after sentencing; federal jurisdictions, Colorado, Florida and Washington are among the jurisdictions that place such outer limits on the timing of restitution orders.<sup>327</sup>

Courts disagree as to whether the outer time limits set forth in certain restitution provisions regarding when restitution must be entered act as a jurisdictional bar to a court's ability to order restitution. In some jurisdictions, restitution ordered outside of an expressly identified time frame is not necessarily unlawful; federal courts and courts in Florida, Kentucky and Oregon have reached this conclusion.<sup>328</sup> Other state courts, such as those in Washington, have concluded that restitution must be ordered within a statutory time frame or else the court loses jurisdiction.<sup>329</sup> When victims have a constitutional right to restitution, this can serve as an argument for overcoming such statutory time limitations.<sup>330</sup> Likewise, there is a strong policy argument to be made in favor of not treating such deadlines as jurisdictional bars: these deadlines are designed to protect victims from the willful dissipation of a defendant's assets and to otherwise prompt the government to action, not to protect the interests of defendants in certainty regarding the amount of money they owe a victim.<sup>331</sup> Subsequent modifications and amendments to a restitution order outside of these time frames may occur under limited circumstances.<sup>332</sup>



## ENFORCING RIGHTS

### *Supporting Restitution After Deadline for Ordering*

- The deadline was missed as a result of violation(s) of the victim's rights and the court has jurisdiction to remedy such violation(s).*
- The court made clear, prior to the expiration of the deadline, its intent to order restitution.*
- Although past the deadline, restitution is timely under the circumstances of the case.*
- Public policy supports the imposition of restitution past the deadline, as the deadline is designed to protect victims from the willful dissipation of assets and to encourage the government to be timely in its restitution efforts.*

## **D. Procedures and Requirements for the Final Restitution Calculation and Determination of the Manner of Payment**

Once a court has determined that restitution is warranted under the circumstances of the case, the court<sup>333</sup> must calculate the total amount of restitution to which the victim is entitled and determine the manner in which the defendant must pay it. Notably, the total amount of restitution that a defendant owes to a victim is separate and legally distinct from other costs, fees and surcharges that the defendant might also be obligated to pay.<sup>334</sup> The determination of the total amount of restitution owed and the manner of payment involves consideration of a range of factors and victims' rights.

### **1. Factors Courts Consider When Determining the Amount of Restitution and the Manner of Payment**

When making decisions regarding the amount and manner of payment, courts consider the following factors:

#### *i. Interests and Resources at Stake for Victims and Defendants*

When making a final restitution calculation and decision about the manner and method of restitution payment, courts consider the interests and resources at stake for both victims and defendants.<sup>335</sup> The consideration of specific factors regarding the interests of victims and defendants is mandatory in some jurisdictions<sup>336</sup> and discretionary<sup>337</sup> in others.

#### **a. Victims' Interests and Resources**

Courts consider a victim's interests when setting a restitution amount. In particular, they consider losses that the victim sustained as a result of an offense when determining the amount of restitution owed.<sup>338</sup> Courts may also base the manner of restitution payment on any burden or hardship that the victim has suffered, as well as on the victim's mental, physical and financial well-being.<sup>339</sup> Some jurisdictions also require courts to consider the victim's financial resources,<sup>340</sup> though others expressly provide that, a court may not decline to issue a restitution order because the victim has, or is entitled to, receive compensation from insurance proceeds or other sources.<sup>341</sup> A victim who obtains compensation for their losses through a general victim compensation fund or a narrow fund for victims of certain categories of crimes is not barred from receiving restitution from a defendant.<sup>342</sup> Additionally, the receipt of restitution does not necessarily bar a victim from recovery under a crime victim compensation program, though if a victim receives restitution they may not later also seek compensation for the same losses under a victim compensation or assistance fund.<sup>343</sup>

#### **b. Defendants' Interests and Resources**

When determining the manner, method or amount of restitution, courts also consider defendants' interests and resources. Some restitution provisions expressly require courts to consider a defendant's ability to pay when deciding whether and how much restitution to order

(e.g., Connecticut, South Carolina, Vermont).<sup>344</sup> Others expressly forbid such consideration (e.g., federal, Alaska, Arizona, California, Hawaii, New Hampshire, Montana),<sup>345</sup> or limit it to the time of enforcement (e.g., Florida).<sup>346</sup> On the other hand, courts may<sup>347</sup> or must<sup>348</sup> consider a defendant's ability to pay when determining how restitution will be paid, such as in a lump sum or on an installment basis.

Depending on the restitution law, consideration of a defendant's ability to pay may include an assessment of the defendant's financial resources and assets and their projected income and obligations,<sup>349</sup> including those of their dependents.<sup>350</sup> Many restitution provisions place an affirmative obligation on a defendant to provide courts and/or probation officers with access to information regarding their present and future assets and income.<sup>351</sup> Some restitution provisions expressly bar a defendant from diminishing their assets to lessen or impair their financial ability to meet their full restitution obligation.<sup>352</sup> Additionally, some restitution laws require a defendant to notify the government and/or the court when there has been a material change in the defendant's economic circumstances, which could, in turn, lead to a change in the defendant's restitution obligations or payment schedule.<sup>353</sup>

## ENFORCING RIGHTS

### *Limits on Consideration of Defendants' Ability to Pay*

*In many jurisdictions, victims are entitled to have restitution ordered in the full amount of their losses, regardless of the defendant's current or future ability to pay. A defendant's ability to pay is more appropriately taken into account to protect victims from the willful dissipation of assets and to encourage the government to be timely in its restitution efforts.*

### *ii. Methods of Loss Calculation*

Some restitution laws provide an express method of calculating restitution,<sup>354</sup> while others do not.<sup>355</sup> Case law may also control the method of calculation a court employs when making its final restitution determination.<sup>356</sup> The method that courts use to calculate restitution is generally the one that best accomplishes the compensatory goal of restitution.<sup>357</sup>

### *iii. Nonmonetary Restitution*

In some instances, restitution may be nonmonetary. Examples of nonmonetary restitution include the return or replacement of property, property repair or other services rendered to the victim.<sup>358</sup> Victims generally need to consent to such in kind payments of restitution.<sup>359</sup>

### *iv. Multiple Victims and Otherwise Complicated Calculations*

Courts often order restitution for multiple victims, but some restitution laws 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.<sup>360</sup> Depending on the jurisdiction, courts may also decline to order restitution on the ground that calculating the victims' losses would be too complicated.<sup>361</sup> Before denying a victim's restitution request on the ground that determining restitution would complicate and

prolong the sentencing process, courts balance the victim’s need for restitution against such complication and extension of sentencing.<sup>362</sup>

v. *Set Range or Amount of Restitution*

Depending on the jurisdiction, a court may order restitution for an amount greater than the monetary threshold of the criminal charge upon which the restitution order is based.<sup>363</sup>

Some restitution provisions cap the amount of restitution that may be ordered in general<sup>364</sup> or with respect to certain crimes.<sup>365</sup> In jurisdictions where a victim has a broad constitutional right to full restitution, such a cap may unlawfully limit this right. For instance, in 2021, the Arizona Supreme Court held that a statute capping restitution unlawfully limited a crime victim’s constitutional right to receive prompt restitution.<sup>366</sup>

vi. *Liability Apportionment*

If more than one defendant is convicted of an offense that results in a victim’s loss, courts may require one defendant to pay the full amount of restitution,<sup>367</sup> or it may direct all defendants to pay restitution jointly and severally.<sup>368</sup> In some circumstances involving multiple defendants, a court may apportion liability based on a defendant’s relative role in causing the victim’s economic losses.<sup>369</sup> Some jurisdictions also apportion restitution liability among a defendant and a victim; under the doctrine of comparative fault, courts may reduce a restitution award upon concluding that the victim’s actions were a substantial factor in causing the victim’s losses.<sup>370</sup>

vii. *Credits and Offsets*

When a civil damages award is made prior to the issuance of a restitution order, the restitution order may be subject to an offset or credit for losses compensable in restitution that were covered by the civil award.<sup>371</sup> Additionally, when a civil settlement is reached between the defendant and the victim, some of 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.<sup>372</sup> 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.<sup>373</sup>

On the other hand, defendants are not generally entitled to an offset against a victim’s restitution order for payments by the



**ENFORCING  
RIGHTS**

***Challenging  
Caps on Restitution Awards***

*If a restitution law caps the amount of restitution available at a certain dollar amount, consider the constitutionality of such a cap under a jurisdiction’s victims’ rights amendment.*



**ENFORCING  
RIGHTS**

***Credits and  
Offsets***

*Any credits or offsets that a defendant receives against their restitution obligations should reflect money that has already been paid to the victim. Such credits and offsets should not interfere with the total amount of the victim’s recovery.*



victim's insurance company, a victim compensation program or a worker's compensation program.<sup>374</sup> For additional information regarding the relationship between civil recovery and restitution, see *infra* [Part V](#).

*viii. Interest*

Many restitution laws expressly require a convicted person to pay interest on restitution,<sup>375</sup> while others leave the inclusion of interest to the discretion of the court<sup>376</sup> or bar the inclusion of interest altogether.<sup>377</sup> Interest may be limited to restitution that is not paid within a certain time period after it has been ordered or where restitution is ordered over a certain dollar amount.<sup>378</sup> A restitution statute may expressly state how to compute such interest.<sup>379</sup> Interest generally is not paid until a convicted person has met their obligation with respect to the principal.<sup>380</sup>

*ix. Payment Schedule*

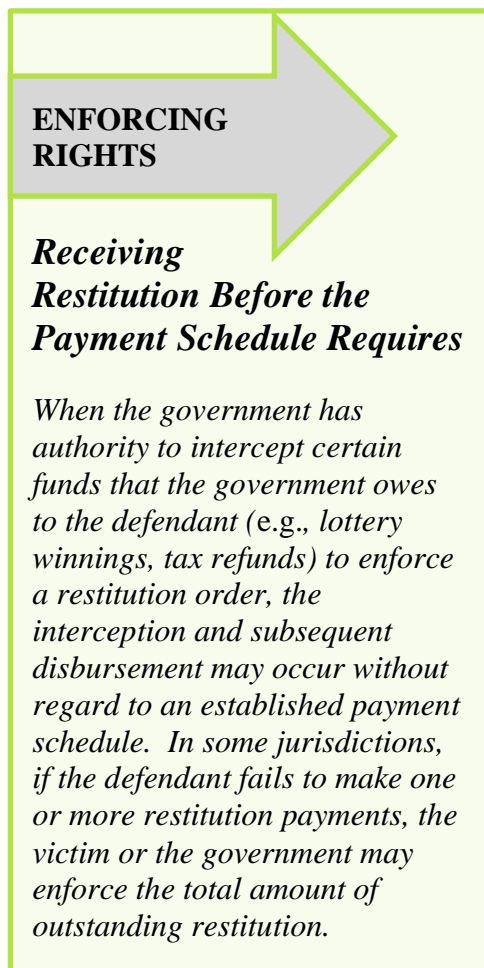
When a court issues a restitution order, it may require that a single lump sum payment be made immediately or that partial payments be made at specified intervals.<sup>381</sup> The order will specify to whom the restitution payments should be made; depending on the jurisdiction and other aspects of a defendant's sentence, the order may require 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, such as the clerk of court, the department of corrections, the department of probation, or a government restitution unit.<sup>382</sup>

When the court sets a schedule for restitution payments, it may be required to do so in a manner that ensures full payment will be made in the shortest reasonable time frame<sup>383</sup> or within a certain time period.<sup>384</sup> When a restitution order specifies payment in installments, the government may not seek to enforce restitution as a lump sum payment, absent a modification to the order.<sup>385</sup>

In some instances, even when restitution is mandatory, the court may order that the defendant make nominal periodic payments, if the court finds that the defendant's economic circumstances do not currently allow for payment of any amount and will not allow for payment of the full amount owed in the foreseeable future.<sup>386</sup>

*x. Objections Before a Restitution Order is Issued*

After a court determines a restitution amount and distribution method, but before it issues the restitution order, many jurisdictions expressly allow interested persons – namely, the



**ENFORCING RIGHTS**

***Receiving Restitution Before the Payment Schedule Requires***

*When the government has authority to intercept certain funds that the government owes to the defendant (e.g., lottery winnings, tax refunds) to enforce a restitution order, the interception and subsequent disbursement may occur without regard to an established payment schedule. In some jurisdictions, if the defendant fails to make one or more restitution payments, the victim or the government may enforce the total amount of outstanding restitution.*

government, the defendant and any victims – to object to the amount or distribution method.<sup>387</sup> This may take place at a restitution hearing.<sup>388</sup> A defendant may have a certain amount of time after receipt of a proposed restitution order to object to the court’s proposal.<sup>389</sup> A failure to object to a proposed restitution order at sentencing may waive the defendant’s right to dispute the amount.<sup>390</sup> In the instance of a dispute, the government and/or the victim bear the burden of establishing evidence of the victim’s losses by a preponderance of evidence,<sup>391</sup> though some jurisdictions place the burden on defendants to come forward with information to challenge the amount of a restitution proposal.<sup>392</sup> A full adversarial proceeding may be necessary to resolve disputes regarding restitution.<sup>393</sup>

## 2. Victims’ Rights Implicated in Courts’ Determination of Final Restitution Amount and Manner of Payment

A court’s final determination of the amount of restitution owed and the manner of payment implicates victims’ rights, including the rights to:

- Justice and due process and to be treated with fairness and respect for the victim’s dignity.<sup>394</sup>
- Language access and assistance.<sup>395</sup>
- Nonparticipation in the restitution process.<sup>396</sup>
- Notice of objections to restitution calculations and decisions regarding manner of payment.<sup>397</sup>
- Notice of restitution proceedings.<sup>398</sup>
- Be present and/or heard at sentencing and/or restitution proceedings.<sup>399</sup>
- Pursue civil damages against the defendant.<sup>400</sup>
- Retain private counsel.<sup>401</sup>
- Privacy and confidentiality regarding materials used to calculate restitution and in proceedings involving objections to proposed restitution orders.<sup>402</sup>
- Submit information to the court regarding victims’ financial losses.<sup>403</sup>

For additional information about victims’ restitution-related rights, *see supra* [Part II](#).

## **E. Procedures and Requirements Related to the Issuance of a Restitution Order**

Once a court has made a final restitution determination, it issues a restitution order directing the convicted person to pay the victim for covered losses. The procedures and requirements involved in such issuance relate to: (1) the contents of the order; (2) the nature of the defendant’s sentence and terms of release; and (3) victims’ rights.

### 1. Information Contained in a Restitution Order

Restitution laws may require certain information to be contained within a restitution order, such as the defendant’s contact information, the victim’s contact information, the amount owed and any payment schedule.<sup>404</sup> The restitution order may also specify to whom a defendant

is to pay the restitution that they owe to the victim. In some instances, the defendant will be required to pay the victim directly, in open court.<sup>405</sup> In other instances, the restitution order will direct the defendant to make payment(s) to an entity tasked with restitution collection, such as the clerk of court, the department of corrections, the department of probation or a government restitution unit.<sup>406</sup>

The absence of such required information from a restitution order may render it invalid.<sup>407</sup> Typically, victims bear the responsibility of alerting the court, the prosecution, the department of probation and any other relevant government entity to any changes in their contact information.<sup>408</sup> In some instances, restitution may be ordered, but the amount owed may not be specified in the initial order.<sup>409</sup>

## 2. Nature of the Defendant's Sentence or Terms of Release

Restitution can be ordered as a condition of a nonprosecution agreement or other forms of pretrial diversion.<sup>410</sup> More commonly, though, it is ordered after a defendant is convicted, as part of the sentence.<sup>411</sup> Restitution can be a mandatory<sup>412</sup> or discretionary<sup>413</sup> condition of probation. It may be a precondition to release on parole,<sup>414</sup> as well as a mandatory<sup>415</sup> or discretionary<sup>416</sup> condition of parole. It may also be ordered as a part of a conditional or suspended sentence,<sup>417</sup> a condition of a work release program,<sup>418</sup> or a part of any outcome other than an acquittal or unconditional dismissal.<sup>419</sup> In some jurisdictions, restitution may be awarded more broadly as a condition of probation or supervised release than as part of a sentence.<sup>420</sup>

## 3. Victims' Rights Implicated Upon Issuance of a Restitution Order

The issuance of a restitution order implicates victims' rights, including the rights to:

- A copy of the restitution order<sup>421</sup> and other information regarding payment schedules and restitution enforcement.<sup>422</sup>
- Enforce a restitution order.<sup>423</sup>
- Notice that a restitution order was issued.<sup>424</sup>
- Privacy and confidentiality with respect to the contents of the order.<sup>425</sup>

For additional information about victims' restitution-related rights, *see supra* [Part II](#).

## **F. Procedures and Requirements Regarding Challenges and Changes to Final Restitution Orders**

Restitution orders may be challenged and changed through three main processes: (1) requests for modification of a final restitution order; (2) victims' petitions for appellate review to compel enforcement of their right to restitution; and (3) appeals of a restitution order or a court's failure to order restitution.

1. Requests for Modification of Final Restitution Orders

Once a restitution order is issued, it becomes a final judgment. Modifications to a final restitution order may only occur under limited circumstances and implicate victims' rights.

*i. Grounds Upon Which Final Restitution Orders May Be Modified*

Modifications to a final restitution order may occur under limited circumstances.<sup>426</sup> The possibility of and procedure regarding modifications depend upon whether the modification being sought involves the total amount of restitution owed or the schedule pursuant to which restitution is to be paid.

*a. Modifications Regarding Amount of Restitution*

After entry of a restitution order, a court may only revoke or otherwise modify the amount of restitution owed in limited circumstances. Requests for such modification may be brought by the victim,<sup>427</sup> the government,<sup>428</sup> and/or the defendant.<sup>429</sup> The court may also, under certain circumstances, make such changes *sua sponte*.<sup>430</sup>

Grounds upon which the amount of restitution ordered in a case can be changed include:

- Amount owed to the victim was unknown at the time of the initial order.<sup>431</sup>
- Changes in circumstances upon which the court based restitution.<sup>432</sup>
- Correction of clerical or other clear error.<sup>433</sup>
- Correction of invalid or incomplete sentence.<sup>434</sup>
- Consent by the prosecutor and victim.<sup>435</sup>
- Defendant has otherwise compensated the victim for their losses.<sup>436</sup>
- Discovery of new information regarding the victims' losses.<sup>437</sup>
- Exercise of judicial discretion.<sup>438</sup>
- Interests of justice.<sup>439</sup>
- Judgment of guilt set aside.<sup>440</sup>
- Violation of the victim's rights.<sup>441</sup>

There are also a number of changes in circumstance that generally do not support the modification of a final restitution order, including:

- The victim's relocation to a different jurisdiction.<sup>442</sup>
- The victim's death.<sup>443</sup>

**ENFORCING RIGHTS**

***Requesting Modifications Before the Court Loses Jurisdiction***

*Once a convicted person completes their sentence, a court may lack authority to impose restitution through sentence modification. Therefore, to the extent they have the resources to do so, victims and the individuals assisting them should request modification as soon as possible after an order is issued.*

- The defendant's death.<sup>444</sup>
- The defendant's bankruptcy.<sup>445</sup>

#### b. Modifications Regarding Restitution Payment Schedule

Many restitution laws directly authorize courts to modify payment schedules based upon a request by the victim or the government.<sup>446</sup> Many jurisdictions also authorize such modifications based upon a request from the defendant<sup>447</sup> and/or the court's *sua sponte* decision to make such modifications.<sup>448</sup> Modifications may issue upon certain changes in the defendant's finances or circumstances after the payment schedule was initially established.<sup>449</sup>

#### ii. *Victims' Rights Implicated Before a Final Restitution Order is Modified*

The victims' rights that are implicated in the modification of a restitution order include the rights to:

- Justice and due process and to be treated with fairness and respect for the victim's dignity regarding restitution modification procedures.<sup>450</sup>
- Notice of any material changes in a defendant's financial circumstances.<sup>451</sup>
- Notice before a restitution order is amended or otherwise modified.<sup>452</sup>
- Be present and/or heard regarding any proposed modifications.<sup>453</sup>
- Retain private counsel.<sup>454</sup>
- Privacy and confidentiality.<sup>455</sup>

For additional information about victims' restitution-related rights, *see supra* [Part II](#).

### 2. Petitions for Review by the Victim

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, such as petition for a writ of mandamus.<sup>456</sup>

### 3. Appeals by the Victim, the Government and/or the Defendant

Restitution orders may also be challenged and changed through the appeal process, as may a court's failure to order restitution. Some jurisdictions expressly provide victims with legal authority to appeal a restitution order that was issued in violation of their rights; Maryland, Illinois, and Utah have laws to this effect.<sup>457</sup>

Some jurisdictions provide the government with the authority to appeal a restitution order on a victim's behalf, including the federal government, Florida and Illinois.<sup>458</sup> Even outside of such express restitution-related appeal provisions, federal and state prosecutors have standing to appeal a restitution order or its denial based on laws governing the government's authority to

appeal unlawful criminal sentences.<sup>459</sup> In jurisdictions without express provisions regarding appeals related to restitution or other legal authority for restitution-related appeals, victims<sup>460</sup> and/or the government<sup>461</sup> may lack standing to directly appeal a restitution award.

Defendants may also challenge restitution orders through appeal.<sup>462</sup> Depending on the jurisdiction and the time at which restitution is ordered, a defendant may be required to appeal restitution separately from their conviction.<sup>463</sup> Also depending on the jurisdiction, if a defendant dies while appealing a restitution order, the restitution order may or may not abate.<sup>464</sup>

Additionally, although defendants generally may appeal restitution amounts and plans regarding the manner of payment, they lack standing to appeal a court's failure to order restitution.<sup>465</sup> Likewise, defendants lack standing to challenge the restitution order of a co-defendant<sup>466</sup> or to challenge the person or entity to whom they are ordered to pay restitution.<sup>467</sup>

When a defendant appeals a restitution order or employs procedures related to the filing of an appeal, a victim may have standing to respond, even in the absence of an express law authorizing their participation in the appellate process. For instance, a victim may respond to a defendant's appeal of 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.<sup>468</sup>



**ENFORCING RIGHTS**

***Monitoring Defendant's Direct Appeal***

*A victim may have standing to respond to and otherwise participate in a defendant's appeal of their conviction, depending on the jurisdiction and the ways in which the appeal implicates the victim's rights.*

## **G. Procedures and Requirements Related to Restitution Enforcement**

Restitution enforcement is a complicated process, one which involves multiple actors within and outside of the criminal justice system. The main issues regarding restitution enforcement include: (1) the processes related to restitution collection; (2) the processes related to restitution disbursement; (3) the effect of pending appeals on restitution collection and disbursement; and (4) delinquency or default in restitution payments.

### **1. Restitution Collection**

#### ***i. Parties Responsible for Restitution Collection***

The parties responsible for supervising restitution collection vary by jurisdiction. Even within a single jurisdiction these entities may change based on certain considerations, such as the nature of the crime, the convicted person's status within the correctional system, the victim's identity and/or whether restitution is in default. Depending on these and other factors, the parties responsible for supervising restitution collection and other aspects of enforcement include:

- Clerks of court.<sup>469</sup>
- Courts that issued the restitution order.<sup>470</sup>
- Departments of corrections.<sup>471</sup>
- Government restitution units.<sup>472</sup>
- Parole, probation and restitution officers.<sup>473</sup>
- Prosecutors' offices.<sup>474</sup>
- Nonprofit organizations.<sup>475</sup>
- Victims.<sup>476</sup>

ii. *Methods and Means of Restitution Collection*

The avenues for restitution collection vary by jurisdiction. They can generally be broken down by means of collection that are available only to the government or are available to victims and/or the government. These means of collection may be available before the defendant has defaulted on their restitution obligations, after such default or in both instances.<sup>477</sup>

1. Government-Only Means of Collection

Government-only means of restitution collection may include:

- Bail or bond deposits (*e.g.*, California, Hawaii, Illinois, Michigan, South Carolina)<sup>478</sup> and forfeiture (*e.g.*, California, Montana).<sup>479</sup>
- Clerk of court and other court mechanisms (*e.g.*, federal)<sup>480, 481, 482</sup>
- Collecting agencies (*e.g.*, Alaska, California, Hawaii, Illinois, Montana, New Hampshire, Ohio, Oregon, Vermont).<sup>483, 484</sup>
- Confiscation and criminal forfeiture (*e.g.*, federal, California, Ohio, Oregon, Utah),<sup>485</sup> including the application of the proceeds of certain crimes to restitution (*e.g.*, federal, Florida, Illinois, Michigan, New Hampshire, Ohio, Vermont)<sup>486</sup> and court requirements that a defendant forfeit and sell their assets and apply the proceeds to their restitution obligations (*e.g.*, Montana).<sup>487</sup>
- Criminal fines (*e.g.*, Arizona, Oregon).<sup>488</sup>
- Government collection units (*e.g.*, Alaska, California, Hawaii, South Carolina, Vermont).<sup>489</sup>
- Incarcerated person's accounts and other resources (*e.g.*, federal, Arizona, California, Hawaii, Illinois, Michigan, Montana, Utah).<sup>490</sup>
- Incarcerated person's earnings while in prison or on work release (*e.g.*, Arizona, California, Florida, Hawaii, New Hampshire, Michigan, Montana, Ohio, Oregon, South Carolina, Vermont).<sup>491</sup>

**SAFEGUARDING RIGHTS + INTERESTS**

***Explaining the Process of Restitution Collection and Disbursement***

*It is important to understand and explain to victims the processes associated with the collection and disbursement of restitution. This includes understanding payment plans, and allocation of payments if there are multiple victims or as between fines, and restitution, and priority of payment (e.g., child support payments before restitution payments).*

- Monies the government owes the convicted person,<sup>492</sup> including: civil damages awarded as the result of a convicted person’s lawsuit against a correctional facility or its employees (*e.g.*, Arizona, California, Ohio);<sup>493</sup> lottery winnings (*e.g.*, Colorado, Vermont);<sup>494</sup> unclaimed property (*e.g.*, Colorado, Vermont);<sup>495</sup> and tax refunds (*e.g.* Colorado, Arizona, Utah, Vermont).<sup>496</sup>
- Proceeds from notoriety contracts and works depicting crime (*e.g.*, Michigan, Oklahoma, Oregon, Utah).<sup>497</sup>
- Restitution funds (*e.g.*, Maine, Montana, New York, Vermont).<sup>498</sup>

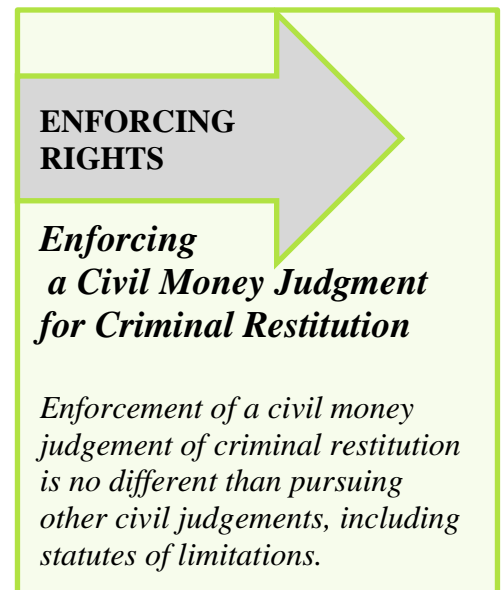
## 2. Government and/or Victim-Initiated Collection

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.<sup>499</sup> Under some restitution laws, a restitution order automatically converts to a civil money judgment, which can be enforced by the victim and/or the government.<sup>500</sup> Under other restitution laws, the victim or the prosecutor must first execute the order as a civil judgment.<sup>501</sup> Additionally, in some jurisdictions, a restitution order can only be converted to a civil judgment by the court upon a defendant’s default in their payment obligations.<sup>502</sup>

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.<sup>503</sup> 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 addition to any restitution-specific rights and remedies otherwise available to the victim.<sup>504</sup> Victims may initiate civil collection proceedings independently<sup>505</sup> or such proceedings may be brought by the prosecutor<sup>506</sup> or another government entity.<sup>507</sup>

Enforcement may require locating the assets of a convicted person and then employing certain collection tools, including:

- Liens on real and personal property (*e.g.*, federal, Arizona, California, Florida, Illinois, Kentucky, Michigan, Vermont).<sup>508, 509</sup>
- Garnishment of a corporation-garnishee’s shares or securities or the defendant’s other proprietary interests in the corporation-garnishee (*e.g.*, Arizona, Kentucky).<sup>510</sup>
- Garnishment of personal property (*e.g.*, Arizona, Kentucky).<sup>511</sup>
- Garnishment of non-wage monies (*e.g.*, Arizona, Kentucky).<sup>512</sup>
- Garnishment of wages (*e.g.*, Arizona, California, Florida, Kentucky, Montana, New Hampshire).<sup>513</sup>



**ENFORCING RIGHTS**

***Enforcing a Civil Money Judgment for Criminal Restitution***

*Enforcement of a civil money judgement of criminal restitution is no different than pursuing other civil judgements, including statutes of limitations.*



iii. *Timing of Restitution Collection*

Some restitution laws are clear that a restitution order does not expire until it is paid in full; California, Illinois, Michigan and Montana have such laws in place.<sup>514</sup> Other restitution laws provide that a convicted person's liability to pay restitution expires after a set amount of time; federal and Oregon law have provisions to this effect.<sup>515</sup>

Once a convicted person completes their sentence, a court may lack jurisdiction to impose restitution through a sentence modification.<sup>516</sup> Additionally, depending on the jurisdiction, once a convicted person is no longer under court-ordered supervision, the government may retain the ability to collect restitution on the victim's behalf, as is the case in Georgia and Maryland,<sup>517</sup> as well as certain federal cases.<sup>518</sup> In other jurisdictions, the government loses the ability to collect restitution on the victim's behalf once the convicted person is no longer under court-ordered supervision; this is the case in California and Kentucky.<sup>519</sup>

In jurisdictions where the government does not retain its ability to collect restitution upon the conclusion of probation, the victim may still rely on civil methods of enforcement.<sup>520</sup> Yet, civil statutes of limitations on money judgments may also impose time limits on a victim's ability to enforce their restitution order in civil court.<sup>521</sup>

2. Restitution Disbursement

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. The manner of this disbursement depends upon the following factors:

i. *Timing of Restitution Disbursement*

Once restitution has been collected, it usually must be disbursed within a certain time frame. Specific time frames may be set forth under statutes and rules governing restitution procedures; Alabama, Arizona and California are among the states that expressly address the timeframe for disbursement.<sup>522</sup> Broader time frames can be found in victims' rights laws and restitution provisions guaranteeing victims the right to the prompt and timely receipt of restitution; Arizona, Oregon and South Carolina are examples of states with such laws.<sup>523</sup>



**ENFORCING RIGHTS**

***3 Timing Concerns That Can Complicate Restitution Collection***

- Expiration of liability to pay restitution after set amount of time under statute.*
- Completion of the non-restitution components of defendant's sentence.*
- Civil statutes of limitations on money judgments.*



**ENFORCING RIGHTS**

***Maintaining Current Contact Information***

*To ensure receipt of restitution disbursement and access to restitution-related notifications, victims should keep their contact information current with the prosecutor's office, the court and/or the entity responsible for distributing restitution payments.*

In cases where the victim cannot be located, some jurisdictions direct courts, clerks and/or other relevant agencies responsible for restitution disbursement to deposit the money into a general restitution fund to be held for the victim for a certain amount of time; California is a state that does this.<sup>524</sup>

*ii. Priority of Payments*

Restitution laws are generally clear that any payments a convicted person makes in connection with their criminal case first must be applied to the amount that the convicted person owes in restitution.<sup>525</sup> In some contexts, a special assessment related to the case or other court costs, may take priority over restitution payments; this occurs in certain federal cases and in Kentucky, Ohio and Montana.<sup>526</sup> Restitution laws may also specify the priority of restitution payments among victims. For instance, the federal government, Kentucky and Montana expressly provide that restitution payments are to be applied first to private victims and then to government victims;<sup>527</sup> Arizona and Michigan expressly provide that private victims have priority over all institutional victims;<sup>528</sup> and the federal government and Montana provide that when a victim has received compensation for a loss from insurance or another source, restitution must be paid to the individual victim before it is paid to the provider of such compensation.<sup>529</sup> 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; the federal government and Oregon have laws to this effect.<sup>530</sup>

*iii. Payment Schedules*

When there are multiple victims in a case, courts may create different payment schedules for each victim based on certain considerations, such as the type and amount of the victim's loss and the victim's economic circumstances. Federal law expressly allows for such a scenario.<sup>531</sup>

*iv. Locating Victims to Disburse Funds*

Some jurisdictions directly fund victim location efforts for restitution purposes, such as Arizona and California.<sup>532</sup> The funds for these efforts may come from interest earned on collected restitution or other restitution-related fees and surcharges.<sup>533</sup>

*v. Unclaimed Funds*

When victims cannot be located or otherwise do not claim restitution collected on their behalf, this money may be reallocated. Depending on the jurisdiction, this money may be reallocated to general revenue funds;<sup>534</sup> funds that pool unclaimed restitution to disburse to victims for whom restitution has been ordered but who have been unable to collect;<sup>535</sup> and victim compensation and assistance funds.<sup>536</sup> If a victim's location is later determined or if the victim chooses to claim the funds, such funds may become available to them.<sup>537</sup> Generally, a set amount of time must pass before unclaimed restitution funds may be reallocated.<sup>538</sup> Depending on the jurisdiction, victims may only have a certain amount of time to claim reallocated restitution<sup>539</sup> or they may make such a claim at any time.<sup>540</sup>

### 3. Effect of Pending Appeal on Restitution Collection and Disbursement

Depending on the jurisdiction, a court may<sup>541</sup> or may not<sup>542</sup> retain authority to order restitution once an appeal of a defendant's conviction is pending. Where the appeal is challenging the restitution order itself, a trial court may lack jurisdiction to make substantive changes to the order,<sup>543</sup> but may retain jurisdiction to take actions that do not change the appealed order in a meaningful way.<sup>544</sup>

Additionally, sentencing laws and rules may expressly authorize courts to stay the restitution portion of a sentence pending appeal.<sup>545</sup> Courts may take action to ensure compliance with a restitution order upon the resolution of an appeal, such as issuing a restraining order, an injunction, an order requiring the defendant to deposit all or part of restitution owed with the court or other responsible entity, or an order requiring the defendant to post bond.<sup>546</sup> In some jurisdictions, restitution collection will not be stayed pending appeal, but disbursement may or may not occur until the appeal is resolved.<sup>547</sup> Should an appeal result in a restitution order being reversed or vacated, the defendant may seek reimbursement of restitution from the government.<sup>548</sup>

### 4. Payment Delinquency or Default

Restitution laws typically contain provisions that expressly relate to restitution enforcement when a restitution payment is delinquent or in default. Such delinquency or default can cause a range of consequences and implicate victims' rights.

#### *i. Consequences of Delinquency or Default*

When a convicted person is in default on a restitution payment, the court may impose a range of consequences. Depending on the jurisdiction, such consequences may be imposed upon motion of the prosecutor, the victim, another interested party or the court itself.<sup>549</sup> Probation officers generally have an obligation to report noncompliance;<sup>550</sup> and, in some jurisdictions, they must institute parole violation proceedings and impose sanctions when a defendant is not meeting their restitution obligations.<sup>551</sup>

In jurisdictions where the court clerk or another entity is responsible for restitution collection and disbursement, they are required to notify the court of a defendant's failure to pay restitution.<sup>552</sup> Once the court is aware of a default in restitution payments, it may be required to take prompt action.<sup>553</sup> The government and/or the victim may be entitled to notice of default; for instance, Arizona and Michigan require that victims receive notice of a defendant's default in restitution payments and Michigan requires that the prosecutor also receive such notice.<sup>554</sup>



## **ENFORCING RIGHTS**

### ***Tools to Protect Restitution While the Defendant's Direct Appeal is Pending***

*If the court stays a restitution order pending resolution of a direct appeal, protecting a victim's right to restitution includes steps to ensure compliance with the defendant's restitution obligations. Tools may include: a restraining order; an injunction; an order requiring the deposit of funds with the court or other responsible entity or to post bond.*

a. Consequences of Delinquency or Default

Defaulting on restitution may result in:

- Adjustment or entry of a payment schedule.<sup>555</sup>
- Contempt of court and imposition of sanctions.<sup>556</sup>
- Community restitution.<sup>557</sup>
- Extension of probation or supervised release.<sup>558</sup>
- Fee or fine.<sup>559</sup>
- Imprisonment.<sup>560</sup>
- Increased supervision during probation and supervised release.<sup>561</sup>
- Liens and other encumbrances on defendants' property.<sup>562</sup>
- Performance bond.<sup>563</sup>
- Reasonable attorney's fees and costs associated with enforcement.<sup>564</sup>
- Report of default to credit reporting company.<sup>565</sup>
- Resentencing.<sup>566</sup>
- Restraining order or injunction.<sup>567</sup>
- Revocation of probation or supervised release.<sup>568</sup>
- Sale of defendant's property.<sup>569</sup>
- Suspension of recreational licenses.<sup>570</sup>
- Wage garnishment.<sup>571</sup>
- Any other action necessary to obtain compliance.<sup>572</sup>
- No further action.<sup>573</sup>

To determine which action to take, a court may hold a hearing.<sup>574</sup> The defendant may have an opportunity to demonstrate good cause for nonpayment at such a hearing or otherwise.<sup>575</sup> Courts typically base their determination on what consequences follow from the nonpayment of restitution on a consideration of a range of factors, such as a defendant's employment status, earning ability, financial resources, willingness to comply with a restitution order and other circumstances that bear on the defendant's ability or failure to comply with a restitution order.<sup>576</sup>

There are a number of indirect consequences that stem from a convicted person's nonpayment of their restitution obligations. Some jurisdictions expressly tie the full payment of restitution to the broad restoration of any civil rights that were lost or suspended as the result of a conviction.<sup>577</sup> More narrowly, the payment of restitution may be necessary to:

- Expunge or seal criminal record.<sup>578</sup>
- Move out of state while on probation or parole.<sup>579</sup>
- Obtain or restore certain business and recreational licenses.<sup>580</sup>
- Obtain or restore driving licenses and privileges.<sup>581</sup>
- Obtain a pardon.<sup>582</sup>
- Be removed from certain offender registries.<sup>583</sup>
- Vote.<sup>584</sup>

b. Effect of Nonpayment when Defendant is a Corporation

When restitution is imposed on a defendant that is a corporation or another business entity, any person authorized to make disbursements from the entity's assets has a duty to pay restitution from those assets.<sup>585</sup> On the other hand, when an organization's director, officer, shareholder, employee or agent are ordered to pay restitution, payments generally may not be made, directly or indirectly, from the organization's assets.<sup>586</sup> Should a defendant-corporation or other business entity fails to make a court-ordered restitution payment, it may forfeit its rights to do business within the jurisdiction.<sup>587</sup> Additionally, the person whose responsibility it is within the entity to make restitution payments may be held in contempt of court.<sup>588</sup>

c. Effect of Nonpayment on 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.<sup>589</sup> Other jurisdictions allow for the formal conclusion of probation or supervised release prior to complete payment, but expressly provide that the convicted person's restitution obligations are not terminated upon the conclusion of such release conditions.<sup>590</sup> If restitution has not been ordered before probation is terminated, courts may lack jurisdiction to extend probation for the sole purpose of ordering restitution.<sup>591</sup>

ii. *Victims' Rights Implicated in Restitution Noncompliance*

In addition to the straightforward violation of their right to restitution, restitution noncompliance by a convicted person implicates the rights of victims, including the rights to:

- Access a defendant's restitution payment history.<sup>592</sup>
- Enforce a restitution order, including the right to costs associated with restitution enforcement.<sup>593</sup>
- Justice and due process and to be treated with fairness and respect for the victim's dignity regarding restitution requests and procedures.<sup>594</sup>
- Notice of a convicted person's default in their restitution payments<sup>595</sup> and of a defendant's bankruptcy.<sup>596</sup>
- Language access and assistance.<sup>597</sup>
- Nonparticipation in the restitution process.<sup>598</sup>
- Be present and/or heard at proceedings regarding a defendant's nonpayment of restitution.<sup>599</sup>
- Privacy and confidentiality during hearings and other procedures related to defendant's noncompliance with restitution.<sup>600</sup>
- Pursue civil damages against the defendant.<sup>601</sup>
- Retain private counsel.<sup>602</sup>

For additional information about victims' restitution-related rights, *see supra* [Part II](#).

## V. RELATIONSHIP BETWEEN CRIMINAL RESTITUTION AND CIVIL DAMAGES AWARDS AND CIVIL SETTLEMENTS

A restitution order in a criminal case does not infringe upon a victim's right to bring a civil suit against their offender.<sup>603</sup> Likewise, the fact that a victim has an enforceable civil obligation against a defendant does not preclude a court from ordering restitution against the same defendant.<sup>604</sup> The ultimate amount of money the victim receives from either the civil justice system or the criminal restitution process will depend, however, on whether the victim has already received compensation in a related criminal or civil case and the scope of such compensation.

### A. Effect of Criminal Restitution Order on Subsequent Civil Damages Awards

If a criminal court has issued a restitution order compensating the victim for their losses, the civil court issuing a subsequent civil judgment typically must credit any amount of restitution that the defendant has paid against the civil damages award, where restitution covers the same losses at issue in the civil case.<sup>605</sup> Civil recovery subsequent to the issuance of a restitution order, but prior to the full payment of restitution, may also reduce the amount of restitution the defendant owes.<sup>606</sup>

### B. Effect of Civil Damages Award or Civil Settlement on Criminal Restitution Order

When a civil damages award is made prior to the issuance of a restitution order, the restitution order may be subject to an offset or credit for losses compensable in restitution that were covered by the civil award.<sup>607</sup> Additionally, when a civil settlement is reached between the defendant and the victim, restitution may be subject to an offset or credit to the extent that the agreement expressly covers economic losses being claimed in restitution.<sup>608</sup> If a defendant's insurer has made payments to the victim for losses that would otherwise be compensable as restitution, those payments may be offset against the defendant's restitution obligation.<sup>609</sup> On the other hand, a defendant is not generally entitled to an offset against restitution for payments by the victim's insurance company, a victim compensation program or a worker's compensation program.<sup>610</sup>

### C. Effect of Civil Release of Liability on Criminal Restitution Order

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.<sup>611</sup> Likewise, because the government is not a party to a civil settlement between the victim and the defendant, such an agreement cannot bar the government from seeking restitution in a related criminal case.<sup>612</sup>



**ENFORCING  
RIGHTS**

***Receiving  
Criminal Restitution  
and Civil Damages***

*A restitution order in a criminal case does not infringe upon a victim's right to bring a civil suit. Likewise, the fact that a victim has an enforceable civil obligation against a defendant does not preclude a court from ordering restitution against the same defendant.*

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<sup>1</sup> See generally *Fundamentals of Victims' Rights: A Victim's Right to Restitution*, NCVLI Victim Law Bulletin (Nov. 2011), at 1, <https://law.lclark.edu/live/files/11821-fundamentals-of-victims-rights-a-victims-right-to> (providing historical overview of restitution within colonial America and the United States).

<sup>2</sup> See generally *id.* (discussing the multiple rationales supporting restitution).

<sup>3</sup> See *United States v. Simmonds*, 235 F.3d 826, 831 (3d Cir. 2000) (observing that “the primary and overarching goal” of the federal Mandatory Victims Restitution Act (MVRA), 18 U.S.C. § 3663A, is to “fully compensate these victims for their losses and to restore these victims to their original state of well-being”); *People v. Jennings*, 26 Cal. Rptr. 3d 709, 719 (Cal. Ct. App. 2005) (observing that “the primary purpose of victim restitution is to fully reimburse the victim for his or her economic losses”); *Huml v. Vlazny*, 716 N.W.2d 807, 813 (Wis. 2006) (stating that “[t]he primary purpose of restitution . . . is to compensate the victim, thereby advancing society’s interest in seeing victims made whole”); see also *Hughey v. United States*, 495 U.S. 411, 416 (1990) (observing that the “ordinary meaning of ‘restitution’ is restoring someone to a position he occupied before a particular event”).

<sup>4</sup> Crime victim compensation programs reimburse qualifying victims for out-of-pocket expenses related to their victimization. These programs can be a significant resource for mitigating the financial consequences of crime. *Crime Victim Compensation: A Valuable Resource for Victim Recovery*, NCVLI (2016), at 1, 5, <https://law.lclark.edu/live/files/25182-ncvli-newsletter---victim-compensation-processpdf>. Unlike restitution, compensation programs generally cover a narrow range of losses, cap the maximum amount of recovery that can be awarded, often cover only violent person crimes, and require victims to report a crime within a short window of time, except in exceptional circumstances. *Id.* at 1–2.

<sup>5</sup> Civil damages are money awarded after an offender is found liable to the plaintiff-victim in a civil lawsuit. Civil damages can be compensatory and punitive in nature. Unlike most restitution laws, civil damages may include compensation for noneconomic losses, such as pain and suffering. *Avenues of Financial Recovery for Crime Victims: A Brief Comparison of Administrative Compensation, Criminal Restitution, and Civil Damages*, NCVLI Toolkit (2014), <https://law.lclark.edu/live/files/17042-toolkit-victim-comprestitutioncivil-damages>.

<sup>6</sup> See, e.g., Cal. Const. art. I, § 28(a)(3) (stating that victims’ constitutional rights are personally held and enforceable); Ariz. Rev. Stat. Ann. § 13-4437(A) (stating that victims’ constitutional and statutory rights “belong to the victim”).

<sup>7</sup> See, e.g., *State v. Barr*, 833 P.2d 713, 714 (Ariz. Ct. App. 1992) (stating that “[t]he right to restitution belongs to the victim” and that neither the state nor the court have authority to not pursue a restitution order in the absence of a waiver by the victim); *E.H. v. Slayton in & for Cnty. of Coconino*, 468 P.3d 1209, 1214 (Ariz. 2020) (stating that the state “lacks authority to waive a victim’s restitution right” in the context of a plea agreement); *People v. Pierce*, 184 Cal. Rptr. 3d 607, 610 (Cal. Ct. App. 2015) (“The victims’ right to restitution is a constitutional one, and just as it cannot be bargained away or limited by the prosecution, nor can the prosecution waive the victim’s right to restitution.”); *State v. Thomas*, 14 A.3d 961, 965 (Vt. 2010) (observing that the prosecution may not bargain away a victim’s right to restitution).

<sup>8</sup> See, e.g., 18 U.S.C. § 3771(d)(1) (affording victims standing to assert their rights); Ariz. Rev. Stat. Ann. § 13-4437(A) (same); 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(3) (same).

<sup>9</sup> Victims have a right to have private counsel represent their interests in a criminal case. See generally *Victims Can Have Attorneys*, NCVLI Quicktool (2013), <https://www.youtube.com/watch?v=AsnbJff4TKU> (discussing the right of crime victims to private counsel); see, e.g., Ariz. Rev. Stat. Ann. § 13-4437(A) (“In asserting any right, the victim has the right to be represented by personal counsel at the victim’s expense and the proceedings may be initiated by the victim’s counsel or the prosecutor.”); 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(3) (providing that the victim’s retained attorney has standing to assert the victim’s rights); *Lindsay R. v. Cohen*, 343 P.3d 435, 437 (Ariz. Ct. App. 2015) (“A victim may retain private counsel to ensure that these [restitution] rights are protected.”); see also 18 U.S.C. § 3771(c)(2) (requiring that the prosecutor advise the crime victim that they can seek the advice of an

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attorney with respect to their rights); Fla. Const. art. I, § 16(b)(11) (providing victims with the right to be informed that they can seek advice of an attorney with respect to their rights).

<sup>10</sup> See, e.g., 18 U.S.C. § 3771(d)(1) (providing that the attorney for the government may assert a victim's rights); Tex. Const. art. I, § 30(d) ("The state, through its prosecuting attorney, has the right to enforce the rights of crime victims."); Ariz. Rev. Stat. Ann. § 13-4437(C) ("At the request of the victim, the prosecutor may assert any right to which the victim is entitled"); 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(3) (providing that the prosecuting attorney has standing to assert the victim's rights); Miss. Code Ann. § 99-43-47 ("The prosecuting attorney may assert any right to which the victim is entitled.").

<sup>11</sup> See generally *VictimLaw*, Off. for Victims of Crime, Tech. Training & Tech. Assistance Ctr., <https://victimlaw.org/victimlaw/start.do> (providing database of victims' rights laws in federal, state, territorial and tribal jurisdictions).

<sup>12</sup> See, e.g., 18 U.S.C. § 3771(a)(6) (affording victims "[t]he right to full and timely restitution as provided by law"); Alaska Const. art. I, § 24 (affording victims "the right to restitution from the accused"); Ariz. Const. art. II, § 2.1(A)(8) (affording victims the right "[t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury"); Cal. Const. art. I, § 28(b)(13) (affording victims the right to "[t]o restitution"); Colo. Rev. Stat. Ann. § 24-4.1-302.5(1)(h) (affording victims the right to have the court order restitution for pecuniary damages that resulted from the commission of a crime); Conn. Const. art. I, § 8(b)(9) (affording victims "the right to restitution which shall be enforceable in the same manner as any other cause of action or as otherwise provided by law"); D.C. Code § 23-1901(b)(6) (affording victims the right to "[a]n order of restitution from the person convicted of the criminal conduct that caused the victim's loss or injury"); Fla. Const. art. I, § 16(b)(9) (affording victims "[t]he 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"); Ga. Code Ann. § 17-17-1(7) (affording victims "[t]he right to restitution as provided by law"); Idaho Const. art. I, § 22(7) (affording victims the right "[t]o restitution, as provided by law, from the person committing the offense that caused the victim's loss"); Ill. Const. art. I, § 8.1(a)(12) (affording victims "[t]he right to restitution"); 725 Ill. Comp. Stat. Ann. 120/4(a)(10) (affording victims the right "[t]o restitution"); Ind. Code Ann. § 35-40-5-7 (affording victims "the right to pursue an order of restitution and other civil remedies against the person convicted of a crime against the victim"); Iowa Code Ann. § 915.100 (affording victims the right to restitution); Ky. Const. § 26A (affording victims "the right to full restitution to be paid by the convicted or adjudicated party in a manner to be determined by the court, except that in the case of a juvenile offender the court shall determine the amount and manner of paying the restitution taking into consideration the best interests of the juvenile offender and the victim"); Ky. Rev. Stat. Ann. § 421.5001(11) (affording victims the right to "full restitution"); La. Const. art. I, § 25 (affording victims "the right to seek restitution"); La. Stat. Ann. § 46:1844(M)(1) (affording victims the right to request and to receive restitution); Md. Code Ann., Crim. Proc. § 11-603(b) (recognizing the presumption that victims have a right to restitution if a victim or the state requests it and the court is presented with competent evidence); Mass. Gen. Laws Ann. ch. 258B, § 3(o) (providing that victims have the right "to request that restitution be an element of the final disposition of a case"); Mich. Const. art. I, § 24(1) (affording victims "[t]he right to restitution"); Mich. Comp. Laws Ann. § 780.766 (detailing victims' right to restitution in felony cases); *id.* § 780.826 (detailing victims' right to restitution in misdemeanor cases); Mo. Const. art. I, § 32(1)(4) (affording victims "[t]he right to restitution, which shall be enforceable in the same manner as any other civil cause of action, or as otherwise provided by law"); Nev. Const. art. I, § 8A(1)(l) (affording victims the right "[t]o full and timely restitution"); N.H. Rev. Stat. § 21-M:8-k(II) (affording victims "[t]he right to full and timely restitution [as granted under state law]"); N.M. Const. art. II, § 24(A)(8) (affording "[a] victim of arson resulting in bodily injury, aggravated arson, aggravated assault, aggravated battery, dangerous use of explosives, negligent use of a deadly weapon, murder, voluntary manslaughter, involuntary manslaughter, kidnapping, criminal sexual penetration, criminal sexual contact of a minor, homicide by vehicle, great bodily injury by vehicle or abandonment or abuse of a child . . . the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury"); N.C. Const. art. I, § 37(1a)(c) (affording victims of person crimes and felony property crimes "[t]he right to receive restitution in a reasonably timely manner, when ordered by the court"); N.D. Const. art. I, § 25(n) (affording victims "[t]he right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct"); Ohio Const. art. I, § 10a(A)(7) (affording victims the right "to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim"); Okla. Const. art. II, § 34(A) (affording victims the right "to full and timely restitution"); Or. Const. art. I, § 42(1)(d) (affording victims "[t]he right to receive prompt restitution from the convicted criminal who caused the



victim's loss or injury"); 25 Laws P.R. Ann. § 973a(q) (affording victims' the right to restitution in cases in which Puerto Rico law allows for it); S.C. Const. art. I, § 24(A)(9) (affording victims the right to "receive prompt and full restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury, including both adult and juvenile offenders"); S.D. Const. art. VI, § 29(14) (affording victims "[t]he right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal conduct and as provided by law for all losses suffered as a result of delinquent conduct"); Tenn. Const. art. I, § 35(7) (affording victims "[t]he right to restitution from the offender"); Tex. Const. art. I, § 30(b)(4) (affording victims, upon request, "the right to restitution"); Utah Code Ann. § 77-37-3(1)(e) (stating that the bill of rights for victims includes the right of victims to "seek restitution or reparations, including medical costs as provided in [state statutes governing restitution criteria and order issuance]"); V.I. Code Ann. 34 § 203(d)(3) (affording crime victims "the right to receive restitution for expenses or property loss incurred as a result of the crime"); Wis. Stat. Ann. § 950.04(1v)(q) (guaranteeing victims the right to restitution, pursuant to other state statutes); Wis. Const. art. I, § 9m(2)(m) (affording victims the right "[t]o full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution"); *see also* Va. Const. art. I, § 8A(6) (stating that the General Assembly may afford victims "[t]he right to restitution"); Haw. Rev. Stat. § 801D-4(d) (stating, within the state's bill of rights for victims, that payment of restitution is a precondition for release on parole).

<sup>13</sup> *See, e.g.*, 18 U.S.C. § 3664; Ala. Code §§ 15-18-65 through 15-18-78 (Restitution for Victims of Crime); Ariz. Rev. Stat. Ann. §§ 13-801 through 13-825 (Restitution and Fines); Cal. Penal Code § 1202.4; Conn. Gen. Stat. Ann. § 53a-28(c); Fla. Stat. Ann. § 775.089; Haw. Rev. Stat. Ann. § 706-646; 730 Ill. Comp. Stat. Ann. 5/5-5-6; Kan. Stat. Ann. § 21-6604(b)(1); La. Code Crim. Proc. Ann. art. 883.2; Ohio Rev. Code Ann. § 2929.18(A)(1); Or. Rev. Stat. § 137.106; S.C. Code Ann. § 17-25-322; Vt. Stat. Ann. tit. 13, § 7043.

<sup>14</sup> *See, e.g.*, Ariz. Rev. Stat. Ann. § 12-253(4) (detailing probation officer's restitution-related responsibilities regarding the preparation of a presentence report); Fla. Stat. Ann. § 947.181 (authorizing restitution as a condition of parole); *id.* § 948.032 (authorizing restitution as a condition of probation); Mich. Comp. Laws Ann. § 791.236(5) (requiring parole order to contain a condition to pay restitution); Fla. Admin. Code R. 23-21.0165(2) (establishing regulations governing restitution as a condition of parole).

<sup>15</sup> *See, e.g.*, Fla. Stat. Ann. § 945.31 (establishing procedures for the Department of Corrections to collect and disburse restitution).

<sup>16</sup> *See, e.g.*, Fed. R. Crim. P. 32(c)(1)(B), (d)(2)(D); Alaska R. Crim. P. 32.1(b)(2), (c)(2); Alaska R. Crim. P. 32.6; Ky. R. Crim. P. 11.06; N.H. R. Crim. P. 29(e); Vt. R. Crim. P. 32(g).

<sup>17</sup> *See, e.g.*, Ariz. Code of Jud. Admin § 3-401; Utah R. Jud. Admin. 6-303.

<sup>18</sup> *See, e.g.*, N.J. Admin. Code § 13:75-9.2; Utah Admin. Code § R671-403-6; 19-1 Vt. Code R. §§ 1:I through 1:X.

<sup>19</sup> *See, e.g.*, Fla. Stat. 7 J. Cir. Cr.-2017-024 (order establishing general priorities for, *inter alia*, restitution disbursement); Fla. Stat. 15 J. Cir. 4.407 (order establishing procedure for distribution of unclaimed restitution).

<sup>20</sup> *See, e.g.*, 18 U.S.C. § 5B1.3; *id.* § 5D1.3.

<sup>21</sup> *See, e.g.*, Md. Code Ann., Crim. Proc. § 11-603(b) (stating that victims are presumed to have a right to restitution if (1) the victim or the state requests it; and (2) the court is presented with competent evidence of certain losses); Minn. Stat. Ann. § 611A.04(1)(a) (providing victims with the right to receive restitution as part of the disposition of a case); Or. Rev. Stat. Ann. § 137.106(1) (affording victims the right to restitution for the full amount of the victim's losses).

<sup>22</sup> *See, e.g.*, Cal. Penal Code § 1214(b) (authorizing victims to enforce restitution orders in the same manner as a civil judgment); Fla. Stat. Ann. § 775.089(5) (same); Haw. Rev. Stat. Ann. § 706-644(5) (same); Neb. Rev. Stat. Ann. § 29-2286 (same).

<sup>23</sup> *See, e.g.*, 18 U.S.C. § 3663(b)(1) (providing method for calculating restitution for certain property losses); Fla. Stat. Ann. § 775.089(7) (providing the bases upon which restitution may be calculated) Mich. Comp. Laws Ann. § 780.766(3)(b) (providing method for calculating restitution for certain property losses); *id.* § 780.766(3)(e) (providing method for calculating compensable homemaking and child care expenses).

<sup>24</sup> *See, e.g.*, 18 U.S.C. § 3664 (governing general procedure for issuance of restitution order); Minn. Stat. Ann. § 611A.04(1) (same); Vt. Stat. tit. 13, § 7043 (same).

<sup>25</sup> *See, e.g.*, 18 U.S.C. § 3664 (governing general procedure for restitution enforcement); Cal. Penal Code § 1214(b) (same); Haw. Rev. Stat. Ann. § 706-644(5) (same).

<sup>26</sup> *See, e.g.*, 18 U.S.C. § 3664(a) (obligations of probation officers with respect to preparing a presentence investigation report containing restitution-related information); Ala. Code § 15-18-67 (rights of defendants, victims and district attorneys to be present and heard regarding restitution at any restitution hearing); Ariz. Rev. Stat. Ann.

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§ 12-253(4) (obligations of adult probation officers with respect to presentence investigation reports and restitution); Mich. Comp. Laws Ann. § 791.236 (obligations of parole board with respect to restitution).

<sup>27</sup> See, e.g., Ohio Rev. Code Ann. § 2929.18 (restitution in felony cases); *id.* § 2929.28 (restitution in misdemeanor cases); Mich. Comp. Laws Ann. § 780.766 (restitution in felony cases and for other violations for which the offender, upon conviction, may be punished by imprisonment for more than one year); *id.* § 780.826 (restitution in misdemeanor cases).

<sup>28</sup> See, e.g., 18 U.S.C. § 3663A (mandating restitution for certain offenses involving violence, property, doping, product tampering and theft of medical products).

<sup>29</sup> See, e.g., 18 U.S.C. § 2264(a) (restitution for victims of domestic violence and stalking); *id.* § 2327(a) (restitution for victims of telemarketing and email marketing fraud); *id.* § 2421A(d) (restitution for victims of the promotion or facilitation of prostitution and reckless disregard that conduct contributed to sex trafficking); *id.* § 2429(a) (restitution for victims transportation or travel for unlawful sexual purposes); Cal. Penal Code § 186.11 (restitution in cases involving multiple fraud and embezzlement felonies); *id.* § 600(e) (restitution for victims of willful and malicious harm or interference with horses or dogs used by police officers or volunteers); Fla. Stat. Ann. § 775.0844(8) (restitution for victims of white collar crime); *id.* § 817.02(2)(a) (restitution for offenses related to obtaining property by false personation); Ky. Rev. Stat. Ann. § 189.2329(2) (restitution for owners of temporary traffic control devices damaged by prohibited conduct); La. Rev. Stat. Ann. § 539.3 (restitution for certain sex offenses); N.H. Rev. Stat. § 638:26 (restitution for victims of identity fraud); Ohio Rev. Code Ann. § 901.511(D) (restitution for offenses involving agricultural products or equipment); Or. Rev. Stat. Ann. § 167.385(5) (restitution for victims of unauthorized use of livestock animal); see *Survey of State Statutes Explicitly Providing for Criminal Restitution for Offenses Involving Working Dogs*, NCVLI (2014), <https://law.lclark.edu/live/files/17837-50-state-chartexplicit-restitution-provisions-for> (providing examples of state statutes governing restitution when offense involves working dogs).

<sup>30</sup> See, e.g., 18 U.S.C. § 1593(a); Ariz. Rev. Stat. Ann. § 13-1309; 720 Ill. Comp. Stat. Ann. 5/10-9(g); Mich. Comp. Laws Ann. § 780.766b; Vt. Stat. Ann. tit. 13, § 2657.

<sup>31</sup> See, e.g., 18 U.S.C. § 2259(a) (restitution for victims of child sexual exploitation); Ohio Rev. Code Ann. § 2919.22 (restitution for victims of child endangerment and other offenses); W. Va. Ann. Code § 61-8C-4 (restitution for victims of filming of sexually explicit conduct of minors).

<sup>32</sup> See, e.g., 18 U.S.C. § 1593(b)(2) (“An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.”); *id.* § 2248(b)(2) (same); *id.* § 2259(b)(3) (same).

<sup>33</sup> See, e.g., S.C. Code Ann. § 16-3-2040 (establishing crime-specific restitution procedures and relying on general restitution procedures); Mont. Code Ann. § 40-5-503(6) (mandating restitution for victims of rape to cover certain costs, subject to the procedures of the state’s general restitution laws).

<sup>34</sup> A victim’s ability to meaningfully access justice and enforce their other rights can also hinge upon the victim’s ability to exercise their right to restitution. See *State v. Lindsley*, 953 P.2d 1248, 1252 (Ariz. Ct. App. 1997) (finding that denying victims restitution for wages lost in attending court proceedings to which they have a right to attend is “tantamount in some instances to denying that individual the opportunity to exercise that right”).

<sup>35</sup> See, e.g., Mass. Gen. Laws Ann. ch. 258B, § 3(o) (affording victims the right to receive the name and telephone number of the probation officer or other official supervising restitution payments).

<sup>36</sup> See, e.g., *United States v. Rubin*, 558 F. Supp. 2d 411, 425 (E.D.N.Y. 2008) (recognizing that the right to confer with the prosecution, under the Crime Victims’ Rights Act (CVRA), 18 U.S.C. § 3771(a)(5), includes the right to gather information from the government that is necessary to pursue restitution in a case); *United States v. Keifer*, No. 2:08-CR-162, 2009 WL 414472, at \*4 (S.D. Ohio Feb. 18, 2009) (granting the victim’s motion to unseal the case and noting that the victim’s CVRA rights to request restitution and to speak at sentencing in pursuit of their right to restitution required access to certain case documents and information).

<sup>37</sup> See, e.g., Cal. Civ. Proc. Code § 2033.720(b) (“Notwithstanding whether a victim initiates or maintains an action to satisfy the unpaid restitution order, a victim may propound the form interrogatories approved pursuant to this section once each calendar year. The defendant subject to the restitution order shall, in responding to the interrogatories propounded, provide current information regarding the nature, extent, and location of any assets, income, and liabilities in which the defendant claims a present or future interest.”); see also *United States v. Doherty*, 05-CR-494, 2009 WL 10710802, at \*1 (E.D.N.Y. Mar. 23, 2009) (slip copy) (granting the victim’s motion to obtain defendant’s tax returns from third-parties, which had been produced directly to the court in response to the victim’s subpoena, for the purposes of calculating the amount of restitution owed).

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<sup>38</sup> See, e.g., 18 U.S.C. § 3664(k) (“A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant’s economic circumstances that might affect the defendant’s ability to pay restitution. The court may also accept notification of a material change in the defendant’s economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.”).

<sup>39</sup> See, e.g., Mich. Comp. Laws Ann. § 780.766(23) (“A court that receives notice that a defendant who has an obligation to pay restitution under this section has declared bankruptcy shall forward a copy of that notice to the prosecuting attorney. The prosecuting attorney shall forward the notice to the victim at the victim’s last known address.”).

<sup>40</sup> See, e.g., Ariz. Const. art. II, § 2.1(A)(7) (affording victims the right “[t]o read pre-sentence reports relating to the crime against the victim when they are available to the defendant”); Fla. Const. art. I, § 16(b)(6)e (providing victims with “[t]he right to receive a copy of any presentence report, and any other report or record relevant to the exercise of a victim’s right, except for such portions made confidential or exempt by law”); 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(13)(A) (providing victims with the right to request a copy of a presentence report); see *Victim Access to the Presentence Investigation Report in Federal Prosecutions*, NCVLI Victim Law Bulletin (Aug. 2011), at 3–4, <https://law.lclark.edu/live/files/11820-victim-access-to-the-presentence-investigation> (detailing why crime victims cannot effectuate their restitution rights without independent access to a presentence report). But see *United States v. Coxton*, 598 F. Supp. 2d 737, 739–41 (W.D.N.C. 2009) (rejecting request by victim’s family members for disclosure of sections of the presentence report related to, *inter alia*, restitution).

<sup>41</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-810(H) (“If a defendant is sentenced to pay . . . restitution . . . , the clerk of the sentencing court, on request, shall make the defendant’s payment history available to the prosecutor, victim, victim’s attorney, probation department and court without cost.”).

<sup>42</sup> See, e.g., Iowa Code Ann. § 910.6 (“An office or individual preparing a restitution plan of payment or modified plan of payment shall forward a copy to the clerk of court in the county in which the offender was sentenced. The clerk of court shall forward a copy of the restitution plan of payment or modified plan of payment to the victim or victims.”); Mass. Gen. Laws Ann. ch. 258B, § 3(o) (affording victims the right to receive from the probation department a copy of the restitution payment schedule); S.D. Codified Laws § 23A-28-6 (“The executive director of the Board of Pardons and Paroles shall provide each known victim a copy of the schedule of restitution for each inmate placed on parole.”); Va. Code Ann. § 19.2-305.1(E) (affording victims the right to a copy of the form containing the amount of restitution, the date by which it must be paid and the terms and conditions of such repayment).

<sup>43</sup> Crime victims, like all people, have a fundamental right to access the courts. See *Chappell v. Rich*, 340 F.3d 1279,1282 (11th Cir. 2003) (“Access to the courts is clearly a constitutional right, ground in the [right to petition clause of the] First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment and/or the Fourteenth Amendment”); *Swkel v. City of River Rouge*, 119 F.3d 1259, 1261–62 (6th Cir. 1997) (observing that the right to access the courts is a fundamental right protected by multiple provisions of the United States Constitution, including the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause, the First Amendment, and the Privileges and Immunities Clause of Article IV); see also, e.g., Ohio Const., art. I, § 16 (“All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.”). Jurisdictions support this fundamental right through laws that require or otherwise authorize restitution for losses incurred as a result of participating in the criminal justice process (e.g., wages lost while attending court proceedings, the cost of transportation to and from the courthouse). See *State v. Lindsley*, 953 P.2d 1248, 1252 (Ariz. Ct. App. 1997) (“To deny a victim the right to reimbursement for wages lost in attending court proceedings which he or she may attend by right would be tantamount in some instances to denying that individual the opportunity to exercise that right.”); see also *State v. Houser*, 314 P.3d 203, 210 (Idaho Ct. App.2013) (finding, *inter alia*, that distinguishing between the importance of criminal court proceedings in the context of restitution requests for wages lost attending such proceedings “would be substantially unfair to crime victims who may not be legally sophisticated”). Maintaining victim privacy and confidentiality in the restitution context is also critical to protecting victims’ access to justice. The fear of public disclosure of victim’s identifying and other personal information in restitution requests and during restitution hearings may discourage victims from pursuing restitution all together; as such, victims’ right to access justice also supports the nondisclosure of victim’s identifying and other personal information in the restitution

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context. For information regarding victims' restitution-related privacy and confidentiality rights and protections, *see supra* Part II.B.

<sup>44</sup> *See generally* Nat'l Assn. of Crime Victim Compensation Boards, <https://nacvcb.org> (providing information regarding state crime victim compensation programs). The receipt of restitution does not necessarily bar a victim from recovery under a crime victim compensation program; however, if a victim receives restitution, they may not later also seek compensation for the same losses under a victim compensation fund. *See, e.g.*, Cal. Penal Code § 1202.4(j) ("The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted."); Haw. Rev. Stat. Ann. § 706-646(5) ("The restitution ordered shall not affect the right of a victim to recover under section 351-33 [governing compensation awards] or in any manner provided by law; provided that any amount of restitution actually recovered by the victim under this section shall be deducted from any award under section 351-33.").

<sup>45</sup> *See, e.g.*, Conn. Gen. Stat. Ann. § 54-220(a)(7) (requiring victim advocates to assist victims in the processing of claims for restitution); Ind. Code Ann. § 35-40-6-4(10) (providing victims with the right to have a prosecuting attorney or victim assistance program assist them "in preparing verified documentation necessary to obtain a restitution order"); Mass. Gen. Laws Ann. ch. 258B, § 3(o) (providing that victims have the right "to obtain assistance from the prosecutor in the documentation of the victim's losses"); 22 Okla. Stat. § 991f(D) ("Every crime victim receiving the restitution claim form shall be provided assistance and direction to properly complete the form."); Vt. Stat. Ann. tit. 13, § 5304(a)(3)(C) (providing victims with the right to "assistance in documenting and preparing requests for restitution and insurance reimbursement"); *see also* Or. Rev. Stat. Ann. § 147.227(2)(e)(F) (stating that to qualify for funding from the Criminal Injuries Compensation Account, a victims' assistance program must, *inter alia*, "[a]ssist victims in preparing restitution documentation for purposes of obtaining a restitution order").

<sup>46</sup> Some jurisdictions provide victims with a narrow right to confer with the prosecution regarding restitution. *See, e.g.*, Fla. Const. art. I, § 16(b)(6)(c) (affording victims, beginning at the time of their victimization, the right, upon request, "to confer with the prosecuting attorney concerning . . . restitution"). Other jurisdictions provide victims with such a right through a general guarantee of a right to confer with the prosecution. *See, e.g.*, 18 U.S.C. § 3771(a)(5) (affording victims the right to confer with the attorney for the government); Alaska Const. art. I, § 24 (affording victims the right to confer with the prosecution"); Ariz. Const. art. II, § 2.1(A)(6) (affording victims the right "[t]o confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case"); 725 Ill. Comp. Stat. Ann. 120/4(a)(3) (affording victims "[t]he right to communicate with the prosecution"); La. Const. art. I, § 25 (affording victims "the right to confer with the prosecution prior to final disposition of the case"); N.M. Stat. Ann. § 31-26-4(F) (affording victims the right to "confer with the prosecution"); Tenn. Const. art. I, § 35(1) (affording victims the right to confer with the prosecution).

<sup>47</sup> Confering with the victim about restitution may be essential prior to entry into a plea agreement. *See, e.g., United States v. Stevens*, 239 F. Supp. 3d 417, 424 (D. Conn. 2017) ("The Government's pre-plea consultation with a victim's family should include advising the family of a possible restitution claim, to ascertain whether the family wishes the Government to pursue such restitution at sentencing, and to make clear to a defendant at the time of a plea agreement what the possible and likely scope of restitution may be."). 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 resulted in the victim's restitution interests not being taken into account. *See, e.g., Stevens*, 239 F. Supp. 3d at 425 (rejecting plea agreement entered into without conferring with the victim on the grounds that such an agreement violated the CVRA and, as a result, the administration of justice did not support its acceptance).

<sup>48</sup> *See, e.g.*, 18 U.S.C. § 3664(m)(1)(B) ("At the request of a victim named in a restitution order, the clerk of the court shall issue an abstract of judgment certifying that a judgment has been entered in favor of such victim in the amount specified in the restitution order."); Cal. Penal Code § 1191.2 (affording victims the right to receive a copy of the restitution order from the probation officer); *id.* § 1214(b) ("Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order and a copy of the defendant's disclosure [regarding their finances]"); S.D. Codified Laws § 23A-28-6 ("The court services officer shall provide each known victim a copy of the court's order approving or modifying the plan of restitution for any defendant not serving his sentence in the state penitentiary.").

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<sup>49</sup> See, e.g., Ala. Code § 15-18-78(a) (authorizing victims to enforce a restitution order in the same manner as a civil judgment); Alaska Stat. Ann. § 12.55.045(l) (same); Cal. Const. art. I, § 28(b)(13)(A) (affording victims the right to seek and secure restitution); Haw. Rev. Stat. Ann. § 706-644(5) (same); Iowa Code Ann. § 915.100(f) (same); Neb. Rev. Stat. Ann. § 29-2286 (same); N.Y. Crim. Proc. Law § 420.10(6)(a) (same). But see *People v. Crumbs*, No. ST-11-CR-467, 2013 WL 12461162, at \*2 (V.I. Super. Ct. Feb. 14, 2013) (denying the victim’s motion to intervene to compel defendant to comply with the terms of their probation and to obtain restitution).

<sup>50</sup> See, e.g., Alaska Stat. Ann. § 12.55.045(l) (“If the victim enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded.”); Fla. Stat. Ann. § 775.089(5) (“If civil enforcement is necessary, the defendant shall be liable for costs and attorney’s fees incurred by the victim enforcing the order.”); Haw. Rev. Stat. Ann. § 706-647(1) (providing that victims need not pay filing fees when seeking civil enforcement of court-ordered restitution); Mich. Comp. Laws Ann. § 780.766(20) (“The court shall not impose a fee on a victim, victim’s estate, or prosecuting attorney for enforcing an order of restitution.”); S.D. Codified Laws § 23A-28-6 (“If the victim is not satisfied with the approved or modified plan of restitution, the victim’s exclusive remedy is a civil action against the defendant, which, if successful, may include attorney’s fees.”).

<sup>51</sup> See, e.g., Fla. Stat. Ann. § 960.295 (providing for civil restitution liens as supplemental to other forms of restitution enforcement available to victims).

<sup>52</sup> See, e.g., Ariz. Const. art. II, § 2.1(A)(1); Cal. Const. art. I, § 28(b)(1); Colo. Rev. Stat. Ann. § 24-4.1-302.5(1)(a); Fla. Const. art. I, § 16(b)(2); Ill. Const. art. I, § 8.1(a)(1); Nev. Const. art. I, § 8A(1)(a); N.J. Stat. Ann. § 52:4B-36(c); S.C. Const. art. I, § 24(1); Tenn. Const. art. I, § 35(2); Utah Const. art. I, § 28(1)(a). Restitution procedures that intimidate, harass or abuse victims violate this right. See *State v. Quijada*, 439 P.3d 815, 826–27 (Ariz. Ct. App. 2019) (rejecting “any notion that a victim who disobeys a subpoena to appear and testify at a restitution hearing may be arrested and held in contempt [under state law]” because, *inter alia*, victims’ have a constitutional right to be free from intimidation, harassment and abuse and “[s]ubjecting a victim to the threat of arrest and punishment for failing to appear at a restitution hearing presents far too great a risk of transforming a defendant’s due-process rights into a weapon for harassment and abuse”); *State v. Isaza*, No. A-5600-17T5, 2019 WL 321135, at \*5 (N.J. Super. Ct. App. Div. Jan. 25, 2019) (recognizing that cross-examination at a restitution hearing could implicate victims’ right to be free from intimidation, harassment or abuse); see also *United States v. Agate*, 613 F. Supp. 2d 315, 319 (E.D.N.Y. 2009) (noting that the government’s motion to quash defendants’ subpoena to compel a victim’s appearance at the restitution hearing had been granted based upon, *inter alia*, “a finding of fact that [the victim’s] appearance might expose him to danger”).

<sup>53</sup> See, e.g., 18 U.S.C. § 3664(d)(2) (detailing the information a probation officer must provide to a victim prior to submitting a presentence report, including information regarding a victim’s opportunity to submit information to the probation officer regarding their financial losses); Ala. Code § 15-23-62(6) (requiring a law enforcement agency, during initial contact with the victim, to inform the victim of “[t]he existence and eligibility requirements of restitution” under state law); Ariz. Rev. Stat. Ann. § 13-4408(A)(5) (requiring the prosecutor to notify victims, within seven days of charging an offender, of their “right to request a preconviction restitution lien pursuant to § 13-806”); Cal. Penal Code § 1191.2 (providing that, when a probation officer performs their statutory obligation to give victims adequate notice of sentencing proceedings, they “also provide the victim with information concerning . . . the requirement that the court order restitution for the victim, the victim’s right to receive a copy of the restitution order from the court and to enforce the restitution order as a civil judgment, the victim’s responsibility to furnish the probation department, district attorney, and court with information relevant to his or her losses, and the victim’s opportunity to be compensated from the Restitution Fund if eligible”); Fla. Stat. Ann. § 960.001(1)(j) (requiring law enforcement agencies and state attorneys to inform victims of their right to request restitution, receive restitution and to enforce restitution order); Haw. Rev. Stat. Ann. § 706-602(2) (providing that court personnel or another agency designated by the court must give victims notice of, *inter alia*, “the possibility of restitution by the defendant to all the victims of the convicted defendant’s criminal acts”); Ky. Rev. Stat. Ann. § 421.500(5)(d) (directing state attorneys to provide victims with information about “[r]estitution, where applicable”); N.H. Rev. Stat. § 21-M:19(II)(g) (providing sexual assault victims with the right to information about their right to restitution); S.C. Code Ann. § 16-3-1555(E) (stating that the prosecuting attorney must inform victims about, *inter alia*, restitution collection); Utah Code Ann. § 77-38-3(3)(b) (requiring the prosecuting agency to provide victims with notice of their right to request restitution); Vt. Stat. Ann. tit. 30, § 328(c)(4) (providing sexual assault victims with the right to information about restitution availability and eligibility); *id.* § 5304(a)(1) (directing victim advocates to provide all victims with information regarding their rights, including their right to seek restitution).

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<sup>54</sup> See, e.g., 18 U.S.C. § 3771(a)(10) (affording victims the right to be informed of their rights, including the right to restitution); Ariz. Rev. Stat. Ann. § 13-4408(A)(1) (requiring the prosecutor to notify victims, within seven days of charging an offender, of their constitutional, statutory and rule-based rights); Fla. Const. art. I, § 16(b)(11) (guaranteeing victims the right to information about their rights); Ky. Rev. Stat. Ann. § 421.500(3)–(5) (directing law enforcement personnel and state attorneys to provide victims with certain information regarding their rights); Wis. Const. art. I, § 9m(2)(p) (providing victims with a broad right to notice of all of their rights, privileges and protections).

<sup>55</sup> See, e.g., 18 U.S.C. § 3771(a)(8); Alaska Const. art. I, § 24; Ariz. Const. art. II, § 2.1(A)(1); Cal. Const. art. I, § 28(b)(1); Colo. Rev. Stat. Ann. § 24-4.1-302.5(1)(a); Conn. Const. art. I, § 8(b)(1); D.C. Stat. Ann. § 23-1901(b)(1); Fla. Const. art. I, § 16(b)(1); Ga. Const. art. I, § 1 ¶XXX; Ga. Code Ann. § 17-17-1(9); Idaho Const. art. I, § 22(1); Ill. Const. art. I, § 8.1(a)(1); 725 Ill. Comp. Stat. Ann. 120/4(a)(1); Ind. Const. art. I, § 13(b); Ind. Code Ann. § 35-40-5-1(1); Ky. Const. § 26A; La. Const. art. I, § 25; Mich. Const. art. I, § 24(1); Miss. Const. art. 3, § 26A(1); Nev. Const. art. I, § 8A(1)(a); N.H. Rev. Stat. Ann. § 21-M:8-k(II)(a); N.J. Rev. Stat. Ann. § 52:4B-36(a); N.M. Const. art. II, § 24(A)(1); N.M. Stat. Ann. § 31-26-4(A); N.D. Const. art. I, § 25(2)(a); Ohio Const. art. I, § 10a(A)(1); Okla. Const. art. II, § 34(A); R.I. Const. art. I, § 23; S.C. Const. art. I, § 24(1); S.D. Const. art. 6, § 29(1); Tex. Const. art. I, § 30(a)(1); Utah Const. art. I, § 28(1)(a); Va. Const. art. I, § 8-A(1); Wis. Const. art. I, § 9m(2)(a). The right to fair and dignified treatment is the right to justice and due process within the criminal justice process, which requires consideration of victims’ interests throughout their involvement in this process. Restitution procedures that treat victims unfairly or without respect for their dignity violate this right. See *State v. Benn*, 274 P.3d 47, 50 (Mont. 2012) (recognizing that abating a conviction when a defendant dies during the pendency of an appeal undermines the finality that restitution laws are designed to provide, thereby denying victims their rights to fair and dignified treatment).

<sup>56</sup> See, e.g., Ariz. Code of Jud. Admin. § 6-103(D)(3) (requiring probation departments to “[i]dentify language assistance resources for communicating with limited-English speaking victims”); Or. Rev. Stat. Ann. § 45.275(1)(b) (requiring courts to appoint a qualified interpreter for non-English-Speaking victims who seek to exercise their constitutional rights); *id.* § 45.285(3) (requiring the courts to appoint qualified interpreters and make available appropriate assistive communication devices for victims with a disability who seek to exercise their constitutional rights); see generally *Interpreters: A Requirement for Meaningful Exercise of Victims’ Rights by Non-English Speaking Victims*, NCVLI Victim Law Article (Fall/Winter 2013), <https://law.lclark.edu/live/files/20788-interpretors-a-requirement-for-meaningful-exercise> (detailing how the appointment of an interpreter is necessary as a matter of law and policy to give meaning to the rights of non-English speaking victims within the criminal justice system).

<sup>57</sup> See, e.g., 18 U.S.C. § 3664(g)(1) (“No victim shall be required to participate in any phase of a restitution order.”); see *United States v. Agate*, 613 F. Supp. 2d 315, 319 (E.D.N.Y. 2009) (noting that the government’s motion to quash defendants’ subpoena to compel a victim’s appearance at the restitution hearing had been granted based upon, *inter alia*, the provision in 18 U.S.C. § 3664(g)(1) that “[n]o victim shall be required to participate in any phase of a restitution order”); *State v. Quijada*, 439 P.3d 815, 826 (Ariz. Ct. App. 2019) (recognizing that while victims do not “have an unconditional right to refuse to appear and testify at a restitution proceeding,” they may refuse to participate where such participation violates their constitutional rights or statutory protections); *People v. Lehman*, 202 Cal. Rptr. 3d 386, 393 (Cal. App. Ct. 2016) (explaining that state law does not require victims to present testimony or affidavits in connection with restitution and that the victims’ testimony at trial, one victim’s statement at sentencing, and a probation report were sufficient to support a restitution order); see also Ga. Code Ann. § 17-14-18 (recognizing that victims may refuse to claim restitution); Mich. Comp. Laws Ann. § 780.766(21) (same); *cf.* N.Y. Crim. Proc. § 390.30(3)(b) (providing that although presentence investigation reports generally must contain victim impact statements that include information regarding a victim’s financial losses, victims are not required to supply information for the preparation of the report). *But cf. In re K.C.*, No. 2 CA-JV 2015-0225, 2016 WL 1273321, at \*2 (Ariz. Ct. App. Mar. 31, 2016) (finding that court was within its discretion to find certain documents insufficient to support restitution award, “particularly in light of the victim’s refusal to testify”).

<sup>58</sup> See, e.g., Haw. Rev. Stat. Ann. § 706-602(2) (providing that court personnel or another agency designated by the court must give victims notice of, *inter alia*, “the possibility of restitution by the defendant to all the victims of the convicted defendant’s criminal acts”); Utah Code Ann. § 77-38-3(3)(b) (requiring the prosecuting agency to provide victims with notice of their right to request restitution).

<sup>59</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-804(N) (affording victims the right to notice when a “probationer becomes in arrears in an amount that totals four full court-ordered monthly payments of victim restitution” and detailing the

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contents of such notice); Mich. Comp. Laws Ann. § 791.236(13) (requiring that probation officers provide immediate notice, *inter alia*, to the victim when a parolee defaults on their restitution obligations); Mont. Code Ann. § 46-23-1025(4) (providing that if a prisoner has violated a condition of release requiring the payment of restitution, the supervising parole officer must notify the victim of the violation hearing).

<sup>60</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-805(D) (“The clerk of the court shall notify each person who is entitled to restitution of the criminal restitution order.”); Fla. Rev. Stat. § 960.001(1)(j) (including, within guidelines for fair treatment of victims within the criminal justice system, direction to the state attorney to inform the victim when restitution is ordered).

<sup>61</sup> See, e.g., Cal. Penal Code § 1202.4(f)(1) (providing victims with the right to notice of a motion for modification of a restitution order 10 days prior to the proceeding held to decide the motion); Mass. Gen. Laws Ann. ch. 258B, § 3(o) (affording victims the right to receive notice from the offender’s supervising probation officer if the offender seeks to modify the restitution order); Mont. Code Ann. § 46-18-246 (providing victims with notice of hearing regarding a petition to adjust or otherwise waive restitution payment); N.C. Gen. Stat. Ann. § 15A-1340.39(a) (providing victims the right to notice of hearing regarding the partial or full remission of a restitution order at least 15 days prior to the hearing).

<sup>62</sup> See, e.g., 18 U.S.C. § 3664(d)(2)(A)(iv) (requiring probation officers to provide victims with the scheduled date, time and place of a sentencing hearing); Utah Const. art. I, § 28(1)(b) (affording victims the right, upon request, to notice of “important criminal justice hearings related to the victim,” which, under Utah Code Ann. § 77-38-2(5)(f), include any court proceeding to determine or modify restitution); Vt. Stat. Ann. tit. 13, § 5321(a)(1) (providing victims with the right to advanced notice of sentencing proceedings).

<sup>63</sup> See, e.g., Ala. Code § 15-23-74 (“The victim has the right to present evidence, an impact statement, or information that concerns the criminal offense or the sentence during any pre-sentencing, sentencing, or restitution proceeding.”); Ariz. Rev. Stat. Ann. § 13-4426(A)–(B) (stating that “[t]he victim may present evidence, information and opinions that concern the criminal offense, the defendant, the sentence or the need for restitution at any aggravation, mitigation, presentencing or sentencing proceeding” and that “[a]t any disposition proceeding the victim has the right to be present and address the court”); *id.* § 13-4437(E) (“Notwithstanding any other law and without limiting any rights and powers of the victim, the victim has the right to present evidence or information and to make an argument to the court, personally or through counsel, at any proceeding to determine the amount of restitution pursuant to § 13-804.”); Cal. Penal Code § 1191.1 (affording victims the right to attend all sentencing proceedings and to be heard regarding their views on the need for restitution); Or. Rev. Stat. Ann. § 137.013 (providing victims with the right to be present and heard at sentencing regarding the need for, *inter alia*, restitution); S.C. Code Ann. § 17-25-322(A) (affording victims the right to be present at a restitution hearing); Utah Const. art. I, § 28(1)(b) (affording victims the right, upon request, to be present and heard at “important criminal justice hearings related to the victim,” which, under Utah Code Ann. § 77-38-2(5)(f), include any court proceeding to determine or modify restitution).

<sup>64</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-4427(B) (“The victim has the right to be heard at any proceeding in which the court is requested to modify the terms of probation or intensive probation of a person . . . if the modification involves restitution . . . .”); Cal. Penal Code § 1202.4(f)(1) (“A victim at a restitution hearing or modification hearing described in this paragraph may testify by live, two-way audio and video transmission, if testimony by live, two-way audio and video transmission is available at the court.”); Mass. Gen. Laws Ann. ch. 258B, § 3(o) (“If the offender seeks to modify the restitution order, the offender’s supervising probation officer shall provide notice to the victim and the victim shall have the right to be heard at any hearing relative to the proposed modification.”); Mont. Code Ann. § 46-18-246 (providing victims with the right to be heard at a restitution modification proceeding); N.C. Gen. Stat. Ann. § 15A-1340.39(a) (providing victims the right to be heard at a hearing regarding the partial or full remission of a restitution order); Utah Const. art. I, § 28(1)(b) (affording victims the right, upon request, to be present and heard at “important criminal justice hearings related to the victim,” which, under Utah Code Ann. § 77-38-2(5)(f), include any court proceeding to determine or modify restitution).

<sup>65</sup> See, e.g., Ariz. Const. art. II, § 2.1(A)(4) (affording victims the right to be heard at proceedings involving, *inter alia*, sentencing); Fla. Const. art. I, § 16(b)(6)b (affording victims the right, upon request, to be present and heard at all public proceedings involving the criminal conduct, including sentencing); Ill. Const. art. I, § 8.1(a)(5) (affording victims the right to be heard at any post-arraignment court proceeding that involve, *inter alia*, their rights or sentencing); Wis. Const. art. I, § 9m(2)(i) (affording victims the right, “[u]pon request, to be heard in any proceeding during which a right of the victim is implicated, including release, plea, sentencing, disposition, parole, revocation, expungement, or pardon”); 18 U.S.C. § 3771(3)–(4) (affording victims the right to be present and heard

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at public court proceedings related to sentencing); Ala. Code § 15-23-74 (“The victim has the right to present evidence, an impact statement, or information that concerns the criminal offense or the sentence during any pre-sentencing, sentencing, or restitution proceeding.”); N.H. Rev. Stat. § 651:4-a (providing victims with the right to be heard before a judge sentences a defendant to certain crimes); Vt. Stat. Ann. tit. 13, § 5321(a)(2) (providing victims with the right to appear personally at sentencing to express their views on, *inter alia*, the need for restitution).

<sup>66</sup> See, e.g., Mont. Code Ann. §46-23-1025(4) (“If the prisoner has violated a condition of release requiring the payment of restitution, the supervising parole officer shall notify the victim of the offense prior to the hearing required by 46-23-1024 and give the victim an opportunity to provide written or oral comment.”).

<sup>67</sup> See, e.g., Fla. Const. art. I, § 16(b)(6)b (affording victims the right to be heard at “any proceeding during which a right of the victim is implicated”); Utah Const. art. I, § 28(1)(b) (affording victims the right, upon request, to be present and heard at “important criminal justice hearings related to the victim,” which, under Utah Code Ann. § 77-38-2(5)(f), include any court proceeding to determine or modify restitution); *Fay v. Fox in & for Cty. of Maricopa*, 494 P.3d 1105, 1110, 1106 (Ariz. 2021) (holding “that a crime victim has a constitutional and statutory right to be heard on the merits of a defendant’s motion for a delayed appeal of a restitution order”).

<sup>68</sup> See *supra* note 9.

<sup>69</sup> For information regarding victims’ restitution-related privacy and confidentiality rights and protections, see *infra* Part II.B.

<sup>70</sup> Most jurisdictions are clear that nothing in their restitution laws limit or impair a victim’s right to initiate a civil action against their offender. See, e.g., Ala. Code § 15-18-75; Ariz. Rev. Stat. Ann. § 13-807; Fla. Stat. Ann. § 775.089(8); Idaho Code Ann. § 19-5304(11); 730 Ill. Comp. Stat. Ann. 5/5-5-6(k); Iowa Code Ann. § 915.100(2)(i); Ky. Rev. Stat. Ann. § 533.030(3)(d); N.H. Rev. Stat. § 651:65; N.Y. Penal Code § 60.27(6); Ohio Rev. Code Ann. § 2929.18(H); S.C. Code Ann. § 16-3-1110(B). For additional information regarding the relationship between criminal restitution and civil damages, see *infra* Part V.

<sup>71</sup> See, e.g., Ariz. Const. art. 2, § 2.1(A)(5) (affording victims the right “[t]o refuse an interview, deposition, or other discovery request by the defendant, the defendant’s attorney, or other person acting on behalf of the defendant”); Cal. Const. art. I, § 28(b)(5) (affording victims the right “[t]o refuse an interview, deposition, or discovery request by the defendant, the defendant’s attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.”); Or. Const. art. I, § 42(1)(c) (affording victims “[t]he right to refuse an interview, deposition or other discovery request by the criminal defendant or other person acting on behalf of the criminal defendant provided, however, that nothing in this paragraph shall restrict any other constitutional right of the defendant to discovery against the state”). This right may serve as a ground upon which victims can move to quash a motion to compel their presence and testimony at a restitution hearing. *State v. Quijada*, 439 P.3d 815, 826 (Ariz. App. Ct. 2019) (recognizing that a court may quash a motion to compel a victim’s presence at a restitution hearing if the sought testimony is in violation of, *inter alia*, a victim’s constitutional right to refuse defense interviews, deposition and other discovery requests).

<sup>72</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-806(C) (“A prosecutor or a victim in a criminal proceeding in which there was an economic loss may file a request with the court for a preconviction restitution lien after the filing of a misdemeanor complaint or felony information or indictment.”).

<sup>73</sup> See, e.g., 18 U.S.C. § 3664(d)(2)(A)(iii) (providing that, prior to submitting a presentence report to the court, the probation officer must notify identified victims of “the opportunity of the victim to submit information to the probation officer concerning the amount of the victim’s losses”); *id.* § 3664(d)(2)(A)(vi) (providing that, prior to submitting a presentence report to the court, the probation officer must notify identified victims of “the opportunity of the victim to file with the probation officer a separate affidavit relating to the amount of the victim’s losses subject to restitution”); Ala. Code § 15-23-74 (providing victims with the right to present evidence, an impact statement, or other information at a restitution proceeding); Ariz. Rev. Stat. Ann. § 13-4410(C)(2)–(3) (stating that a victim’s impact statement may include “[a]n explanation of the extent of any economic loss or property damage suffered by the victim” and “[a]n opinion of the need for and extent of restitution”); *id.* § 13-4437(E) (“Notwithstanding any other law and without limiting any rights and powers of the victim, the victim has the right to present evidence or information and to make an argument to the court, personally or through counsel, at any proceeding to determine the amount of restitution pursuant to § 13-804”); Cal. Penal Code § 1191.15(a) (affording victims the right to submit a victim impact statement to the court reflecting, *inter alia*, their views on the need for restitution); Fla. Const. art. I, § 16(b)(6)d (providing victims with “[t]he right to provide information regarding the impact of the offender’s conduct on the victim and the victim’s family to the individual responsible for conducting any presentence investigation or compiling any presentence investigation report, and to have any such information



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considered in any sentencing recommendations submitted to the court”); Fla. Stat. Ann. § 960.001(j) (“The state attorney shall seek the assistance of the victim in the documentation of the victim’s losses for the purpose of requesting and receiving restitution.”); Haw. Rev. Stat. Ann. § 706-602(1)(b) (providing that a presentence report must include, *inter alia*, information made available by the victim regarding their financial losses); Ky. Rev. Stat. Ann. § 421.520(1) (providing victims with the right to submit, to the probation officer responsible for preparing the presentence investigation report, a written impact statement about, *inter alia*, the victim’s need for restitution); *id.* § 421.520(2) (providing victims with the right to give impact statements that contain, *inter alia*, “a description of the nature and extent of any physical, psychological, or financial harm to the victim, the victim’s need for restitution and whether the victim has applied for or received compensation for financial loss”); Mich. Comp. Laws Ann. § 780.763(1)(f), (3) (affording victims the right to give an impact statement at sentencing regarding the need for and extent of restitution); Ohio Rev. Code Ann. § 2930.13(C) (authorizing victims to give a written or oral statement regarding their need for restitution to the probation officer preparing the presentence report).

<sup>74</sup> See, e.g., 18 U.S.C. § 3612(b)(1)(G) (requiring the confidentiality of any information relating to a victim that is contained in a restitution order or otherwise provided by the victim to the Attorney General or the court for the purposes of restitution); *id.* § 3664(d)(4) (providing that the privacy of any records filed or testimony given in support of restitution must be “maintained to the greatest extent possible, and such records may be filed or testimony heard in camera”); Alaska Stat. Ann. § 12.55.051(f) (providing that a victim’s identifying and locating information provided for the purposes of restitution collection and disbursement is confidential); Cal. Penal Code § 1202.4(f)(4)(B) (providing that when the Crime Victim Compensation Board seeks restitution for payments made to the victim, it may submit, as proof of its losses, copies of the victims’ bills that have been “redacted to protect the privacy and safety of the victim and any legal privilege”); *id.* § 1203c(d)(3) (providing that a victim’s contact information, gathered for the purposes of restitution disbursement, is confidential); 22 Okla. Stat. § 991f(G) (“The court shall, upon motion by the crime victim, redact from the submitted documentation all personal information relating to the crime victim that does not directly and necessarily establish the authenticity of any document or substantiate the asserted amount of the restitution claim.”); Or. Rev. Stat. Ann. § 18.048(2)(b) (“If restitution . . . is ordered [in a criminal case], the name of the person to whom the court should disburse payments [must be included on the judgment], unless the victim requests that this information be exempt from disclosure in the public record.”); Va. Code Ann. § 19.2-305.1(E) (providing that a victims’ contact information contained in a restitution form is confidential and may not be disclosed to any person); Vt. Stat. Ann. tit. 13, § 5322 (barring disclosure, in response to a public records request, of a victim’s name and identifying information contained in a restitution order); Vt. Stat. Ann. tit. 13, § 7043(c)(3) (detailing privacy and confidentiality protections for victim records at issue in restitution disputes); Alaska R. Crim. P. 32.6(c)(3) (stating that a victim’s restitution information statement is to be submitted *ex parte* and providing that the victims’ identifying and locating information is not to be disclosed to anyone other than court personnel); Idaho R. Admin. 32(g)(17)(F) (providing that personal or identifying victim information contained in restitution sheets is not subject to disclosure pursuant to a public records request); *United States v. Gallion*, No. CRIM.A. 2:07-39-DCR, 2011 WL 4015586, at \*4 (E.D. Ky. Sept. 9, 2011) (mem.), *aff’d* 504 F. App’x 373 (6th Cir. 2012) (relying on, *inter alia*, on 18 U.S.C. § 3664(d)(4) when concluding that “a district court in a restitution proceeding may seal a record if it finds an overriding interest in maintaining the privacy of the records”).

<sup>75</sup> See *Whalen v. Roe*, 429 U.S. 589, 599 (1977) (observing that the federal constitutional right to privacy includes an “individual interest in avoiding disclosure of personal matters”); Ariz. Const. art. II, § 8 (providing that “[n]o person shall be disturbed in his private affairs . . . without authority of law”); Fla. Const. art. I, § 23 (providing “[e]very natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein”); Wash. Const. Art. I, § 7 (“No person shall be disturbed in his private affairs . . . without authority of law.”).

<sup>76</sup> See, e.g., 18 U.S.C. § 3771(a)(8) (affording victims the right to be treated with respect for their privacy); D.C. Stat. Ann. § 23-1901(b)(1) (same); Idaho Const. art. I, § 22(1) (affording victims the right to be treated with respect for their privacy); Ill. Const. art. I, § 8.1(a)(1) (same); 725 Ill. Comp. Stat. Ann. 120/4(a)(1) (same); Mich. Const. art. I, § 24(1) (same); Nev. Const. art. I, § 8A(1)(a) (same); N.H. Rev. Stat. Ann. § 21-M-8:k(II)(a) (same); N.M. Const. art. II, § 24(A)(1) (same); Ohio Const. art. I, § 10a(A)(1) (same); Okla. Const. art. II, § 34(A) (same); Tex. Const. art. I, § 30(a)(1) (same); )Va. Code Ann. § 19.2-11.01(A) (same); Wis. Const. art. I, § 9m(2)(b) (affording victims the right privacy).

<sup>77</sup> See, e.g., *United States v. Starr*, No. 10 CR 520 (SAS), 2011 WL 1796340, at \*1 & n.7 (S.D.N.Y. May 2, 2011) (relying on, *inter alia*, victims’ right to privacy under the CVRA when rejecting a media request for disclosure of the victims’ sealed restitution requests); *People v. Cartwright*, No. A101108, 2004 WL 179198, at \*10–11 (Cal. Ct.

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App. Jan. 30, 2004) (concluding that defendant was not entitled to unredacted copies of the victim’s medical and mental health bills for restitution purposes on the ground that defendant’s “need for the documents was slight, the victims’ privacy and safety interests were substantial” and noting that the privacy protections accorded a victim’s intimate personal information are especially strong when the information is being sought by a person who perpetrated violence against the victim); *State v. McClelland*, 357 P.3d 906, 909 (Mont. 2015) (recognizing that a victim may have a protectable expectation of privacy in form supporting restitution order). For additional information regarding potential responses by the victim and/or the state when a defendant seeks to compel production of their private records, see *infra* Part IV.B.1.vi.a.

<sup>78</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-4434(A) (“The victim has the right at any court proceeding not to testify regarding any identifying or locating information unless the victim consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on the motion shall be in camera.”); Utah Code Ann. § 77-38-6(1) (“The victim of a crime has the right, at any court proceeding, including any juvenile court proceeding, not to testify regarding the victim’s address, telephone number, place of employment, or other locating information unless the victim specifically consents or the court orders disclosure on finding that a compelling need exists to disclose the information. A court proceeding on whether to order disclosure shall be in camera.”); see *State v. Quijada*, 439 P.3d 815, 826 (Ariz. App. Ct. 2019) (recognizing that a court may quash a motion to compel a victim’s presence at a restitution hearing if the sought testimony is in violation of, *inter alia*, a victim’s statutory right to refuse to testify regarding their identifying or locating information).

<sup>79</sup> See, e.g., 18 U.S.C. § 3509(d) (affording child victims certain rights regarding the nondisclosure of their name and other personal information); Cal. Const. art. I, § 28(b)(4) (affording victims the right “[t]o prevent the disclosure of confidential information or records to the defendant, the defendant’s attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim’s family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law”); Fla. Const. art. I, § 16(b)(5) (affording victims “[t]he right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim’s family, or which could disclose confidential or privileged information of the victim”); Nev. Const. art. I, § 8A(d) (affording victims the right “[t]o prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim’s family”).

<sup>80</sup> See, e.g., Ariz. Const. art. II, § 2.1(a)(5); Cal. Const. art. I, § 28(b)(5); Or. Const. art. I, § 42(1)(c).

<sup>81</sup> See *supra* note 52.

<sup>82</sup> See *supra* note 55.

<sup>83</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-4062(4) (physician-patient privilege); Cal. Evid. Code § 1014 (psychotherapist-patient privilege); Utah R. Evid. 512 (victim advocate-victim privilege and confidentiality); *United States v. Shrader*, No. 1:09-0270, 2010 WL 4781625, at \*1–2 (S.D. W. Va. Nov. 16, 2020) (denying defendant’s request for issuance of a subpoena of the victim’s privileged mental health records for restitution purposes on the ground that psychotherapist-patient privilege protects against production of such records); *People v. Garcia*, 111 Cal. Rptr. 3d 435, 442, 443 (Cal. App. Ct. 2010) (recognizing that the psychotherapist-patient privilege protected certain information from compelled disclosure in the restitution setting); *People v. Rivera*, 250 P.3d 1272, 1277 (Colo. Ct. App. 2010) (recognizing that confidential victim records are not subject to disclosure for restitution purposes absent a showing of need); see *Garcia*, 111 Cal. Rptr. 3d at 442–43 (internal citations and quotation marks omitted) (“Requiring a victim of a sexual assault or rape . . . to disclose the details of her communications with her therapist when requesting restitution for therapy costs would tend to deter victim from requesting restitution for the cost of therapy: It would be too much to expect them to do so if they knew that all they say – and all that the psychiatrist learns from what they say – may be revealed to the whole world from a witness stand. . . . The crime victim no doubt has already suffered the humiliation and trauma of being victimized by the defendant.”); see *generally Protecting Victims’ Privacy: Confidentiality and Privilege Primer*, NCVLI (2017), <https://law.lclark.edu/live/files/25187-ncvli-newsletter--protecting-victims> (detailing the concepts of privilege and confidentiality with respect to victims’ privacy rights and interests).

<sup>84</sup> See, e.g., Fed. R. Crim. P. 17(c)(3) (requiring court order prior to the issuance of a subpoena for production of a victim’s personal or confidential information); S.C. R. Crim. P. 13(a)(2) (same); Utah R. Crim. P. 14(b) (outlining procedure for subpoenas for the production of victims’ privileged and unprivileged records); *United States v. Ganesh*, No. 16-cr-00211 LHK (NC), 2018 WL 9732209, at \*1 (N.D. Cal. June 20, 2018) (slip) (directing defendants to ensure that victims are notified of subpoenas seeking their confidential medical information for the purposes of challenging restitution claims, pursuant to Fed. R. Crim. P. 17(c)(3)).

<sup>85</sup> Compare *United States v. Gray*, No. 2:07 CR 166, 2010 WL 11680178, at \*1 (N.D. Ind. Oct. 22, 2010) (citing cases) (recognizing that “[w]hile the language of Rule 17 indicates that it may apply only before trial, courts have held that it can also apply to post-trial matters including sentencing hearings”) with *United States v. Shrader*, No. 1:09-0270, 2010 WL 4781625, at \*2 (S.D. W. Va. Nov. 16, 2020) (concluding that Fed. R. Crim. P. 17(c)(3) applies to subpoenas requesting the production of information prior to trial and not to requests for the production of materials related to restitution and sentencing) and *United States v. Hills*, No. 1:16-CR-329, 2019 WL 1873220, at \*1 (N.D. Ohio Apr. 26, 2019) (“[T]he Court is not convinced that [Federal Rule of Criminal Procedure 17(c)(3)] is available to compel the production of documents for use at sentencing.”).

<sup>86</sup> See *People v. Kelly*, 274 Cal. Rptr. 3d 158, 169 (Cal. Ct. App. 2020) (providing that, in restitution hearings, a victim does not waive the privilege or confidentiality of information related to professional services by submitting a bill for such services).

<sup>87</sup> See, e.g., 18 U.S.C. § 3509(d)(2) (providing that court filings made in cases involving child victims must be filed under seal); Fed. R. Crim. Proc. 49.1 (listing certain information that should be redacted from court filings for privacy); Cal. R. Court 2.551 (setting forth procedure for filing court documents under seal); *People v. Clark*, No. A142142, 2015 WL 5315402, at \*1 (Cal. Ct. App. Sept. 11, 2015) (recognizing that documents supporting the victims’ restitution request were appropriately filed under seal, pursuant to state rules of court).

<sup>88</sup> See *United States v. Starr*, No. 10 CR 520 (SAS), 2011 WL 1796340, at \*1 (S.D.N.Y. May 2, 2011) (relying on the CVRA, the MVRA, Fed. R. Crim. Proc. 32 and 49.1, and policies of the Judicial Conference of the United States when concluding that the balance of competing interests favored sealing victim’s restitution submissions where, *inter alia*, “the fact that both the legislature and the judiciary favor the protection of a victim’s financial information, submitted in furtherance of restitution and the imposition of a fair sentence, weighs heavily in favor of shielding this information from public disclosure”); *United States v. Rainford*, No. S1 18 CR. 289 (SHS), 2020 WL 1673139, at \*2 (S.D.N.Y. Apr. 6, 2020) (slip copy) (filing under seal restitution documents containing the victims’ identifying information and amount they were owed in restitution, “[c]onsistent with 18 U.S.C. §§ 3771(a)(8) & 3664(d)(4) and Federal Rule of Criminal Procedure 49.1, to protect the privacy interests of victims”); *United States v. Taylor*, No. 18 CR. 586 (ALC), 2021 WL 3140437, at \*2 (S.D.N.Y. July 26, 2021) (slip copy) (same); *United States v. Church*, 702 F. Supp. 2d 615, 618 (W.D. Va. 2010) (recognizing that 18 U.S.C. § 3509(d) calls for certain documents supporting a child victim’s restitution request to be filed under seal and that redaction may be necessary to protect the victim’s privacy interests).

<sup>89</sup> See, e.g., 18 U.S.C. § 1593; *id.* § 2259; *id.* § 2327; *id.* § 2421A; *id.* § 2429; *id.* § 3663A; *id.* § 3771(a)(6).

<sup>90</sup> See, e.g., Ala. Code § 15-18-67; Alaska Const. art. I, § 24; Alaska Stat. Ann. § 12.55.045(a); Ariz. Const. art. II, § 2.1(A)(8); Ariz. Rev. Stat. Ann. § 13-603(C); Cal. Const. art. I, § 28(b)(13); Cal. Penal Code § 1202.4(f)(3); Colo. Rev. Stat. Ann. § 24-4.1-302.5(1)(h); Conn. Const. art. I, § 8(b)(9); Conn. Gen. Stat. Ann. § 53a-28(c); Del. Code Ann. tit. 11, § 4204(c)(9); D.C. Code § 23-1901(b)(6); Fla. Const. art. I, § 16(b)(9); Fla. Stat. Ann. § 775.089(1)(a); Ga. Code Ann. § 17-17-1(7); Idaho Code Ann. § 19-5304(2); Ill. Const. art. I, § 8.1(a)(12); 725 Ill. Comp. Stat. Ann. 120/4(a)(10); Iowa Code Ann. § 910.2(1)(a); Kan. Stat. Ann. § 21-6604(b)(1); Ky. Const. § 26A; Ky. Rev. Stat. Ann. § 532.032; La. Const. art. 1, § 25; La. Code Crim. Proc. Ann. art. 883.2(A); Mich. Const. art. I, § 24(1); Mich. Comp. Laws Ann. § 780.766(2); *id.* § 780.826(2); Minn. Stat. Ann. § 611A.04(1)(a); Mont. Code Ann. § 46-18-241(1); Nev. Const. art. I, § 8A(1)(1); N.J. Stat. Ann. § 2C:44-2(b); N.C. Const. art. I, § 37(1a)(c); N.C. Gen. Stat. Ann. § 15A-1340.34(b); Ohio Const. art. I, § 10a(A)(7); Okla. Const. art. II, § 34(A); 22 Okla. Stat. Ann. § 991f(C)(1); Or. Rev. Stat. Ann. § 137.106(1)(a); 18 Pa. Stat. § 11.201(6); R.I. Const. art. I, § 23; S.C. Code Ann. § 17-25-322; S.D. Const. art. 6, § 29(14); Tex. Const. art. I, § 30(b)(4); Utah Code Ann. § 76-3-201(4)(a); Va. Const. art. I, § 8-A(5); W. Va. Code § 61-11A-4(a); Wis. Stat. Ann. § 973.20(1r); Wyo. Stat. Ann. § 7-9-102.

<sup>91</sup> See, e.g., Ariz. Const. art. II, § 2.1(A)(8) (affording victims the right “[t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury”); Cal. Const. art. I, § 28(b)(13)(B) (guaranteeing victims the right to restitution and stating that “[r]estitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss”); Fla. Const. art. I, § 16(b)(9) (recognizing 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”); Or. Rev. Stat. Ann. § 137.106(1)(a) (requiring courts to order restitution when a victim suffers economic damages).

<sup>92</sup> See, e.g., 18 U.S.C. § 3771(a)(6); Ga. Code Ann. § 17-17-1(7); Idaho Const. art. I, § 22(7); Ky. Rev. Stat. Ann. § 532.032; N.H. Rev. Stat. § 21-M:8-k(II); Wis. Stat. Ann. § 950.04(1v)(q); see also *State v. Johnson*, 470 P.3d

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1263, 1267–68 (Idaho Ct. App. 2020) (finding that “[b]ecause the Idaho Constitution gives crime victims the right ‘to restitution, as provided by law,’ additional statutory provisions further define the scope of restitution”).

<sup>93</sup> Notably, courts do not always order restitution even when law mandates it. *See, e.g.,* Amanda Peters, *Reconsidering Federal and State Obstacles to Human Trafficking Victim Status and Entitlements*, 2016 Utah L. Rev. 535, 556 (2016) (internal footnotes omitted) (“Under the [federal Trafficking Victims Protection Act], victims are guaranteed mandatory restitution for the full amount of their losses. The statutory mandate that ‘the court shall order restitution’ to human trafficking victims implies it is awarded in every case. It is not. Federal judges have ordered the trafficker to compensate victims in only 36% of all human trafficking cases. Federal prosecutors do not always request restitution nor do judges consistently grant it. In only 61% of trafficking cases did the Assistant United States Attorney request restitution; of those cases, fewer than one-third of the requests resulted in a judicial order of restitution. When a restitution request was not made, restitution was rarely ordered by the court sua sponte.”).

<sup>94</sup> Some jurisdictions provide limited mandatory restitution laws based upon broad categories of crime. *See, e.g.,* 18 U.S.C. § 3663A(a)(1) (mandating restitution for certain, enumerated federal offenses, as well as any federal offense “in which an identifiable victim or victims has suffered a physical injury or pecuniary loss”); Ariz. Rev. Stat. Ann. § 13-1309 (mandating restitution for violations of statutes governing labor and sex trafficking); N.M. Const. art. II, § 24(A)(8) (mandating restitution for victims of certain, enumerated crimes). Some jurisdictions provide limited mandatory restitution laws based upon narrow categories of crime. Crime-specific mandatory restitution provisions can be found in jurisdictions where restitution is otherwise mandatory. *See, e.g.,* 18 U.S.C. § 1593(a) (mandating restitution for victims of human trafficking); *id.* § 2248(a) (mandating restitution for victims of sexual abuse); 720 Ill. Comp. Stat. Ann. 5/10-9(g) (mandating restitution for victims of human trafficking); Mich. Comp. Laws Ann. § 750.395(7) (mandating restitution for victims of damage or destruction of research property); S.C. Code Ann. § 16-3-2040(A) (mandating restitution for victims of human trafficking). Crime-specific mandatory restitution provisions also exist in jurisdictions that otherwise take a permissive approach to restitution. *See, e.g.,* Haw. Rev. Stat. Ann. § 707-785(1) (mandating restitution for victims of labor trafficking, notwithstanding a general state restitution law that mandates restitution only when the victim requests it); *id.* § 431:2-404 (mandating restitution for victims of insurance fraud, notwithstanding a general state restitution law that mandates restitution only when the victim requests it); Ind. Stat. Ann. § 35-42-3.4-2 (mandating restitution for victims of human trafficking, where restitution is otherwise discretionary); Md. Code Ann., Crim. Law § 7-104(g)(1) (mandating restitution for theft victims, where restitution for victims of other offenses is subject to the court’s discretion); Miss. Code Ann. § 97-3-54.6(2) (mandating restitution for human trafficking victims, where restitution is otherwise discretionary); N.H. Rev. Stat. Ann. § 631:10(I) (same); N.H. Rev. Stat. Ann. § 635.8 (mandating restitution when defendants are convicted desecrating cemeteries and or gravestones, where restitution is discretionary under the state’s general restitution provision).

<sup>95</sup> *See, e.g.,* Iowa Code Ann. § 915.100(2)(a)–(b) (mandating restitution in criminal cases involving adult offenders but making restitution discretionary in cases involving juvenile offenders); Ky. Const. § 26A (guaranteeing victims the right to full restitution from adult defendants and providing that, in the case of juvenile offenders, the court has discretion to determine the amount and manner of restitution); *In Interest of CM*, 409 P.3d 752, 760–62 (Haw. Ct. App. 2017) (distinguishing restitution in adult criminal proceedings, which is mandatory, from restitution in juvenile proceedings before the family court, which is discretionary).

<sup>96</sup> *See, e.g.,* N.J. Stat. Ann. § 2C:44-2(b) (mandating restitution where the victim has suffered a loss and the defendant is able or will be able to pay); W. Va. Code § 61-11A-4(a) (mandating restitution “to the greatest extent economically practicable when considering the defendant’s financial circumstances”); Wyo. Stat. Ann. § 7-9-102 (mandating restitution “unless the court specifically finds that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay”).

<sup>97</sup> *See, e.g.,* Alaska Stat. Ann. § 12.55.045(a) (mandating restitution unless the victim expressly declines it); Haw. Rev. Stat. Ann. § 706-646(2) (“The court shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victims as a result of the defendant’s offense when requested by the victim.”); N.Y. Penal Law § 60.27(1) (requiring the court to order restitution where the victim requests it through the prosecutor or in a victim impact statement, “unless the interests of justice dictate otherwise”); Tex. Const. art. I, § 30(b)(4) (providing that victims, upon request, have the right to restitution).

<sup>98</sup> Under some provisions calling for mandatory restitution, even the victim cannot waive restitution. *See, e.g., United States v. Johnson*, 378 F.3d 230, 244 (2d Cir. 2004) (holding that the district court must, under the MVRA, impose restitution, even if the victim declines it and observing that “[t]o hold otherwise would be inconsistent with

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the MVRA’s statutory scheme of mandatory restitution, and it would undermine the power of the criminal justice system to punish defendants, where appropriate, through orders of restitution”); *State v. Contreras*, 885 P.2d 138, 142 (Ariz. Ct. App. 1994) (observing that even if a victim declines to request restitution, the court’s obligation to impose such restitution remains given the remedial objectives of restitution); *State v. Gaiovik*, 794 N.W.2d 643, 652 (Minn. 2011) (concluding that “a district court’s authority to award restitution is not limited to only the circumstance where the victim requests restitution”); *State v. Miller*, 842 N.W.2d 474, 479 (Minn. Ct. App. 2014) (citation omitted) (“The victim, an interested, typically unrepresented nonparty to the criminal proceeding, has rights and interests aligned with but independent of the state’s interests. This independent right authorizes the district court to order restitution even when the victim does not request it.”). *But see United States v. Speakman*, 594 F.3d 1165, 1177 (10th Cir. 2010) (concluding that “the MVRA is expressly made subject to the victim accepting restitution” because, *inter alia*, the statute provides that victims are not required to participate in any phase of a restitution order).

<sup>99</sup> *See, e.g.*, 18 U.S.C. § 3663A(c)(3) (stating that restitution is not mandatory “if the court finds, from facts on the record, that – (A) the number of identifiable victims is so large as to make restitution impracticable; or (B) determining complex issues of fact related to the cause or amount of the victim’s losses would complicate or prolong the sentencing process to a degree that the need to provide restitution by any victim is outweighed by the burden on the sentencing process”); Idaho Code Ann. § 19-5304(2) (“Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim.”); Kan. Stat. Ann. § 21-6604(b)(1) (mandating restitution, “unless the court finds a plan of restitution unworkable”); Me. Rev. Stat. Ann. tit. 17-A, § 2003(1) (“The court shall, whenever practicable, inquire of a prosecutor, law enforcement officer or victim with respect to the extent of the victim’s financial loss and shall order restitution when appropriate.”); Wash. Rev. Code Ann. § 9.94A.753(5) (“Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court’s judgment and the court sets forth such circumstances in the record.”); Wis. Stat. Ann. § 973.20(1r) (mandating full restitution in cases other than those involving domestic abuse, “unless the court finds substantial reason not to do so and states the reason on the record”); *see also State v. Tucker*, 465 P.3d 173, 174 (Kan. 2020) (“[R]estitution is the rule, and unworkability is the exception.”).

<sup>100</sup> *See, e.g.*, 18 U.S.C. § 3663.

<sup>101</sup> *See, e.g.*, Ark. Code Ann. § 5-4-205(a)(1); Ind. Code Ann. § 35-50-5-3(a); Md. Code Ann., Crim. Proc. § 11-603(b); Mass. Gen. Laws Ann. ch. 258B, § 3(o); Miss. Code Ann. § 99-37-3(1); Mo. Ann. Stat. § 559.105(1); Neb. Rev. Stat. Ann. § 29-2280; N.H. Rev. Stat. Ann. § 651:63(I); Vt. Stat. Ann. tit. 13 § 7043.

<sup>102</sup> *See, e.g.*, Ind. Code Ann. § 35-40-5-7 (providing victims with the right to pursue restitution in a jurisdiction where restitution is otherwise permissive); Mass. Gen. Laws Ann. ch. 258B, § 3(o) (guaranteeing victims the right to request restitution in a jurisdiction where restitution is otherwise permissive).

<sup>103</sup> *See, e.g.*, Vt. Stat. Ann. tit. 13 § 7043 (requiring the consideration of restitution in every case in which a crime victim suffers a material loss).

<sup>104</sup> *See, e.g.*, N.H. Rev. Stat. § 651:61-a (stating that the purpose of the state’s restitution laws is “to establish presumption that the victim will be compensated by the offender who is responsible for the loss”); *State v. Pinault*, 120 A.3d 913, 916 (N.H. 2015) (recognizing the presumption, under the state’s restitution laws, in favor of awarding victims full restitution).

<sup>105</sup> *See, e.g.*, Ark. Code Ann. § 5-4-205(a)(2) (“If the court decides not to order restitution or orders restitution of only a portion of the loss suffered by the victim, the court shall state on the record in detail the reasons for not ordering restitution or for ordering restitution of only a portion of the loss.”); N.H. Rev. Stat. § 651:63(I) (“In any case in which restitution is not ordered, the court shall state its reasons therefor on the record or in its sentencing order.”); Vt. Stat. Ann. tit. 13, § 7043(g)(1) (“When restitution is requested but not ordered, the court shall set forth on the record its reasons for not ordering restitution.”).

<sup>106</sup> *See supra* Part III.A.2.

<sup>107</sup> *See supra* note 95.

<sup>108</sup> *See supra* note 94.

<sup>109</sup> *See, e.g.*, D.C. Code § 23-1901(b)(6) (providing that victims have “the right to . . . [a]n order of restitution from the person convicted of the criminal conduct that caused the victim’s loss or injury”) *and id.* § 16-711(a) (“In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of

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probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.”); Fla. Const. art. I, § 16(b)(9) (guaranteeing victims 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) *and* Fla. Stat. Ann. § 775.089(1)(a) (authorizing courts to not issue restitution if they “find[] clear and compelling reasons” not to do so); Ohio Const. art. I, § 10a(A)(7) (affording victims the right “to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim”) *and* Ohio Rev. Code Ann. § 2919.18(A) (authorizing, but not requiring courts to impose restitution as a financial sanction in felony cases); Tex. Const. art. I, § 30(b)(4) (providing that victims, upon request, have the right to restitution) *and* Tex. Code Crim. Proc. Ann. art. 42.037(a) (affording courts discretion to order restitution when a defendant is convicted of an offense).

<sup>110</sup> *See, e.g., State ex rel. Howery v. Powers*, 154 N.E.3d 146, 149 (Ohio Ct. App. 2020) (concluding that under a new constitutional guarantee to restitution, victims have a clear right to mandatory restitution despite the discretionary language of the state’s preexisting restitution statutes).

<sup>111</sup> *See, e.g., Cal. Penal Code* § 186.12(a)–(b) (authorizing for superior court to preserve assets of person charged with certain fraud and embezzlement felonies for restitution purposes and authorizing the prosecuting agency, “[t]o prevent dissipation of secreting property” by filing, “at the same time as or subsequent to the filing of a complaint or indictment charging” certain felony embezzlement and fraud charges, “a petition with the criminal division of the superior court of the county in which the accusatory pleading was filed, seeking a temporary restraining order, preliminary injunction, the appointment of a receiver, or any other protective relief necessary to preserve the property or assets”); *id.* § 236.6(a) (authorizing the prosecuting agency “[t]o prevent dissipation or secreting of assets or property,” by filing, “at the same time as or subsequent to the filing of a complaint or indictment charging human trafficking,” “a petition with the criminal division of the superior court of the county in which the accusatory pleading was filed, seeking a temporary restraining order, preliminary injunction, the appointment of a receiver, or any other protective relief necessary to preserve the property or assets”); 720 Ill. Comp. Stat. Ann. 5/17-56(h) (providing that, in cases where “a person is charged with financial exploitation of an elderly person or a person with a disability that involves the taking or loss of property valued at more than \$5,000, a prosecuting attorney may file a petition with the circuit court of the county in which the defendant has been charged to freeze the assets of the defendant in an amount equal to but not greater than the alleged value of lost or stolen property in the defendant’s pending criminal proceeding for purposes of restitution to the victim”); Mont. Code Ann. § 46-18-244(5) (“After a prosecution is commenced and upon petition of the prosecutor, the court may grant a restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the restraining order or injunction, bond, or other action is necessary to preserve property or assets that could be used to satisfy an anticipated restitution order. A hearing must be held on the petition, and any person with an interest in the property is entitled to be heard.”); 42 Pa. Stat. § 9728(e) (authorizing the preservation of assets subject to restitution upon the filing of a criminal complaint, information or indictment, subject to certain showings and conditions); *United States v. Scully*, 882 F.3d 549 (5th Cir. 2018) (recognizing that the trial court did not run afoul of federal precedent in issuing a post-trial, pre-judgment order restraining defendants’ assets for the purposes of a future restitution award); *United States v. Johnson*, No. 1:18-CR-00214-DCN, 2021 WL 2556153, at \*3 (D. Idaho June 21, 2021) (recognizing that federal courts may have authority under the All Writs Act, 28 U.S.C. § 1651(a), to freeze a party’s assets to ensure the availability of funds for restitution). *But see Luis v. United States*, 136 S. Ct. 1083, 1093–94 (2016) (concluding that a defendant’s interests in assets unrelated to criminal activity to retain counsel outweighs the government’s interest in ensuring that, in the event of a defendant’s conviction, such assets are available for the payment of criminal forfeiture or restitution; and holding that pretrial restraint of a defendant’s untainted assets to retain counsel of choice violates the Sixth Amendment).

<sup>112</sup> *See, e.g., 720 Ill. Comp. Stat. Ann. 5/17-56(h)* (“The burden of proof required to freeze the defendant’s assets [in certain cases involving the financial exploitation of an elderly person or a person with a disability] shall be by a preponderance of the evidence.”); 42 Pa. Stat. § 9728(e) (authorizing the preservation of assets subject to restitution based upon a hearing and certain showings).

<sup>113</sup> *See, e.g., 18 U.S.C. § 3771(a)(6), (d)(1)* (affording victims the right to restitution and providing that this right may be enforced by the victim, the victim’s lawful representative or the prosecutor); Md. Code Ann., Crim. Proc. § 11-603(b) (emphasis added) (stating that a victim is presumed to have a right to restitution if the victim *or* the state requests it and there is competent evidence of compensable loss); Minn. Stat. Ann. § 611A.04(1)(a) (stating that a victim may file a request for restitution, which must later be served on the prosecutor); *United States v. Gamma Tech Industries, Inc.*, 265 F.3d 917, 924 (9th Cir. 2001) (finding that federal restitution statutes authorize victims to

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request restitution independent of the government); *State v. Shakibi*, No. A14-0242, 2014 WL 6609082, at \*2 (Minn. Ct. App. Nov. 24, 2014) (concluding that victims need not have party status in a criminal proceeding to request restitution independent of the prosecutor); *State v. Lynch*, 469 P.3d 800, 805 (Or. Ct. App. 2020) (finding that where the state’s plea agreement with a defendant provides that restitution will be determined within a statutory 90-day time limit and the victim seeks restitution outside of that time window, the prosecutor may need to decline to pursue the victim’s request under the terms of the plea, but the victim, acting on their own accord, is not barred from obtaining restitution independently); *State v. Brown*, 342 P.3d 239, 240 (Utah 2014) (concluding that the victim had standing under the state’s victims’ rights and restitution to file a request for restitution and did not need to proceed through the intermediary of the prosecution). Notably, a prosecutor’s failure to request restitution has been found to not waive the victim’s right to request it. *See, e.g., Lafontant v. State*, 13 A.3d 56, 67 (Md. Ct. Spec. App. 2011) (recognizing 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).

<sup>114</sup> *See, e.g., State v. Johnson*, 470 P.3d 1263, 1268 (Idaho Ct. App. 2020) (vacating the lower court’s grant of victim’s motion for restitution on the ground that the victim lacked standing to pursue restitution independent of the prosecutor).

<sup>115</sup> Minn. Stat. Ann. § 611A.04(1)(a) (“The court, or a person or agency designated by the court, shall request information from the victim to determine the amount of restitution owed. The court or its designee shall obtain the information from the victim in affidavit form or by other competent evidence.”).

<sup>116</sup> *See, e.g., Wis. Stat. Ann. § 973.20(1)(c)* (“The court, before imposing sentence or ordering probation, shall inquire of the district attorney regarding the amount of restitution, if any, that the victim claims.”).

<sup>117</sup> *See, e.g., Okla. Stat. Ann. tit. 21, § 142A-5* (“The unexcused failure or refusal of the crime victim to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed available information.”); Del. R. Super. Ct. 32(g)(2) (“Except for good cause shown, failure to timely return a Restitution Claim Form shall be deemed a waiver of restitution.”).

<sup>118</sup> *See, e.g., Md. Code Ann., Crim. Proc. § 11-603(b)* (stating that a victim is presumed to have a right to restitution if the victim or the state requests it and there is competent evidence of compensable loss); N.Y. Penal Law § 60.27(1) (providing that the district attorney must, where appropriate, “advise the court at or before the time of sentencing that the victim seeks restitution or reparation. . .”); 21 Okla. Stat. Ann. § 142A-5 (requiring the district attorney’s office to provide all victims with an official request for restitution form to complete, regardless of whether the victim specifically requested the form); *State v. Stutler*, 402 P.3d 1013, 1015 (Ariz. Ct. App. 2017) (noting that state filed a motion for restitution on the victim’s behalf); *State v. Johnson*, 470 P.3d 1263, 1268 (Idaho Ct. App. 2020) (citing cases) (“The State seeking restitution on behalf of crime victims has consistently been the practice in Idaho.”).

<sup>119</sup> *See, e.g., 18 U.S.C. § 3664(g)(1)* (“No victim shall be required to participate in any phase of a restitution order.”); *see People v. Lehman*, 202 Cal. Rptr. 3d 386, 394 (2016) (concluding that the state had authority to seek noneconomic restitution on the victims’ behalf even where the victim did not specifically file a demand for such restitution).

<sup>120</sup> *See, e.g., 725 Ill. Comp. Stat. Ann. 120/4.5(b)(11)* (requiring the State’s Attorney to “request restitution at sentencing and as part of a plea agreement if the victim requests restitution”).

<sup>121</sup> *See supra* note 40.

<sup>122</sup> *See supra* note 43.

<sup>123</sup> *See supra* note 44.

<sup>124</sup> *See supra* note 45.

<sup>125</sup> *See supra* note 46.

<sup>126</sup> *See supra* note 52.

<sup>127</sup> *See supra* note 54.

<sup>128</sup> *See supra* note 55.

<sup>129</sup> *See supra* note 56.

<sup>130</sup> *See supra* note 57.

<sup>131</sup> *See supra* note 62.

<sup>132</sup> For information regarding victims’ restitution-related privacy and confidentiality rights and protections, *see supra* Part II.B.

<sup>133</sup> *See supra* note 9.

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<sup>134</sup> See *supra* note 72.

<sup>135</sup> See *supra* note 73.

<sup>136</sup> See, e.g., Minn. Stat. Ann. § 611A.04(1)(a) (providing that the court or its designee must obtain from the victim an itemized list describing their losses, the dollar amounts of restitution claimed and reasons to justify these amounts); S.C. Code Ann. § 16-3-1515(B) (requiring victims who wish to receive restitution to submit an itemized list of their losses to the prosecuting agency or the court “within an appropriate time limit”).

<sup>137</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-804(I) (providing that a restitution order “may be supported by evidence or information introduced or submitted to the court before sentencing or any evidence previously heard by the judge during the proceedings”); *United States v. Pickett*, 387 F. App’x 32, 36 (2d Cir. 2010) (finding that affidavits from victims detailing their financial losses were not necessary to establish the amount of loss by a preponderance of the evidence where the court found evidence of such loss in the trial testimony of a case agent and a chart prepared by that agent summarizing the victims’ losses); *People v. Lehman*, 202 Cal. Rptr. 3d 386, 393 (Cal. App. Ct. 2016) (explaining that state law does not require the prosecution to present victim testimony or affidavits or expert declarations in connection with a restitution request and that the trial court properly relied on both victims’ testimony at trial, one victim’s statement at sentencing and a probation report when reaching its restitution determination).

<sup>138</sup> See, e.g., 21 Okla. Stat. Ann. § 142A-5 (“The district attorney’s office shall provide all victims, regardless of whether the crime victim makes a specific request, with an official request for restitution form to be completed and signed by the crime victim, and to include all invoices, bills, receipts, and other evidence of injury, loss of earnings and out-of-pocket loss. The crime victim shall provide all documentation and evidence of compensation or reimbursement from insurance companies or agencies of this state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings or out-of-pocket loss.”); Del. R. Super. Ct. 32(g) (requiring the Office of Investigative Services to provide victims with a Restitution Claim Form for the victim to complete either after a plea agreement is reached or as part of a presentence investigation).

<sup>139</sup> See, e.g., 18 U.S.C. § 3664(d)(2)(A)(iv) (affording victims the opportunity to file, with the probation officer charged with preparing a presentence report, “a separate affidavit relating to the amount of the victim’s losses subject to restitution”); Minn. Stat. Ann. § 611A.04(1)(a) (requiring courts or their designees to obtain information underlying a victim’s restitution request “in affidavit form or by other competent evidence”).

<sup>140</sup> See, e.g., S.C. Code Ann. § 16-3-1515(B) (requiring that a victim who wishes to receive restitution must, “within an appropriate time limits set by the prosecuting agency or summary court judge, provide the prosecuting agency or summary court judge with an itemized list which includes [certain information regarding the victim’s financial losses]” and stating that such information may be included in written victim impact statement).

<sup>141</sup> See, e.g., Minn. Stat. Ann. § 611A.04(1)(a) (requiring courts or their designees to obtain information underlying a victim’s restitution request “in affidavit form or by other competent evidence”); S.C. Code Ann. § 16-3-1515(B) (providing that victims may submit a list of their losses and documentation of their claims directly to the prosecutor or the court or through a written victim impact statement).

<sup>142</sup> See, e.g., Ind. Code Ann. § 35-40-6-4(10) (providing victims with the right to have a prosecuting attorney or victim assistance program assist them “in preparing verified documentation necessary to obtain a restitution order”); Mass. Gen. Laws Ann. ch. 258B, § 3(o) (providing that victims have the right “to obtain assistance from the prosecutor in the documentation of the victim’s losses”); Vt. Stat. Ann. tit. 13, § 5304(a)(3)(C) (providing victims with the right to “assistance in documenting and preparing requests for restitution and insurance reimbursement”).

<sup>143</sup> See, e.g., Okla. Stat. Ann. tit. 21, § 142A-5; S.C. Code Ann. § 16-3-1515(B); Del. R. Super. Ct. 32(g)(2)

<sup>144</sup> See, e.g., *United States v. Pickett*, 387 Fed. App’x 32, 36 (2d Cir. 2010) (summary order) (“Nothing precludes a court from ordering restitution in the absence of [loss] affidavits.”); *People v. Lehman*, 202 Cal. Rptr. 3d 386, 393 (Cal. App. Ct. 2016) (explaining that state law does not require the prosecution to present victim testimony or affidavits or expert declarations in connection with a restitution request).

<sup>145</sup> See, e.g., *Anderson v. State*, 794 N.W.2d 137, 140–41 (Minn. Ct. App. 2011) (finding that because the plain language of the identity theft statute required that all victims be paid a minimum of \$1,000 in restitution, the victims were not required to submit loss affidavits in order to receive restitution).

<sup>146</sup> See, e.g., 18 U.S.C. § 3664(a) (requiring information necessary to order restitution be included in a presentence investigation report or a separate report); Fed. R. Crim. P. 32(c)(1)(B), (d)(2)(D) (governing when a probation officer must conduct a presentence investigation report and the contents of such a report, including information related to the financial impact of the offense on the victim); Ariz. Rev. Stat. Ann. § 12-253(4) (requiring probation officers to investigate cases referred by the court and prepare a presentence investigation report, including the



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financial impact of the offense on the victim); Cal. Penal Code § 1203(b), (h) (requiring probation officers to prepare presentence investigation report in felony cases and to include comments from the victim, unless the court directs the officer not to include a statement from the victim because the victim has testified regarding the offense); Haw. Rev. Stat. Ann. § 706-602(1) (requiring personnel or an agency assigned by the court to conduct presentence diagnosis and make a report, which must include information from the victim regarding the financial losses the victim suffered as a result of the offense); Idaho Code Ann. § 19-5304(12) (“Every presentence report shall include a full statement of economic loss suffered by the victim or victims of the defendant’s crime or crimes.”); 730 Ill. Comp. Stat. Ann. 5/5-3-1 to 5/5-3-2(a)(3) (requiring presentence investigation reports in felony cases and that such reports include information regarding a victims’ financial losses); Mich. Comp. Laws Ann. § 780.767(2) (providing that a court may order a probation officer to conduct a presentence report including information regarding a victims’ financial losses); Mo. Stat. Ann. § 217.762(1)–(2) (requiring presentence investigation reports in felonies that resulted in a serious physical injury or death and providing that such reports must include a victim impact statement if the offense caused the victim, *inter alia*, economic injury); Mont. Code Ann. § 46-18-112(1)(f) (providing that, if the court orders a presentence investigation report, it must include information regarding the victim’s pecuniary losses); Utah Code Ann. § 77-18-103(2)(b) (providing that when a presentence report is required, it must include information regarding restitution). *But see* 18 U.S.C. § 3664(a) (providing that when the number and identity of the victims cannot be reasonably ascertained or there are other reasons why meeting the requirements of a presentence report are impracticable, the probation officer must inform the court).

<sup>147</sup> *See, e.g.*, Cal. Penal Code § 1203(b) (requiring probation officers to prepare presentence investigation report in felony cases); 730 Ill. Comp. Stat. Ann. 5/5-3-1 to 5/5-3-2(a)(3) (same); Mo. Stat. Ann. § 217.762(3) (requiring presentence investigation reports in felonies that resulted in a serious physical injury or death).

<sup>148</sup> *See, e.g.*, Mich. Comp. Laws Ann. § 780.767(2) (providing that a court may order a probation officer to conduct a presentence report including information regarding a victims’ financial losses); Mont. Code Ann. § 46-18-11(1)(a)(i) (providing that a court may order probation officers to make a presentence investigation and report); Utah Code Ann. § 77-18-103(1) (authorizing courts to request the preparation of a presentence report upon agreement of the defendant or when the defendant is convicted of a felony or a class A misdemeanor).

<sup>149</sup> *See, e.g.*, 18 U.S.C. § 3664(a); Ariz. Rev. Stat. Ann. § 12-253(4); Haw. Rev. Stat. Ann. § 706-602(1)(b); Mont. Code Ann. § 46-18-242(1)(b); Utah R. Crim. P. 21A(c)(1).

<sup>150</sup> *See, e.g.*, 18 U.S.C. § 3664(d)(1); Ariz. Rev. Stat. Ann. § 13-4424(A); Ky. Rev. Stat. Ann. § 421.520(1); Ohio Rev. Code Ann. § 2930.13(B); Del. R. Super. Ct. 32(g)(2).

<sup>151</sup> *See, e.g.*, 18 U.S.C. § 3664(a) (requiring courts to order the probation officer to obtain necessary restitution information and to provide such information to the court in a presentence or other report); Minn. Stat. Ann. § 611A.04(1)(a) (requiring the court to consider information the victim submits in support of restitution); Wis. Const. art. I, § 9m(2)(j) (affording victims the right “[t]o have information pertaining to the economic, physical, and psychological effect upon the victim of the offense submitted to the authority with jurisdiction over the case and to have that information considered by that authority”).

<sup>152</sup> *See generally* *Survey of Select Federal and State Laws Governing Victim Impact Statements and a Victim’s Right to be Heard Post-Conviction Regarding the Imposition and Completion of a Sentence*, NCVLI (2018), <https://law.lclark.edu/live/files/26753-right-to-be-heard-post-conviction-survey-qr> (surveying statutes governing victim impact statements).

<sup>153</sup> *See, e.g.*, Md. Code Ann., Crim. Proc. § 11-402(a) (requiring presentence investigation reports include victim impact statements in felonies where the victim suffered physical, psychological or economic injury); Mo. Stat. Ann. § 217.762(3) (requiring that presentence investigation reports include victim impact statements when the defendant caused the victim physical, psychological or economic injury); N.Y. Crim. Proc. Law § 390.30(3)(a) (requiring that presentence investigation report contain victim impact statement).

<sup>154</sup> *See, e.g.*, Md. Code Ann., Crim. Proc. § 11-402(b) (“If the court does not order a presentence investigation or predisposition investigation, the prosecuting attorney or the victim may prepare a victim impact statement to be submitted to the court and the defendant or child respondent in accordance with the Maryland Rules.”); Miss. Code Ann. § 99-43-33 (“The victim has the right to present an impact statement or information that concerns the criminal offense or the sentence during any entry of a plea of guilty, sentencing or restitution proceeding.”); Mo. Stat. Ann. § 217.762(3) (providing that, where the court does not order a presentence investigation, the prosecutor may submit a victim impact statement to the court and that the court must consider such a statement prior to ordering restitution).

<sup>155</sup> *See, e.g.*, Colo. Rev. Stat. Ann. § 18-1.3-603(2) (“The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact

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statements or other means to determine the amount of restitution and the identities of the victims.”); Ohio Rev. Code Ann. § 2947.051(A) (requiring courts in certain felony cases to order that a victim impact statement be prepared by “the department of probation of the county in which the victim of the offense resides, by the court’s own regular probation officer, or by a victim assistance program that is operated by the state, any county or municipal corporation, or any other governmental entity”).

<sup>156</sup> See, e.g., Conn. Gen. Stat. Ann. § 54-220(a)(7) (requiring victim advocates to assist victims in the preparation of victim impact statements).

<sup>157</sup> See, e.g., Md. Code Ann., Crim. Proc. § 11-402(d) (requiring courts to consider a victim impact statement when entering a restitution judgment); N.Y. Penal Code § 60.27(2) (same); see also Ohio Rev. Code Ann. § 2947.051(A) (requiring courts to consider victim impact statement when determining sentence).

<sup>158</sup> See *United States v. CITGO Petroleum Corp.*, 893 F. Supp. 2d 848, 854–55 (S.D. Tex. 2012) (concluding that victims may submit written sentencing memoranda focusing on restitution claims); *United States v. Church*, 702 F. Supp. 2d 615, 618 (W.D. Va. 2010) (recognizing that the government filed, as an attachment to its own restitution memorandum, a restitution memorandum prepared by victims’ counsel for the victim witness coordinator at the United States Attorney’s Office, which served as the victim’s request for restitution in the case); see also *State v. Lindahl*, 56 P.3d 589, 595 (Wash. Ct. App. 2002) (concluding that the trial court did not err in allowing the family’s attorney to address the court at the sentencing hearing and to file a sentencing memorandum).  
see generally *Considerations When Advising Victims About Methods for Exercising their Right to be Heard at Sentencing*, NCVLI Victim Law Bulletin (2018), at 3 & n.22, <https://law.lclark.edu/live/files/26752-victim-input-at-sentencing-qr-codepdf> (discussing why filing a sentencing memorandum regarding restitution may be advisable for crime victims). But cf. *Lindsay R. v. Cohen*, 343 P.3d 435, 436 (Ariz. Ct. App. 2015) (concluding that victims’ counsel was not authorized to file substantive pleadings related to restitution “other than those [that] are necessary to ensure that . . . victim rights are being protected”).

<sup>159</sup> See, e.g., N.Y. Crim. Proc. Law § 390.40(1) (authorizing prosecutors, “at any time prior to the pronouncement of sentence,” to “file with the court a written memorandum setting forth any information [the prosecutor] may deem pertinent to the question of sentence,” including information related to restitution”); *United States v. Adams*, 955 F.3d 238, 247 (2d Cir. 2020) (noting the government’s memorandum of law regarding restitution); *United States v. Kugler*, No. CR 14-73-BLG-SPW, 2016 WL 816741, at \*1 (D. Mont. Feb. 29, 2016) (noting the government’s inclusion of restitution requests within its sentencing memorandum); *State v. Moore*, 239 A.3d 897, 899–900 (N.H. 2020) (noting that, following the plea and sentencing hearing, the state filed a memorandum of law regarding restitution).

<sup>160</sup> See, e.g., Ala. Code § 15-23-74 (providing victims with the right to present evidence, an impact statement, or other information at, *inter alia*, sentencing); Or. Rev. Stat. Ann. § 137.013 (providing victims with the right to be present and heard at sentencing regarding the need for, *inter alia*, restitution).

<sup>161</sup> See *supra* Part IV.B.1.iv.

<sup>162</sup> See, e.g., 725 Ill. Comp. Stat. Ann. 120/4.5(b)(11) (“The office of the State’s Attorney: . . . shall request restitution at sentencing”).

<sup>163</sup> See, e.g., 18 U.S.C. § 3664(d)(5); Ariz. Rev. Stat. Ann. § 13-804(G).

<sup>164</sup> See, e.g., Ala. Code § 15-18-69; Cal. Penal Code § 1202.4(f)(1); *id.* § 1203.1k; Ohio Rev. Code Ann. § 2929.18(A)(1); Or. Rev. Stat. Ann. § 137.106(5); S.C. Code Ann. § 17-25-322(A); Utah R. Crim. P. 21A(c)(2); Vt. Stat. Ann. tit. 13, § 7043(c); Vt. R. Crim. P. 32(g)(1). For additional information regarding disputed restitution at a restitution hearing, see *infra* Part IV.D.1.x.

<sup>165</sup> See, e.g., Ala. Code § 15-23-74; Cal. Penal Code § 1202.4(f)(1); S.C. Code Ann. § 17-25-322(A), (C); see also Mont. Code Ann. § 46-18-244(2) (stating that in the proceeding to determine the total amount of restitution that the offender owes, the offender may assert any defense that they could raise in a civil action for the losses for which the victim seeks compensation). But see *State v. Blake*, 174 A.3d 126, 133–36 (Vt. 2017) (observing that victims have no standing and are not a party in a restitution proceeding).

<sup>166</sup> See, e.g., *State v. Dodge*, 408 P.3d 510, 514 (Mont. 2017) (finding that restitution will be upheld on appeal if the victim provides testimony at a restitution hearing instead of attaching an affidavit to a court ordered presentence investigation report).

<sup>167</sup> Subpoenas for victims’ private, privileged and/or confidential records may also be opposed on the grounds of privacy, privilege and/or confidentiality. See, e.g., *People v. Garcia*, 111 Cal. Rptr. 3d 435, 442, 443 (Cal. App. Ct. 2010) (recognizing that the psychotherapist-patient privilege protected certain information from compelled disclosure at a restitution hearing); *People v. Rivera*, 250 P.3d 1272, 1277 (Colo. Ct. App. 2010) (recognizing that

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confidential victim records are not subject to disclosure for restitution purposes absent a showing of need); *see generally supra* Part II.B (detailing victims’ restitution-related privacy and confidentiality rights and protections); *Refusing Discovery Requests of Privileged Materials Pretrial in Criminal Cases*, NCVLI Violence Against Women Bulletin (June 2011), <https://law.lclark.edu/live/files/11779-refusing-discovery-requests-of-privileged> (providing information regarding pretrial subpoenas for victims’ privileged records that can be relevant in the restitution context); *Protecting Victims’ Privacy: Moving to Quash Pretrial Subpoena Duces Tecum for Non-Privileged Information in Criminal Cases*, NCVLI Violence Against Women Bulletin (Sept. 2014), <https://law.lclark.edu/live/files/17860-ncvliwamoving-to-quash-pretrial-subpoenas-for> (providing information regarding motions to quash pretrial subpoenas for victims’ records that can be relevant in the restitution context). Subpoenas seeking records for the purposes of restitution may also be objected to on the grounds that they violate a victim’s other rights. *See supra* Part IV.B.1.vi.a.1 (discussing the victims’ rights likely to be implicated when a defendant subpoenas a victim’s private records); *see generally supra* Part II (detailing various victims’ rights likely to be implicated in the restitution context). Another ground to object to a subpoena duces tecum is that it does not comply with local rules regarding subpoena notice, format or service. *See, e.g., United States v. Sabhmani*, No. 07-CR-429 (ADS)(WDW), 2008 WL 7842013, at \*3 (E.D.N.Y. July 19, 2008) (granting motion, filed by the victims’ attorney, to quash defense subpoenas to compel the victims to testify at a restitution hearing where such subpoenas did not comply with the federal rule governing subpoenas in criminal cases). In some jurisdictions, victims and/or the government also may oppose a record request on the ground that the request is “unreasonable or oppressive.” *See, e.g., Fed. R. Crim. P. 17(c)(2)* (“On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive); *Colo. R. Crim. P. 17(c)* (“The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive.”); *Wyo. R. Crim. P. 17(d)* (“The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive.”). Additionally, a victim and/or the government can oppose a request for records that contain information to which the defendant already has access as unnecessary and duplicative. *See, e.g., United States v. Nicoletti*, No. 15-20382, 2021 WL 3422359, at \*3 (E.D. Mich. Aug. 5, 2021) (denying defendant’s motion to compel production of, *inter alia*, an accounting of restitution amount on the grounds that defendant already had access to documents confirming the restitution calculation and that defendant could obtain an accounting of the restitution balance from the clerk’s office); *State v. Reynolds*, 772 So.2d 128 (La. Ct. App. 1999) (finding that the trial court did not abuse its discretion in quashing a subpoena for a theft victim’s contemporary bank records, where the victim was available to be questioned at the restitution hearing and the court considered the records irrelevant to the resolution of restitution); *see People v. Garcia*, 111 Cal. Rptr. 3d 435, 442 (Cal. App. Ct. 2010) (“Prying into the specifics of confidential patient-therapist communications was not necessary for purposes of ordering restitution.”).<sup>168</sup> *See, e.g., United States v. Sabhmani*, No. 07-CR-429 (ADS)(WDW), 2008 WL 7842013, at \*3 (E.D.N.Y. July 19, 2008) (granting motion, filed by the victims’ attorney, to quash defense subpoenas to compel the victims to testify at a restitution hearing where such subpoenas did not comply with the federal rule governing subpoenas in criminal cases).

<sup>169</sup> *See State v. Quijada*, 439 P.3d 815, 826 (Ariz. Ct. App. 2019) (citation omitted) (stating that the Arizona Court of Appeals has previously found that “a defendant does not have an unconditional right to compel a victim to testify at a restitution hearing”).

<sup>170</sup> *See, e.g., People v. Cain*, 97 Cal. Rptr. 2d 836, (Cal. Ct. App. 2000) (concluding that defendant did not have a constitutional right to cross-examine at a restitution hearing the psychotherapist who provided counseling to the victim); *see also United States v. Reyes*, 781 F. App’x 965, 971–72 (11th Cir. 2019) (finding that the court was not obligated to hold, *sua sponte*, a hearing at which the victims would be compelled to testify).

<sup>171</sup> *See State v. Quijada*, 439 P.3d 815, 826 (Ariz. Ct. App. 2019) (internal citation omitted) (holding that “when a victim’s testimony is necessary to effectuate a defendant’s due-process rights and to ensure the restitution amount does not create a “windfall’ to the victim,” . . . a victim may be compelled to appear and testify”).

<sup>172</sup> *See, e.g., United States v. Agate*, 613 F. Supp. 2d 315, 319 (E.D.N.Y. 2009) (noting that the government’s motion to quash defendants’ subpoena to compel a victim’s appearance at the restitution hearing had been granted based upon the provision in 18 U.S.C. § 3664(g)(1) that “[n]o victim shall be required to participate in any phase of a restitution order” and “on a finding of fact that [defendant’s] appearance might expose him to danger”); *United States v. Shrader*, No. CRIM. 1:09-0270, 2010 WL 4781625, at \*3 (S.D. W. Va. Nov. 16, 2010) (providing that the fact that a victim received counseling as a consequence of a defendant’s criminal conduct can be relayed through a presentence report and/or the victim’s testimony and, therefore, the production of the victim’s counseling records are not necessary for the determination of defendant’s sentence).

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<sup>173</sup> See, e.g., *People v. Garcia*, 111 Cal. Rptr. 3d 435, 442, 443 (Cal. App. Ct. 2010) (finding that the trial court properly sustained the government’s objections to defendant’s questioning of the victim during a restitution proceeding regarding privileged and confidential information and observing that “[i]n carrying out the trial court’s statutory mandate to order restitution to the victim, the trial court appropriately exercised its discretion in balancing the defendant’s need to discern the actual loss sustained by the victim and the victim’s interest in avoiding being compelled unnecessarily to disclose personal, confidential matters disclosed during therapy”).

<sup>174</sup> See *id.* at 442 (citation omitted) (concluding that “the trial court appropriately allowed ‘only a limited inquiry into the confidences of the psychotherapist-patient relationship, compelling disclosure of only those matters directly relevant’ to the issue of restitution for [the victim’s] therapy costs”).

<sup>175</sup> See *E.H. v. Slayton in & for Cty. of Coconino*, 491 P.3d 396, 398–99 (Ariz. Ct. App. 2021) (observing that, in Arizona, “[n]o rule or statute imposes a deadline for claiming restitution” and concluding that the victim’s request for restitution, which was made after sentencing, was timely).

<sup>176</sup> See, e.g., 18 U.S.C. § 3664(d)(1) (“Upon the request of the probation officer, but not later than 60 days prior to the date initially set for sentencing, the attorney for the Government, after consulting, to the extent practicable, with all identified victims, shall promptly provide the probation officer with a listing of the amounts subject to restitution.”); *id.* § 3664(d)(5) (“If the victim’s losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victim’s losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.”).

<sup>177</sup> See, e.g., Colo. Rev. Stat. Ann. § 18-1.3-603(2) (“The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims. Further, the prosecuting attorney shall present this information to the court prior to the order of conviction or within ninety-one days, if it is not available prior to the order of conviction. The court may extend this date if it finds that there are extenuating circumstances affecting the prosecuting attorney’s ability to determine restitution.”); 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(12)(B) (providing that, when the amount of restitution is not known at the time of sentencing, “[t]he prosecutor shall file and serve within 60 days after sentencing a proposed judgment for restitution and a notice that includes information concerning the identity of any victims or other persons seeking restitution, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers”); Or. Rev. Stat. Ann. § 137.106(1)(a) (requiring that the district attorney investigate and present to the court the victim’s restitution claims at the time of sentencing or within 90 days after entry of the judgment and providing that “[t]he court may extend the time by which the presentation must be made for good cause”).

<sup>178</sup> See, e.g., 18 U.S.C. § 3664(d)(5); Colo. Rev. Stat. Ann. § 18-1.3-603(2); 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(12)(B).

<sup>179</sup> See, e.g., Colo. Rev. Stat. Ann. § 18-1.3-603(1)(b); Or. Rev. Stat. Ann. § 137.106(1)(a).

<sup>180</sup> See, e.g., *O’Dell v. State*, 366 P.3d 555, 559 (Alaska Ct. App. 2016) (finding that the trial court did not commit plain error in ordering defendant to pay restitution even though the prosecutor submitted the request seven months late, as Criminal Rule 53, which allows the procedural rules to be “relaxed or dispensed with by the court in any case where it shall be manifest to the court that a strict adherence to them will work injustice,” permitted the court to relax the 90-day filing deadline set by Criminal Rule 32.6(c)(2)).

<sup>181</sup> See, e.g., *State v. Lynch*, 469 P.3d 800, 805 (Or. Ct. App. 2020) (emphasis added) (“Thus, where the state’s plea agreement with a defendant provides that restitution will be determined within the 90-day time period contemplated by statute, and a victim seeks restitution outside of that window, a prosecutor, to avoid breaching the agreement, may need to decline to press the claim asserted by the victim. *But that does not mean that a victim, acting on the victim’s own accord, will be barred from obtaining restitution if the victim can establish the claim in accordance with the constitution and its implementing provisions.*”).

<sup>182</sup> See *United States v. Graham*, No. 2:17-CR-00153-JAW, 2019 WL 6999109, at \*3 (D. Me. Dec. 20, 2019) (“While it is unfortunate that restitution cannot always be handled neatly and quickly, it would be more unfortunate still if a victim’s understandable hesitancy to enter a possibly long-term financial relationship (however remote and intermediated) with her victimizer deprived her of the opportunity to – within a reasonable period – change her mind and request restitution for some of the damage caused by a defendant’s criminal act.”).

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<sup>183</sup> See, e.g., *State v. Thompson*, 306 P.3d 731, 735 (Or. Ct. App. 2013) (concluding that the time window in the state law governing victims’ challenges to the violation of their constitutional rights was not a jurisdictional restriction on the trial court’s authority to hear an untimely claim).

<sup>184</sup> See *supra* note 40.

<sup>185</sup> See *supra* note 43.

<sup>186</sup> See *supra* note 45.

<sup>187</sup> See *supra* note 46.

<sup>188</sup> See *supra* note 52.

<sup>189</sup> See *supra* note 54.

<sup>190</sup> See *supra* note 55.

<sup>191</sup> See *supra* note 56.

<sup>192</sup> See *supra* note 57.

<sup>193</sup> See *supra* note 62.

<sup>194</sup> See *supra* note 63.

<sup>195</sup> See *supra* note 70.

<sup>196</sup> For information regarding victims’ restitution-related privacy and confidentiality rights and protections, see *supra* Part II.B.

<sup>197</sup> See *supra* note 71.

<sup>198</sup> See *supra* note 9.

<sup>199</sup> See *supra* note 73.

<sup>200</sup> See generally *supra* Part III.

<sup>201</sup> See, e.g., Or. Rev. Stat. Ann. § 135.886(i) (providing that, when determining whether a defendant’s participation in a general diversion program in the best interests of justice, the district attorney must consider provisions for restitution); Wyo. Stat. Ann. § 7-9-103(a)–(c) (providing that, as part of the deferred prosecution agreement process, in any misdemeanor or felony case, the prosecutor must present any restitution claims to the court).

<sup>202</sup> See, e.g., *Compise v. Commonwealth*, 597 S.W.3d 175, 181 (Ky. Ct. App. 2020) (recognizing that pretrial diversion agreements are subject to court approval and that, where a court approves such an agreement it must order restitution). See also Utah Code Ann. § 77-2-5(5) (“(a) If the court approves a diversion agreement that includes an agreement by the parties for the amount of restitution that the defendant will pay, the court shall order the defendant to pay restitution in accordance with the terms of the diversion agreement. (b) The court shall collect, receive, process, and distribute payments for restitution to the victim, unless otherwise provided by law or by the diversion agreement.”).

<sup>203</sup> See, e.g., Okla. Stat. Ann. tit. 22, § 991f-1.1(B)(3)(g) (“In determining whether to defer prosecution and refer a case to the Restitution and Diversion Program, the district attorney shall consider . . . the wishes of the victim.”); Or. Rev. Stat. Ann. § 135.886(2)(h) (requiring the district attorney to consider, *inter alia*, the victim’s recommendations, if any, when “determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community”); State of Georgia, Cobb County Gov’t, *Pretrial Diversion: About the Program*, <https://www.cobbcounty.org/courts/district-attorney/pretrial-diversion> (noting that acceptance into the pretrial diversion program will be based upon certain considerations, including “[t]he victim’s response to the defendant’s petition for diversion”); see also 18 U.S.C. § 3771(a)(9) (affording victims “the right to be informed in a timely manner of any . . . deferred prosecution agreement”); Ohio Rev. Code Ann. § 2935.36(C) (providing victims with “the opportunity to file written objections with the prosecuting attorney prior to the commencement of the pretrial diversion program”).

<sup>204</sup> See, e.g., Fla. Const. art. I, § 16(b)(6)(c) (“A victim shall have the following specific rights upon request: . . . The right to confer with the prosecuting attorney concerning . . . participation in pretrial diversion programs . . .”); Del. Code Ann. tit. 11, § 9405 (requiring that the prosecutor confer with a victim before, *inter alia*, the prosecutor agrees to pretrial diversion); Ky. Rev. Stat. Ann. § 421.500(6) (“The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case, including . . . entry into a pretrial diversion program.”); Minn. Stat. Ann. § 611A.031 (“A prosecutor shall make every reasonable effort to notify and seek input from the victim prior to referring a person into a pretrial diversion program in lieu of prosecution for a violation of [certain enumerated crimes].”).

<sup>205</sup> See, e.g., Ky. Rev. Stat. Ann. § 532.032(2) (“If pretrial diversion is granted, restitution shall be a part of the diversion agreement.”); Mich. Comp. Laws Ann. § 780.766(2) (requiring restitution when an offense is resolved by a delayed sentence or deferred judgment of guilt); Miss. Code. Ann. § 99-15-121 (“Prior to the completion of the

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pretrial intervention program the offender shall make restitution, as determined by the district attorney and approved by the court, to the victim, if any[.]”); S.C. Code Ann. § 17-22-140 (requiring that, prior to the completion of a pretrial intervention program, the offender make restitution to the victim, as determined by the solicitor); Utah Code Ann. § 77-2-5(4)(b) (“The diversion agreement . . . shall include an agreement, by the parties, for a specific amount of restitution that the defendant will pay, unless the prosecuting attorney certifies that: (i) the prosecuting attorney has consulted with all victims, including the Utah Office for Victims of Crime; and (ii) the defendant does not owe any restitution.”); *see also* Fla. Stat. Ann. § 901.41(2)(b) (establishing a model prearrest diversion program that requires, *inter alia*, that program participants pay restitution as a condition of participation); Ky. Rev. Stat. Ann. § 533.254(2) (stating that procedural requirements regarding restitution set forth in Ky. Rev. Stat. Ann. § 533.030 “shall, in so far as possible, be applicable to pretrial diversion”).

<sup>206</sup> *See, e.g.*, Colo. Rev. Stat. § 18-1.3-101(9)(b) (providing that diversion agreements may include provisions regarding the payment of restitution); Mont. Code Ann. § 46-16-130(1)(a)(iv) (providing that deferred prosecution agreement may include a condition requiring the payment of restitution); Or. Rev. Stat. Ann. § 135.891(1) (stating that restitution is generally a permissive condition of diversion agreements); Wash. Rev. Code § 10.05.140(1) (providing that, “[a]s a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution”); Wyo. Stat. Ann. § 7-103(c) (requiring court to order all or part of restitution claimed under deferred prosecution agreements or state on the record why the order was not entered); *see also* Vt. Stat. Ann. tit. 3, § 164a (providing that diversion program may refer a victim to the Restitution Unit for the purposes of advance payment of restitution and that the Restitution Unit may enter into a repayment contract with the offender).

<sup>207</sup> *See, e.g.*, Ariz. Rev. Stat. § 13-1810(E)(2) (providing that when prosecution is deferred in a bad check case, one of the conditions of deferral is the full payment of restitution within a period to be decided by the prosecutor); Cal. Penal Code § 1001.64(b) (same); Fla. Stat. Ann. § 832.08(4)(b) (providing that condition of participation in bad check pretrial diversion program is full payment of restitution on the check); Or. Rev. Stat. Ann. § 135.925(5)(b) (stating that condition of participation in bad check diversion program is the full payment of restitution).

<sup>208</sup> Cal. Penal Code § 1001.81(c)(2), (e)(2).

<sup>209</sup> Or. Rev. Stat. Ann. § 135.886(i).

<sup>210</sup> *See, e.g.*, Fla. Const. art. I, § 16(b)(6)(c) (“A victim shall have the following specific rights upon request: . . . The right to confer with the prosecuting attorney concerning . . . participation in pretrial diversion programs . . .”); Del. Code Ann. tit. 11, § 9405 (requiring that the prosecutor confer with a victim before, *inter alia*, the prosecutor agrees to pretrial diversion); Ky. Rev. Stat. Ann. § 421.500(6) (“The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case, including . . . entry into a pretrial diversion program.”); S.C. Code Ann. § 16-3-1545(H) (“The prosecuting agency must discuss a case with the victim. The agency must confer with each victim about the disposition of the case including, but not limited to, diversions and plea negotiations.”); Utah Code Ann. § 77-2-5(4)(b) (providing that a diversion agreement must include an agreement regarding restitution unless the prosecuting attorney certifies that they “consulted with all victims, including the Utah Office for Victims of Crime” and concluded there were no financial losses in need of reimbursement). *Cf. People v. Borquez*, 814 P.2d 382, 383 (Colo. 1991) (noting that the county district attorney’s diversion program relied on the victim’s request for a certain amount of restitution that represented losses it experienced as a result of defendant’s theft, but that defendant elected to withdraw from the program because she disagreed with the victim’s figure).

<sup>211</sup> *See, e.g.*, Minn. Stat. Ann. § 611A.031 (requiring the prosecutor to “make every reasonable effort to notify and seek input from victims before referring a person to a pretrial diversion program in lieu of prosecution for certain criminal violations); Okla. Stat. tit. 22, § 991f-1.1(B)(3)(g) (requiring that the district attorney consider, *inter alia*, the victim’s wishes before deferring prosecution).

<sup>212</sup> *See, e.g.*, Okla. Stat. Ann. tit. 22, § 991f-1.1(J) (“The victim shall promptly provide to the Restitution and Diversion Program all documentation and evidence of compensation or reimbursement from insurance companies or agencies of this state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings or out-of-pocket loss.”); *see also* Vt. Stat. Ann. tit. 3, § 164a(b) (requiring the state Restitution Unit, which enforces and collects court-ordered restitution in Vermont, and the attorney general’s diversion program to develop a process for, *inter alia*, documenting victim loss).

<sup>213</sup> Ariz. Rev. Stat. § 13-1810(E)(2).

<sup>214</sup> *See, e.g., Compise v. Commonwealth*, 597 S.W.3d 175, 182 (Ky. Ct. App. 2020) (recognizing that when restitution is a condition of pretrial diversion the restitution order must specify the amount and frequency of each restitution payment).

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<sup>215</sup> See, e.g., Colo. Rev. Stat. Ann. § 18-1.3-101(2) (“In any case, either before or after charges are filed, the district attorney may suspend prosecution of the offense for a period not to exceed two years. The period of diversion may be extended for an additional time up to one year if the failure to pay restitution is the sole condition of diversion that has not been fulfilled, because of inability to pay, and the defendant has a future ability to pay.”); Mo. Ann. Stat. § 557.014(2) (“Each prosecuting attorney in the state of Missouri shall have the authority to, upon agreement with an accused or a defendant, divert a criminal case to a prosecution diversion program for a period of six months to two years, thus allowing for any statute of limitations to be tolled for that time alone. The period of diversion may be extended by the prosecuting attorney as a disciplinary measure or to allow sufficient time for completion of any portion of the prosecution diversion including restitution; provided, however, that no extension of such diversion shall be for a period of more than two years.”); N.M. Stat. Ann. § 31-16A-7(A) (“A defendant may be diverted to a preprosecution diversion program for no less than six months and no longer than two years. A district attorney may extend the diversion period for a defendant as a disciplinary measure or to allow adequate time for restitution; provided that the extension coupled with the original period does not exceed two years.”).

<sup>216</sup> See, e.g., *State v. Crudup*, No. M2004-01646-CCA-R9CO, 2005 WL 1378774, at \*4 (Tenn. Crim. App. June 9, 2005) (finding that the district attorney general did not abuse his discretion in requiring defendant to pay full amount of agreed upon restitution up front, as a condition of pretrial diversion); see also *State v. Pojawa*, No. A-4808-18, 2021 WL 447210, at \*1–3 (N.J. Super. Ct. App. Div. Feb. 9, 2021), cert. denied, 246 N.J. 221, 249 A.3d 860 (2021) (recognizing that upfront payment of restitution may be a condition of admission to pretrial intervention program, but that denial of admission into a program cannot be based solely on an inability to pay).

<sup>217</sup> See Ala. Stat. Ann. § 12-17-226.5(c) (“Restitution, or portions thereof, may be left open [in a pretrial diversion agreement] where amounts are difficult to determine or, due to the nature of the harm, may increase or decrease over the period.”).

<sup>218</sup> See Vt. Stat. Ann. tit. 3, § 164a(a) (“A diversion program may refer an individual who has suffered a pecuniary loss as a direct result of a delinquent act or crime alleged to have been committed by a juvenile or adult accepted to its program to the Restitution Unit established by 13 V.S.A. § 5362 for the purpose of application for an advance payment pursuant to 13 V.S.A. § 5363(d)(1). The Restitution Unit may enter into a repayment contract with a juvenile or adult accepted into diversion and shall have the authority to bring a civil action to enforce the repayment contract in the event that the juvenile or adult defaults in performing the terms of the contract.”).

<sup>219</sup> See ABA Standards for Crim. Just. 14-4.1 cmt., (1999) (internal footnotes omitted) (“Many jurisdictions view the prompt payment of restitution to the victim of the offense as one of the cardinal purposes behind diversion programs, and thus require as a condition of successful completion of a diversion program the payment of restitution.”).

<sup>220</sup> See, e.g., 18 U.S.C. § 3663(a)(1)(A) (providing that a court may order restitution for victims of conduct beyond the offense of conviction “if agreed to by the parties in a plea agreement”); *id.* § 3663A(a)(1)(A) (providing that the court must order restitution for victims of conduct beyond the offense of conviction “if agreed to by the parties in a plea agreement”); Cal. Penal Code § 1192.3(b) (authorizing defendants to agree to the payment of restitution as a condition of probation, if the plea is freely and voluntarily given); Fla. Stat. Ann. § 775.089(1)(b)2 (“A plea agreement may contain provisions that order restitution relating to criminal offenses committed by the defendant to which the defendant did not specifically enter a plea.”); 730 Ill. Comp. Stat. Ann. 5/5-5-6(d) (“In instances where a defendant has more than one criminal charge pending against him in a single case, or more than one case, and the defendant stands convicted of one or more charges, a plea agreement negotiated by the State’s Attorney and the defendants may require the defendant to make restitution to victims of charges that have been dismissed or which it is contemplated will be dismissed under the terms of the plea agreement, and under the agreement, the court may impose a sentence of restitution on the charge or charges of which the defendant has been convicted that would require the defendant to make restitution to victims of other offenses as provided in the plea agreement.”); La. Code Crim. Proc. Ann. art. 883.2(B) (“[I]f the defendant agrees as a term of a plea agreement, the court shall order the defendant to provide restitution to other victims of the defendant’s criminal conduct, although those persons are not the victim of the criminal charge to which the defendant pleads. Such restitution to other persons may be ordered pursuant to Article 895 or 895.1 of this Code or any other provision of law permitting or requiring restitution to victims.”); Vt. Stat. Ann. tit. 13, § 7043(d)(3) (“An order of restitution may require the offender to pay restitution for an offense for which the offender was not convicted if the offender knowingly and voluntarily executes a plea agreement that provides that the offender pay restitution for that offense. A copy of the plea agreement shall be attached to the restitution order.”); *In re J.M.A.*, 147 N.E.3d 1005, 1015–16 (Ill. App. Ct. 2019) (affirming restitution order, holding that juvenile may be ordered to pay restitution for conduct underlying charges that have

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been dropped, as agreed to as a part of a plea agreement with the state); *see also* 18 U.S.C. § 3663(c)(2) (“In the case of a plea agreement that does not result in a conviction for an offense described in [18 U.S.C. § 3663(c)(1)], this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.”); Mont. Code Ann. § 46-18-243(2)(a)(v) (defining “victim”, for the purposes of restitution, to include “any person or entity whom the offender has voluntarily agreed to reimburse as part of a voluntary plea bargain”).<sup>221</sup> *See, e.g.*, 730 Ill. Comp. Stat. Ann. 5/5-5-6(d) (“In instances where a defendant has more than one criminal charge pending against him in a single case, or more than one case, and the defendant stands convicted of one or more charges, a plea agreement negotiated by the State’s Attorney and the defendants may require the defendant to make restitution to victims of charges that have been dismissed or which it is contemplated will be dismissed under the terms of the plea agreement, and under the agreement, the court may impose a sentence of restitution on the charge or charges of which the defendant has been convicted that would require the defendant to make restitution to victims of other offenses as provided in the plea agreement.”); Wash. Rev. Code Ann. § 9.94A.753(5) (“[R]estitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor’s recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.”); *James v. State*, 223 So. 3d 288, 290–91 (Fla. Dist. Ct. App. 2017) (holding that the trial court abused its discretion in awarding restitution for 20 pieces of jewelry defendant never admitted to having pawned on the ground that, when a defendant agrees to pay restitution as part of a plea agreement, restitution is limited to those losses arising out of a charged offense, as reflected in the information and/or by the factual basis of the plea); *People v. McClard*, 834 N.E.2d 984, 985–86 (Ill. App. Ct. 2005) (holding that the restitution can only be ordered for losses resulting from the offense(s) of conviction or as provided in a plea agreement and vacating an order of restitution for losses arising from counts that were dismissed, as “the trial court had no authority to order restitution for those counts”); *State v. Stimpson*, 563 A.2d 1001, 1001–02 (Vt. 1989) (holding that it was improper to order restitution award for losses suffered as the result of an incident that was not covered by a plea agreement and for which defendant was not convicted).

<sup>222</sup> *See, e.g.*, *Rollins v. Commonwealth*, 294 S.W.3d 463, 465–67 (Ky. Ct. App. 2009) (finding that language in a plea agreement that defendant would agree to pay restitution was not sufficient to constitute an order of restitution, but, at best, this mention of restitution in the plea agreement “indicated that a restitution claim would be forthcoming from the Commonwealth” and concluding that the court lacked jurisdiction to grant the Commonwealth’s “motion to establish damages” seven years later); *Commonwealth v. Adams*, 566 S.W.3d 225, 230 (Ky. Ct. App. 2018) (finding that “there was no valid restitution order based on [defendant’s] plea agreement where his judgment did not order. Restitution and the Commonwealth failed to file a verified petition for restitution”); *State v. Miller*, 940 N.E.2d 924, 927 (Ohio 2010) (holding that a court may not use a *nunc pro tunc* entry to impose restitution on defendant when it was not imposed as part of the sentence, in a case where the trial court judge filed an amended entry to add an order of restitution to be made to the victim several months after defendant pled guilty and a final sentence was imposed).

<sup>223</sup> *See, e.g.*, Mont. Code Ann. § 46-18-111(1)(d) (providing that where the amount of restitution is not contained in a plea agreement, the court must order a presentence investigation); *State v. Sanderson*, 625 So.2d 471, 473 (Fla. 1993) (holding that if restitution is ordered within sixty days of sentencing, a determination regarding the amount to be paid can be made beyond that period).

<sup>224</sup> *See, e.g.*, *State v. Baker*, 12 A.3d 545, 547–48 (Vt. 2010) (reversing restitution order directing defendant, convicted of burglarizing the victim-library, to pay the cost of changing the victim’s locks, upon concluding that, *inter alia*, defendant did not waive his right to challenge the legality of a restitution order, either by signing a plea agreement or by remaining silent at the plea hearing).

<sup>225</sup> *See, e.g.*, Mont. Code Ann. § 46-12-210(1)(iv) (providing that, before accepting a plea of guilty or nolo contendere, the court must determine that the defendant understands, *inter alia*, that defendant may be ordered to pay restitution); *State v. Kealoha*, 414 P.3d 98, 109–114 (Haw. 2018) (holding that, because restitution is a direct consequence of conviction, the court must advise defendants in open court that there is a possibility that restitution will be ordered, before accepting a guilty plea, to ensure that the plea is knowingly and voluntarily entered); *see also People v. Rowland*, 51 Cal. App. 4th 1745, 1751–52, (Cal. Ct. App. 1997) (finding defendant was not prejudiced by failure to advise him of restitution prior to entering a plea because, *inter alia*, the amount of restitution matched his civil liability).

<sup>226</sup> *See, e.g.*, 725 Ill. Comp. Stat. Ann. 120/4.5(b)(11) (requiring the office of the State’s Attorney to “request restitution at sentencing and as a part of a plea agreement if the victim requests restitution”)

<sup>227</sup> *See, e.g.*, *State v. Keys*, 369 P.3d 313, 315 (Idaho Ct. App. 2016) (“When a plea agreement is silent as to the issue of restitution, trial courts are not precluded from imposing restitution.”); *Morris v. State*, 2 N.E.3d 7, 8 (Ind. Ct. App.



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2013) (finding that the court was free to enter restitution as a part of defendant’s sentence where defendant’s guilty plea was silent as to restitution but left sentencing entirely to the trial court’s discretion).

<sup>228</sup> See, e.g., *People v. Valdez*, 30 Cal. Rptr. 2d 4, 9 (Cal. Ct. App. 1994) (“The terms of appellant’s plea agreement do not circumscribe the mandatory duty of the trial court to order appellant to pay victim restitution.”); *State v. Thomas*, 14 A.3d 961, 966 (Vt. 2010) (affirming, in part, and remanding, part, restitution order of defendant, convicted of aggravated assault by attempting to cause serious bodily injury, on the grounds that, *inter alia*, the lower court’s decision to consider restitution at sentencing, where restitution was not mentioned in defendant’s plea agreement, did not amount to a rejection of the plea agreement because the state’s restitution statute requires the court to consider restitution irrespective of the prosecution’s wishes and a victim’s right to restitution cannot be bargained away by the prosecution).

<sup>229</sup> See, e.g., 18 U.S.C. § 3663(a)(3)(A) (authorizing the court to order restitution, under the VAWA, “in any criminal case to the extent agreed to by the parties in a plea agreement”).

<sup>230</sup> See, e.g., Fla. Stat. Ann. § 775.089(1)(c) (defining “victim” for the purposes of the state’s restitution laws); Mich. Comp. Laws Ann. § 780.766(1) (same); N.H. Rev. Stat. § 651:62(VI) (same).

<sup>231</sup> See, e.g., Fla. Stat. Ann. § 775.0844(8) (defining “victim” for the purposes of Florida’s White Collar Crime Victim Protection Act).

<sup>232</sup> See, e.g., Ariz. Const. art. II, § 2.1(D) (defining “victim” for the purposes of victims’ constitutional rights, including the right to restitution); Fla. Const. art. I, § 16(e) (same); 725 Ill. Comp. Stat. Ann. 120/3(a) (defining “victim” for the purposes of the state’s statutory victims’ rights provisions, including the right to restitution); Ky. Rev. Stat. Ann. § 421.500(1)(a) (same); see also 730 Ill. Comp. Stat. Ann. 5/5-1-22 (applying definition of “victim” contained in statutory victims’ rights provisions to sentencing statutes, including statute governing restitution).

<sup>233</sup> See, e.g., Alaska Stat. Ann. § 12.55.045(a) (authorizing courts to order restitution to the victim “or other person injured by the offense”); 730 Ill. Comp. Stat. Ann. 5/5-5-6 (directing courts to order restitution in all cases under certain provisions of the criminal and vehicle code in which “the person received any injury to his or her person or damage to his or her real or personal property as the result of the criminal act of the defendant”); Ariz. Code of Jud. Admin. § 5-204(K)(5) (for the purposes of the subsection of Arizona’s Code of Judicial Administration governing restitution disbursement, the term “victim” includes the definition of “victim” that applies to all rights under Arizona’s constitutional and statutory victims’ rights provisions, as well as “any person, including the surviving dependent of a person, who has suffered physical injury or pecuniary loss resulting from the crime or delinquent act of the accused or a corporation, partnership, association or other legal entity”).

<sup>234</sup> See generally *Protecting the Victims of “Victimless” Crimes*, NCVLI Victim Law Article (Summer 2011), <https://law.lclark.edu/live/files/15461-protecting-the-victims-of-victimless-crime-sep> (describing how use of the term “victimless crime” mischaracterizes a wide range of crimes and detailing how, under the plain language of the federal Crime Victims’ Rights Act, any crime may be associated with a victim who was directly and proximately harmed by a defendant’s criminal conduct).

<sup>235</sup> See, e.g., Ohio Rev. Code Ann. § 2929.01(L) (defining “economic loss” for the purposes of restitution to mean “any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense, and the cost of any accounting or auditing done to determine the extent of loss if the cost is incurred and payable by the victim”).

<sup>236</sup> See, e.g., Ky. Rev. Stat. Ann. § 532.032(1) (directing how payment of restitution shall be ordered “to a named victim, if there is a named victim”).

<sup>237</sup> See, e.g., Fla. Stat. Ann. § 775.0844(8) (mandating that a person convicted of aggravated white collar crime involving elderly victims pay restitution “to each victim of the crime, regardless of whether the victim is named in the information or indictment”); 730 Ill. Comp. Stat. Ann. 5/5-5-6(b) (providing that restitution is to be ordered for “actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim named in the charge and any other victims who may also have suffered out-of-pocket expenses, losses, damages, and injuries proximately caused by the same criminal conduct of the defendant”); Mont. Code Ann. § 46-18-243(2)(a)(v) (defining “victim”, for the purposes of restitution, to include “any person or entity whom the offender has voluntarily agreed to reimburse as part of a voluntary plea bargain”); *People v. Duff*, 505 N.E.2d 36, 37 (Ill. App. Ct. 1987) (holding, *inter alia*, that a victim not named in the indictment may properly be the recipient of a restitution order).

<sup>238</sup> See, e.g., 18 U.S.C. § 3663(a)(2) (“For the purposes of this section, the term ‘victim’ means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person

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directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy, or pattern.”); *id.* § 3663A(a)(2) (same); Ky. Rev. Stat. Ann. § 421.500(1)(a) (defining “victim” for the purposes of the state’s victims’ rights provisions as “an individual directly and proximately harmed as a result of . . . [t]he commission of a crime classified as a felony; a misdemeanor involving threatened or actual physical injury, harassment, or restraint; a misdemeanor involving a child or incompetent person; or a misdemeanor involving a sexual offense or a trespass; or [c]onduct which, if committed by an adult, would be classified as a felony or a misdemeanor described in subparagraph 1. of this paragraph”); *see also* 730 Ill. Comp. Stat. Ann. 5/5-5-6(b) (providing that restitution is to be ordered for “actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim named in the charge and any other victims who may also have suffered out-of-pocket expenses, losses, damages, and injuries proximately caused by the same criminal conduct of the defendant”); Vt. Stat. Ann. tit. 13, § 7043(a) (providing that restitution must be considered in every case in which a victim has suffered a material loss, where a “victim” is defined under subdivision 5301(4) as “a person who sustains physical, emotional, or financial injury or death as a direct result of the commission or attempted commission of a crime or act of delinquency and shall also include the family members of a minor, a person who has been found to be incompetent, or a homicide victim”).

<sup>239</sup> *See, e.g.*, 18 U.S.C. § 3663(a)(2); *id.* § 3663A(a)(2).

<sup>240</sup> *See, e.g.*, Ariz. Const. art. II, § 2.1(C) (“[For the purposes of Arizona’s constitutional victims’ rights, including the right to restitution,] ‘[v]ictim’ means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person’s spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused”); Ariz. Rev. Stat. Ann. § 13-4401(19) (“[For the purposes of Arizona’s statutory victims’ rights, including the right to restitution,] ‘[v]ictim’ means a person against whom the criminal offense has been committed, including a minor, or if the person is killed or incapacitated, the person’s spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person, except if the person or the person’s spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.”); *id.* § 13-804(E) (“If a victim has received reimbursement for the victim’s economic loss from an insurance company, a crime victim compensation program funded pursuant to § 41-2407 or any other entity, the court shall order the defendant to pay the restitution to that entity. If a victim has received only partial reimbursement for the victim’s economic loss, the court shall order the defendant to pay restitution first to the victim and then to the entity that partially reimbursed the victim.”); *id.* § 13-814(A) (“If the lawful owner of stolen property recovers the property from a pawnbroker or dealer and the person who sold or pledged the property to the pawnbroker or dealer is convicted of a violation of law that is related to the stolen or pledged property, the court shall order the defendant to make restitution to the pawnbroker pursuant to this chapter.”); Ariz. Code of Jud. Admin. § 5-204(K)(5) (for the purposes of the subsection of Arizona’s Code of Judicial Administration governing restitution disbursement, the term “victim” includes the definition of “victim” that applies to all rights under Arizona’s constitutional and statutory victims’ rights provisions, as well as “any person, including the surviving dependent of a person, who has suffered physical injury or pecuniary loss resulting from the crime or delinquent act of the accused or a corporation, partnership, association or other legal entity”).

<sup>241</sup> In some jurisdictions, a “person” entitled to restitution as a “victim” can be a natural person or an entity, such as a corporation. *See, e.g.*, *United States v. Benedict*, 855 F.3d 880, 886–87 (8th Cir. 2017) (concluding that corporations are “persons” eligible for restitution under the MVRA); *United States v. Zoher*, 205 F. App’x 36, 38 (3d Cir. 2006) (“The District Court did not err by ordering payment of restitution to a corporation because § 3663A(a)(2) defines ‘victim’ as ‘a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered,’ and the general definition of ‘person’ for federal statutory purposes includes corporations.”); *People v. Webb-Johnson*, 113 P.3d 1253, 1254 (Colo. Ct. App. 2005) (rejecting the argument that the term “person” used in the state’s restitution statute must be limited to a human being on the ground that, *inter alia*, “because legal entities can be harmed by criminal conduct, excluding such entities from the definition of ‘person’ in [the state’s restitution law] would defeat the legislative intent expressed in [the legislature’s declaration regarding restitution]”); *see also City of Centerville v. Knab*, 166 N.E.3d 1167, 1174 (Ohio 2020) (concluding that while a private corporation falls within the definition of a “person” entitled to restitution, a municipal corporation does not because of its status as a political subdivision). In other jurisdictions, the term “person” is used in the restitution context only to refer to natural persons, but the definition of “victim” for restitution purposes expressly includes corporations and other entities. *See, e.g.*, Ga. Stat. Ann. § 17-14-2(9) (defining “victim” for the purposes of restitution to mean any: “(A) Natural person or his or her personal representative or, if the victim is deceased, his or

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her estate; or (B) Any firm, partnership, association, public or private corporation, or governmental entity.”; Minn. Stat. Ann. § 611A.01(b) (defining “victim” for the purposes of restitution as “a natural person who incurs loss or harm as a result of a crime, including a good faith effort to prevent a crime, and for purposes of [restitution statutes], also includes (1) a corporation that incurs loss or harm as a result of a crime, (2) a government entity that incurs loss or harm as a result of a crime, and (3) any other entity authorized to receive restitution under [sentencing statutes]”). For a discussion of institutions and entities that fall within the definition of “victim” for the purposes of restitution, *see infra* Part IV.C.4.i.c.

<sup>242</sup> *See, e.g.*, 18 U.S.C. § 1593(c) (defining “victim” for the purposes of mandatory restitution for victims of human trafficking as “means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim’s estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian”); Ariz. Const. art. II, § 2.1(C) (defining “victim” for the purposes of the state’s constitutional victims’ rights, including the right to restitution, as “a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person’s spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused”); Fla. Stat. Ann. § 775.089(1)(c)1 (defining “victim” as, *inter alia*, “[e]ach person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant’s offense or criminal episode”); Mich. Comp. Laws Ann. § 780.766(1) (defining “victim” for the purposes of restitution as “an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a felony, misdemeanor, or ordinance violation”).

<sup>243</sup> *See, e.g.*, 18 U.S.C. § 1593(c); *id.* § 3663(a)(2); *id.* § 3663A(a)(2); Ariz. Const. art. II, § 2.1(C); Wis. Const. art. I, § 9m(1)(b); Mont. Code Ann. § 46-18-243(2)(b).

<sup>244</sup> *See, e.g.*, Mont. Code Ann. § 46-18-243(2)(a)(i)(B)–(C) (defining “victim” for the purposes of restitution as “a person who suffers loss of property, bodily injury, or death as a result of: the good faith effort to prevent the commission of an offense” or “the good faith effort to apprehend a person reasonably suspected of committing an offense”); N.H. Rev. Stat. § 651:62(VI) (defining “victim” for the purposes of restitution as “a person or claimant who suffers economic loss as a result of an offender’s criminal conduct or the good faith effort of any person attempting to prevent or preventing the criminal conduct”).

<sup>245</sup> *See, e.g.*, 18 U.S.C. § 1593(c); *id.* § 3663A(a)(2); Fla. Stat. Ann. § 775.089(1)(c)1; Ind. Code Ann. § 35-50-5-3(a); Minn. Stat. Ann. § 611A.04, subd. 6; Mont. Code Ann. § 46-18-243(2)(b); Or. Rev. Stat. Ann. § 137.103(4)(e).

<sup>246</sup> *See, e.g.*, Iowa Code Ann. § 915.100(f) (“A judgment of restitution may be enforced by a victim entitled under the order to receive restitution, or by a deceased victim’s estate, in the same manner as a civil judgment.”); N.Y. Penal Code § 60.27(7) (“In the event that the court requires restitution or reparation to be made to a person and that person dies prior to the completion of said restitution or reparation, the remaining payments shall be made to the estate of the deceased.”); Or. Rev. Stat. Ann. § 137.103(4)(e) (defining “victim” to include the estate of a deceased person against whom defendant committed the criminal offense and who suffered economic damages as a result of the offense or a person who the court determines suffered economic damages as a result of the defendant’s criminal activities); Tex. Crim. Pro. Art. 42.037(d) (“If the court orders restitution under this article and the victim is deceased the court shall order the defendant to make restitution to the victim’s estate.”).

<sup>247</sup> *See, e.g.*, Cal. Penal Code § 1202.4(k)(1) (defining “victim” for the purposes of restitution when a victim is deceased to include “the immediate surviving family of the actual victim”), Penn. Stat. Ann. § 11.103 (defining “victim”, for the purposes of restitution in homicide cases, to mean “[a] family member of a homicide victim, including stepbrothers or stepsisters, stepchildren, stepparents or a fiancé, one of whom is to be identified to receive communication as provided for in this act, except where the family member is the alleged offender”).

<sup>248</sup> *See People v. Runyan*, 279 P.3d 1143, 1148 (Cal. 2012) (concluding that while a deceased victim’s estate was not a “direct victim” of a fatal car collision for the purposes of restitution, the executor or administrator of the estate could collect restitution on the deceased victim’s behalf as the decedent’s personal representative, a conclusion which the court observed was consistent with state probate law and the definition of “victim” under the state’s constitutional victims’ rights amendment to include “a lawful representative of the victim”); *Commonwealth v. Biauce*, 162 A.3d 1133, 1139 (Pa. Super. Ct. 2017) (concluding that the executor or administrator of a crime victim’s estate stands in the deceased victim’s shoes and, thus, is a “victim” for the purposes of restitution).

<sup>249</sup> *See Tyler v. State*, 137 S.W.3d 261, 267 (Tex. Ct. App. 2004) (concluding that the lower court erred in ordering restitution for the deceased victim’s heirs where the state’s restitution statute provides that the estate must receive restitution when the victim is deceased).

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<sup>250</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-4404; Cal. Penal Code § 1202.4(k); Fla. Stat. Ann. § 775.089(1)(c)1; Haw. Rev. Stat. Ann. § 706-646(1)(a), (c)–(d); Mich. Comp. Laws Ann. § 780.766(1); Mont. Code Ann. § 46-18-243(2)(a)(iii)–(v); *State v. Allen*, 147 N.E.3d 618, 619–21 (Ohio 2019) (holding that a bank may qualify as a “victim” entitled to restitution); *State v. Stewart*, 176 A.3d 1120, 1124 (Vt. 2017) (recognizing that, although Vermont narrowly defines the term “victim” for restitution purposes, a bank, in which defendant deposited checks from her employer and which reimbursed defendant’s employer after defendant was convicted of embezzlement, was a “victim” of the embezzlement and entitled to restitution from defendant as a direct victim of defendant’s offense because it was obligated to reimburse the employer’s account, it was not an insurer, and restitution is not a substitute for an award of civil damages); *State v. Quist*, 16 A.3d 611, 613 (Vt. 2011) (holding that government entities may be treated as victims for purposes of the restitution statute).

<sup>251</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-804(E); Cal. Penal Code § 1202.4(f)(2); 730 Ill. Comp. Stat. Ann. 5/5-5-6(b) Mich. Comp. Laws Ann. § 750.535a(4); Mich. Comp. Laws Ann. § 780.766(8); Mont. Code Ann. § 46-18-243(2)(a)(iv); N.H. Rev. Stat. § 651:62(V); S.C. Code Ann. § 17-25-324(A).

<sup>252</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-804(E); Cal. Penal Code § 1202.4(f)(2); Fla. Stat. Ann. § 960.17(1); Haw. Rev. Stat. Ann. § 706-646(1)(c); Haw. Rev. Stat. Ann. § 706-646(2); 730 Ill. Comp. Stat. Ann. 5/5-5-6(b); Mont. Code Ann. § 46-18-243(2)(a)(v); N.H. Rev. Stat. § 21-M:8-1(I); Ohio Rev. Code Ann. § 2743.72(A), (E); see also *People v. Evans*, 252 Cal. Rptr. 3d 355, 358–60 (Cal. Ct. App. 2019) (finding no reason to distinguish between restitution payments made directly to a victim and restitution payments ordered paid to the California Victim Compensation Board for victim expenses covered by that program, as the court saw “no reason that defendant should receive a windfall – and the Restitution Fund should suffer a loss – simply because victims exercised their right to apply to the California Victim Compensation Board rather than waiting for the victim restitution order”); *State v. Thomas*, 14 A.3d 961, 966 (Vt. 2010) (affirming, in part, and remanding, part, restitution order of defendant, convicted of aggravated assault by attempting to cause serious bodily injury, on the grounds that, *inter alia*, the victim compensation fund was a “victim” entitled to restitution under the express terms of the state’s restitution statute). *But see Stanley v. State*, 42 So. 3d 330, 332–33 (Fla. Dist. Ct. App. 2010) (holding that the lower court erred in redirecting restitution payments to the Florida Crimes Compensation Trust Fund (Fund) after the victim of defendant’s offense appeared to have gone out of business because, *inter alia*, the Fund was not a “victim” for restitution purposes, as it had suffered no “property damage or loss, monetary expense, or physical injury or death” due to defendant’s offense).

<sup>253</sup> See, e.g., Alaska Stat. Ann. § 12.55.045(a) (“The court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section . . . to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law.”); 730 Ill. Comp. Stat. Ann. 5/5-5-6(b) (“If a defendant is placed on supervision for, or convicted of, domestic battery, the defendant shall be required to pay restitution to any domestic violence shelter in which the victim and any other family or household members lived because of the domestic battery.”); Mich. Comp. Laws Ann. § 780.766(8) (“The court shall [] order restitution for the costs of services provided to persons or entities that have provided services to the victim as a result of the crime. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation.”); see also *People v. Strebin*, 568 N.E.2d 420, 424–25 (Ill. App. Ct. 1991) (affirming the propriety of restitution to an agency that provided counseling services to an indigent victim observing that to “hold otherwise would render the victim’s indigence a fortuitous occurrence for the defendant, freeing him of a financial obligation that he should rightly bear”).

<sup>254</sup> See, e.g., Cal. Penal Code § 1203.11 (authorizing, as a condition of probation, restitution for public agencies that provided an emergency response related to the defendant’s conduct); Haw. Rev. Stat. Ann. § § 291E-64(g) (providing that a court must order a person sentenced for operating a vehicle after consuming a measurable amount of alcohol to pay restitution to the police department or other agency incurring the expense of a blood test administered in connection with the crime); 720 Ill. Comp. Stat. Ann. 646/90(a) (providing that when a person’s violation of the Methamphetamine Control and Community Protection Act requires an emergency response, that person is required to make restitution to all public entities involved in the emergency response and detailing a non-exclusive list of compensable losses); S.C. Code Ann. § 44-53-376(C) (“If a person is convicted of [knowingly causing the disposal of waste from the production of methamphetamine], in a manner that requires an emergency or environmental response, the person convicted must be required to make restitution to all public entities involved in the emergency response, to cover the reasonable cost of their participation in the emergency response. The convicted person shall make the restitution in addition to any other fine or penalty required by law.”).

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<sup>255</sup> See, e.g., *People v. Carbajal*, 899 P.2d 67, 70–71 (Cal. 1995) (en banc) (observing that restitution ordered as a condition of probation may be proper where “the loss was caused by related conduct not resulting in a conviction,” by “conduct underlying dismissed and uncharged counts,” and by “conduct resulting in an acquittal” and affirming that the trial court has discretion “to order restitution as a condition of probation where the victim’s loss was not the result of the crime underlying the defendant’s conviction, but where the trial court finds such restitution will serve one of the purposes [of probation]”); *State v. Hurst*, 764 So. 2d 652, 652 (Fla. Dist. Ct. App. 2000) (concluding that restitution may be ordered for losses that bear a significant relationship to a defendant’s offense, even if they are not included in the charging information); *In re J.M.A.*, 147 N.E.3d 1005, 1015-16 (Ill. App. Ct. 2019) (affirming restitution order, holding that juvenile may be ordered to pay restitution for conduct underlying charges that have been dropped as agreed to as a part of a plea agreement with the state); *People v. Cameron*, 977 N.E.2d 909, 921 (Ill. App. Ct. 2012) (holding that a trial court may order restitution for losses incurred by the same victim as the result of the same criminal conduct of the defendant, even if those losses were not set forth in the charging instrument and clarifying that in cases involving theft by possession of stolen property, “absent an agreement to the contrary or evidence linking defendant to the initial taking of the property, the defendant may not be required to pay restitution for the losses associated with the initial taking but, rather, may only be required to pay restitution for those losses associated with all of the stolen items that were in defendant’s possession, even if some of those items were not listed in the charging document”)

<sup>256</sup> See, e.g., *United States v. Maturin*, 488 F.3d 657, 660–61 (5th Cir.2007) (“The general rule is that a district court can award restitution to victims of the offense, but the restitution award can encompass only those losses that resulted directly from the offense for which the defendant was convicted.”); *People v. McKinley*, 852 N.W.2d 770, 774–76 (Mich. 2014) (holding that a trial court’s restitution award cannot be based solely on uncharged conduct; that restitution statutes tie a defendant’s course of conduct to the convicted offenses and require a causal link between them; and that any course of conduct that does not give rise to a conviction may not be relied on as a basis for assessing restitution against a defendant); *State v. Bohannon*, 996 A.2d 196, 199–201 (Vt. 2010) (vacating order directing defendant to pay restitution for the cost of extraditing him back to Vermont after he left the state without notifying his probation officer on the grounds that (1) leaving the state without notifying a probation officer is not a “crime” for which restitution can be ordered; (2) “[t]he reinstatement of an original sentence following a probation violation . . . does not transform a probation violation and an underlying criminal offense into the same act” for restitution purposes; and (3) even if restitution could be ordered at a probation revocation proceeding based on the crimes underlying the probation, the link between the costs of extradition and defendant’s underlying crimes of unlawful restraint and assault is “simply too tenuous to trigger restitution”).

<sup>257</sup> See *supra* Part IV.C.3.

<sup>258</sup> See, e.g., 18 U.S.C. § 1593(b)(1); *id.* § 2248(b)(1); *id.* § 2259(b)(1); *id.* § 2264(b)(1); *id.* § 2327(b)(1); *id.* § 2429(b)(1); *id.* § 3664(f)(1)(A); Fla. Const. art. I, § 16(b)(9); Cal. Penal Code § 1202.4(f); Haw. Rev. Stat. Ann. § 706-646(3); Mich. Comp. Laws Ann. § 780.766(2); Mont. Code Ann. § 46-18-24(1); Ohio Const. art. I, § 10a(A)(7); Or. Rev. Stat. Ann. § 137.106(1)(a); S.C. Const. art. I, § 24(A)(9); see also *People v. Garrison*, 852 N.W.2d 45, 50–51 (Mich. 2014) (holding that ordering full restitution is mandatory and “that a restitution order must reflect the total amount of loss caused by a defendant’s criminal conduct, not some lesser amount that a sentencing court might feel is appropriate”). *Cf.* Or. Rev. Stat. Ann. § 137.106(1)(b) (authorizing victims to agree to restitution for less than the full amount of their losses).

<sup>259</sup> See, e.g., 18 U.S.C. § 2259(c)(2) (defining “full amount of the victim’s losses” for the purposes of mandatory restitution for child victims of sexual exploitation through a list of categories of compensable loss, as well as “any other relevant losses incurred by the victim”); Cal. Penal Code § 1202.4(f)(3) (stating that victims are entitled to full restitution for their economic losses and providing a non-exclusive list of categories of compensable loss); Haw. Rev. Stat. Ann. § 706-646(3) (stating that the victim is, upon request, entitled to restitution for the full amount of their losses and providing a non-exclusive list of compensable losses); Mont. Code Ann. § 46-18-243(1)(a) (defining “pecuniary loss” for restitution purposes through a non-exclusive set of examples); N.H. Rev. Stat. § 638:6-b(VI) (“Any restitution ordered by the court [in certain cases involving dealing in counterfeit goods], shall include, but is not limited to attorney’s fees, court costs, and other expenses incurred by the trademark owner in the investigation and prosecution of the case.”); *id.* § 651:62(III) (defining “economic loss” for the purposes of restitution through a non-exclusive list of compensable categories of loss); Ohio Rev. Code Ann. § 2929.01(L) (defining “economic loss” for the purposes of restitution as “any economic detriment suffered by a victim as a direct and proximate result of the commission of an offenses” and listing a non-exclusive list of compensable categories of loss)

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<sup>260</sup> See, e.g., Utah Code Ann. § 77-38b-102(9), (12) (defining “restitution” to mean “the payment of pecuniary damages to a victim” and “pecuniary damages” to mean “demonstrable economic injury, losses, and expenses regardless of whether the economic injury, losses, and expenses have yet been incurred,” but “not include punitive damages or pain and suffering damages”).

<sup>261</sup> See, e.g., 18 U.S.C. § 3663(b) (listing categories of compensable losses for victims of property crimes, offenses resulting in bodily injury and offenses resulting in death); 720 Ill. Comp. Stat. Ann. 5/48-2(d)(6) (listing the categories of compensable losses regarding violations of protections for animal research and production facilities); Vt. Stat. Ann. tit. 13, § 7043(3) (listing the additional losses that a restitution order may cover for victim of human trafficking).

<sup>262</sup> See, e.g., Cal. Penal Code § 1202.4(f)(3)(F) (authorizing restitution for “[n]oneconomic losses, including, but not limited to, psychological harm for violations of [child sex offenses]”); see *People v. Lehman*, 202 Cal. Rptr. 3d 386, 392–93 (Cal. App. Ct. 2016) (discussing award of restitution for noneconomic damages in child sex abuse case).

<sup>263</sup> See generally *State v. Morris*, 839 P.2d 434, 439 (Ariz. Ct. App. 1992) (observing that “certain categories of losses will nearly always require restitution to victims[,]” including medical expenses and mental health counseling; other “expenses incurred by a victim to restore mental well-being and physical safety;” ““necessities of life,” such as transportation, . . . shelter, food, [and] medical care;” and holding that “restitution in these cases should be the rule, not the exception”).

<sup>264</sup> For example, a number of mandatory federal restitution provisions share the same six core categories of loss within their definitions of “full amount of the victims losses”: “medical services relating to physical, psychiatric, or psychological care”; “physical and occupational therapy or rehabilitation”; “necessary transportation, temporary housing, and child care expenses”; “lost income”; “attorneys’ fees, plus any costs incurred in obtaining a civil protection order”; and “any other losses suffered by the victim as a proximate result of the offense.” See, e.g., 18 U.S.C. § 1593(b)(3); *id.* § 2248(b)(3); *id.* § 2259(c)(2); *id.* § 2264(b)(3).

<sup>265</sup> See, e.g., Ohio Rev. Code Ann. § 2929.18(A)(1); N.H. Rev. Stat. § 638:6-b(V); *State v. Sevastopoulos*, 458 P.3d 1149, 1154–55 (Utah Ct. App. 2020) (affirming order that defendant, convicted of theft, pay restitution to the victim for attorney and accountant fees incurred in response to defendant’s admitted thefts and through the pursuit of litigation against the third-party credit card companies, holding that attorney and accountant fees are compensable as restitution under the third-party tort rule, which permits recovery of fees a party incurs due to protecting its interests through litigation with a third party based on the actions of the original offending party). But see, e.g., *State v. Wilkinson*, 39 P.3d 1131, 1133–34 (Ariz. 2002) (en banc) (concluding that restitution is required for “those damages that flow directly from a defendant’s criminal conduct” and establishing a three-part test for determining recoverable losses in restitution: (1) the loss must be economic, (2) the loss must be one that the victims would not have incurred but for defendant’s criminal conduct, and (3) defendant’s criminal conduct must have directly caused the loss).

<sup>266</sup> See, e.g., 18 U.S.C. § 1593(b)(3); *id.* § 2248(b)(3)(E); *id.* § 2259(c)(2)(E); Cal. Penal Code § 1202.4(f)(3)(H); N.H. Rev. Stat. § 638:6-b(V); ”); Vt. Stat. Ann. tit. 13, § 7043(a)(3)(A); see generally *Survey of Select State and Federal Laws Providing for the Recovery of Attorney Fees in Restitution*, NCVLI (2019), <https://law.lclark.edu/live/files/27902-attorney-fees-in-restitution-surveyqr-codepdf> (analyzing whether select federal and state laws provide for recovery of attorney’s fees in restitution); see *Strout v. State*, 180 So. 3d 1052, 1055–56 (Fla. Dist. Ct. App. 2015) (holding, in a case where defendant was convicted of removing and concealing her children in violation of a court order, that: (1) the victim was entitled to restitution for attorneys’ fees incurred in connection with an unsuccessful Hague Convention proceeding in which he sought return of the children, counseling for his daughter and out-of-pocket expenses incurred in traveling to Germany to attempt to retrieve the children and (2) the victim was not entitled to restitution for attorneys’ fees associated with separate custody proceedings regarding his daughter, on the ground that such fees were not sufficiently causally connected to the charged crime); see also *Victim Law Criminal Court Motion Practice: Considerations When Seeking Attorney Fees in Restitution*, NCVLI (Sept. 2016), at 1 n.7, <https://law.lclark.edu/live/files/25181-ncvli-newsletter---attorney-fees-and> (discussing considerations when seeking attorney fees in restitution and compiling cases in which restitution for attorney fees was affirmed). But see *In re Chaddah*, No. 306978, 2012 WL 5258288, at \*1–3 (Mich. Ct. App. Oct. 23, 2012) (per curiam) (finding that the trial court did not err in declining to order restitution for attorney’s fees where the victim hired an attorney in a mandamus action against the prosecutor to procure criminal charges against defendant and a victims’ rights attorney who represented the victim in the criminal case, because there was no causal connection between the victim’s attorney fees and the crime, since the fees incurred in connection with the case were the result of the victim’s “voluntary decision to hire an attorney to represent his rights” and not an expense “necessarily incurred as a result of the offense”); *State v. Gerhardt*, 385 P.3d 1049, 1051–52 (Or. 2016) (reversing

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the appellate court and upholding the trial court’s restitution order that defendant, upon being convicted for strangling his wife, pay for victim’s economic damages incurred while defendant was incarcerated pending the trial when she hired an attorney to help her enforce the no-contact order against defendant and to obtain a permanent protective order under the Family Abuse Prevention Act, finding that defendant’s crime was the factual cause of the victim’s attorney fees and that the fees were reasonably foreseeable).

<sup>267</sup> See, e.g., 18 U.S.C. § 1593(b)(3); *id.* § 2248(b)(3)(C); *id.* § 2259(c)(2)(C); *id.* § 3663(b)(4); *id.* § 3663A(b)(4); Mich. Comp. Laws Ann. § 780.766(3)(e); N.H. Rev. Stat. § 633:10(II)(b); S.C. Code Ann. § 16-3-1110(A)(11)(e).

<sup>268</sup> See *Lagos v. United States*, 138 S. Ct. 1684, 1687 (2018) (finding that the MVRA, which requires that victims be reimbursed for “lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense” only allows for restitution for such losses when they are incurred during participation in government investigations and criminal proceedings).

<sup>269</sup> See, e.g., Mich. Comp. Laws Ann. § 780.766(24) (“If the victim is a minor, the order of restitution shall require the defendant to pay to a parent of the victim an amount that is determined to be reasonable for any of the following that are actually incurred or reasonably expected to be incurred by the parent as a result of the crime: (a) Homemaking and child care expenses. (b) Income loss not ordered to be paid under subsection (4)(h). (c) Mileage. (d) Lodging or housing. (e) Meals. (f) Any other cost incurred in exercising the rights of the victim or a parent under this act.”).

<sup>270</sup> See, e.g., Cal. Penal Code § 1202.4(f)(3)(L); Mont. Code Ann. § 46-6-332(4); Va. Code Ann. § 18.2-186.3(E); *United States v. Emasealu*, 779 F. App’x 283, 284 (5th Cir. 2019) (per curiam) (affirming restitution order to compensate victims for the cost of credit monitoring).

<sup>271</sup> See, e.g., 18 U.S.C. § 3663(b)(3); *id.* § 3663A(b)(3); Fla. Stat. Ann. § 775.089(2)(a)4; Haw. Rev. Stat. Ann. § 706-646(3)(c); Mich. Comp. Laws Ann. § 780.766(3)(f); Mont. Code Ann. § 46-18-243(1)(a); N.H. Rev. Stat. § 651:62(III)(e); Ohio Rev. Code Ann. § 2929.01(L); S.C. Code Ann. § 16-3-1110(A)(11)(c); *Brown v. State*, 657 So. 2d 1280, 1281 (Fla. Dist. Ct. App. 1995) (per curiam) (holding that (1) a victim is entitled to restitution for funeral expenses, regardless of whether the expenses were paid out of wages, savings, or death benefit; and (2) if the funeral expenses were paid by an insurer, the insurer is entitled to restitution); *State v. Phillips*, 382 P.3d 133, 164–65 (Haw. 2016) (affirming restitution order for funeral-related expenses incurred by the victim, who died more than a year after the attempted murder for which defendant was convicted, as a sufficient causal nexus between the attempted murder and the victim’s death was adequately established); *People v. Harris*, 745 N.E.2d 717, 719–20 (Ill. App. Ct. 2001) (affirming order that defendant, convicted of second degree murder, pay restitution in the amount of \$7,652.95 for the costs of the victim’s funeral and airfare to fly the victim’s mother and four other people to fly from Oregon to Chicago to attend the funeral, holding that “where the actual victim is deceased, a broad definition of victim to include the decedent’s family is necessary to effectuate the purpose of the statute[,]” and observing that defendant had waived any objection to the order because he had failed to object to the airfare bill presented by the state at sentencing).

<sup>272</sup> See, e.g., 18 U.S.C. § 1593(b)(3); *id.* § 2248(b)(3)(D); *id.* § 2259(c)(2)(D); *id.* § 3663(b)(2)(C); *id.* § 3663A(b)(2)(C); Ariz. Rev. Stat. Ann. § 13-105(16); Cal. Penal Code § 1202.4(f)(3)(D); Fla. Stat. Ann. § 775.089(2)(a)3; Haw. Rev. Stat. Ann. § 706-646(3)(d); Ky. Rev. Stat. Ann. § 532.350(1)(a); Mich. Comp. Laws Ann. § 780.766(3)(c); Mont. Code Ann. § 46-18-243(1)(a); N.H. Rev. Stat. § 651:62(III)(b); Ohio Rev. Code Ann. § 2929.01(L); Vt. Stat. Ann. tit. 13, § 7043(a)(2); *State v. Demello*, 361 P.3d 420, 422-28 (Haw. 2015) (affirming restitution for lost wages and the broad nature of victims’ right to restitution; and analyzing the legislative history of the restitution statute); *State v. Patterson*, 384 P.3d 92, 95–96 (Mont. 2016) (affirming restitution for, *inter alia*, lost wages incurred in connection with the victim’s efforts to locate stolen property); see also *People v. Allen*, 813 N.W.2d 806, 809–10 (Mich. Ct. App. 2011) (per curiam) (affirming restitution order for expenses incurred to investigate defendant’s attempted fraud, holding that the order was proper even though the salaried investigator would have been paid the same amount without regard to defendant’s crime because Blue Cross essentially lost the time-value that the investigator had to spend on investigating the crime); *People v. Turn*, 896 N.W.2d 805, 807–08 (Mich. Ct. App. 2016) (per curiam) (holding that an assault victim is entitled to restitution for the loss of accumulated sick, personal, and vacation time that is used to recover from the assault, as the paid leave time constitutes income loss because the victim lost the ability to use or receive monetary payment for the paid leave time in the future). *But see People v. Danenberger*, 848 N.E.2d 637, 643–44 (Ill. App. Ct. 2006) (vacating order that defendant, convicted of disorderly conduct by filing a false police report, pay restitution to the police department for expenses incurred while investigating defendant’s false report, holding that the department’s losses were not “out-

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of-pocket expenses, damages, losses, or injuries” within the meaning of the restitution statute because the “money that the officers were paid for the hours that they spent investigating defendant’s claim was money that they would have been paid *anyway*[.]” and clarifying that although no restitution was authorized under the facts of this case, a law enforcement agency could be eligible to receive restitution under different circumstances).

<sup>273</sup> See, e.g., 18 U.S.C. § 3663(b)(4); *id.* § 3663A(4); Cal. Penal Code § 1202.4(f)(3)(E); Mont. Code Ann. § 46-18-243(1)(a); *In re Erika V.*, 983 P.2d 768, 770 (Ariz. Ct. App. 1999) (holding that the parents of a minor victim in a juvenile proceeding were entitled to restitution for lost wages they incurred as a result of defendant’s crime); *State v. Lindsley*, 953 P.2d 1248, 1252 (Ariz. Ct. App. 1997) (affirming an order awarding restitution to a theft victim for wages lost due to attendance at trial, under statute authorizing restitution for economic losses incurred “as a result of the commission of an offense,” on the ground that the trial attendance “was a direct result of defendant’s crime” and noting that “it makes no difference whether the victim attended [the proceedings] pursuant to subpoena or not”); *In re Ryan A.*, 39 P.3d 543, 548–50 (Ariz. Ct. App. 2002) (affirming restitution in a juvenile proceeding for the lost wages of both parents of a child-victim that were incurred to attend court proceedings – including wages lost as a result of rescheduling clients and wages lost when using annual leave time – and clarifying that the “loss of [indirect employment benefits, such as annual leave or vacation time] is a real economic loss tied to wages earned” and is subject to restitution); *State v. Crisler*, 81 Cal. Rptr. 3d 887, 891–92 (Cal. Ct. App. 2008) (internal citations omitted) (finding that wages lost by parents of murder victim while attending trial “readily qualify as ‘economic loss incurred as the result of the defendant’s criminal conduct’ since they would not have been incurred had defendant not murdered their son” and noting the foreseeability of the victim’s parents attending the trial regarding their child’s murder); *State v. Reale*, 343 P.3d 49, 53–55 (Idaho 2014) (affirming an order awarding restitution to the child-victim’s mother to reimburse her for lost wages resulting from taking time off from a night shift job to sleep before morning court appearances under statute defining economic loss, for restitution purposes, as including “lost wages . . . resulting from the criminal conduct” and finding that the decision to miss work was “not an intervening, superseding cause,” as it is “foreseeable that the mother of a child victim would want or need to attend the same court proceedings”); *Huddleston v. State*, 764 N.E.2d 655, 657 (Ind. Ct. App. 2002) (finding that mother of child molestation victim was entitled to restitution for, *inter alia*, wages lost to attend court proceedings because such economic costs were the “direct and immediate result of the criminal acts of a defendant”).

<sup>274</sup> See *supra* note 268.

<sup>275</sup> Ariz. Rev. Stat. Ann. § 13-105(16); Cal. Penal Code § 1202.4(f)(3)(G).

<sup>276</sup> See, e.g., *People v. Cross*, 760 N.W.2d 314, 315 (Mich. Ct. App. 2008) (finding that the trial court was permitted to order restitution for lost profits, even though the restitution statute did not expressly authorize restitution for lost profits); *State v. Jurado*, 905 P.2d 274, 275 (Or. Ct. App. 1995) (finding that restitution may be ordered for the victim’s lost profits if the loss is proved with reasonable certainty).

<sup>277</sup> See, e.g., 18 U.S.C. § 1593(b)(3); *id.* § 2248(b)(3)(A); *id.* § 2259(c)(2)(A); *id.* § 3663(b)(2)(A); *id.* § 3663A(b)(2)(A); Cal. Penal Code § 1202.4(f)(3)(B)–(C); Fla. Stat. Ann. § 775.089(2)(a)1; Haw. Rev. Stat. Ann. § 706-646(3)(b); Ky. Rev. Stat. Ann. § 532.350(1)(a); *id.* § 533.030(3); Mich. Comp. Laws Ann. § 780.766(3)(a); Mont. Code Ann. § 46-18-243(1)(a), (c); N.H. Rev. Stat. § 633:10(II)(a); *id.* § 651:62(III)(a); Ohio Rev. Code Ann. § 2929.01(L); S.C. Code Ann. § 16-3-1110(A)(11)(a); Vt. Stat. Ann. tit. 13, § 7043(a)(2); see also *State v. Essig*, 218 P.3d 838, 841–42 (Mont. 2009) affirming restitution for, *inter alia*, blood testing and counseling expenses incurred by a victim’s children as a result of defendant’s stalking behavior and citing Mont. Code Ann. § 46-18-243(1), which defines “pecuniary loss” explicitly as including “out of pocket losses, such as medical expenses”); *State v. Jent*, 299 P.3d 332, 336–38 (Mont. 2013) (affirming restitution for medical expenses incurred in connection with the victim’s suicide attempt on the day defendant pleaded guilty to the aggravated assault of the victim).

<sup>278</sup> See, e.g., 18 U.S.C. § 1593(b)(3); *id.* § 2248(b)(3)(B); *id.* § 2259(c)(2)(B); *id.* § 3663(b)(2)(B); *id.* § 3663A(b)(2)(B); Fla. Stat. Ann. § 775.089(2)(a)2; Mich. Comp. Laws Ann. § 780.766(3)(b); N.H. Rev. Stat. § 651:62(III)(a).

<sup>279</sup> See, e.g., Cal. Penal Code § 1202.4(f)(3)(I); Ky. Rev. Stat. Ann. § 533.030(3); N.H. Rev. Stat. § 633:10(II)(d); *State v. Shepherd*, 60 A.3d 213, 215–16 (Vt. 2012) (concluding that the trial court did not abuse its discretion in ordering defendant, convicted of multiple sex crimes against a ten-year-old victim, to pay restitution for the relocation expenses of the victim and his family).

<sup>280</sup> See, e.g., Cal. Penal Code § 1202.4(f)(3)(J); *People v. Brooks*, 233 Cal. Rptr. 3d 606, 618 (Cal. Ct. App. 2018) (affirming restitution for the cost of installing a security system following defendant’s commission of a nonviolent burglary and holding that where a victim incurs the economic loss of installing a security system as a direct result of defendant’s criminal conduct, the trial court may include that amount in a victim restitution award regardless of



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whether the offense was violent or nonviolent); *State v. Pumphrey*, 338 P.3d 819, 822–23 (Or. Ct. App. 2014) (affirming order that defendant, convicted of two counts of violating a stalking protective order, pay \$2,671.76 in restitution for expenses victim incurred from changing her phone number, changing the locks on her home, staying at a safe house during court proceedings, obtaining copies of police reports in another state, and taking one day off from work to facilitate the changing of her locks). *But see, e.g., In re T.W.*, 644 N.E.2d 438, 439 (Ill. App. Ct. 1994) (vacating order that juvenile, convicted of burglary, pay restitution for the victims’ expenses incurred in installing security lights, holding that Ill. Comp. Stat. Ann. 5/5-5-6 “does not provide for reimbursement of the cost of security measures added by a victim following the commission of an offense”); *State v. Moore*, 239 A.3d 897 (N.H. 2020) (declining to award restitution for a home security system, noting that “[r]estitution is meant to compensate a victim only for ‘losses’ directly arising from a crime”); *State v. Baker*, 12 A.3d 545, 547–48 (Vt. 2010) (reversing restitution order directing defendant, convicted of burglarizing the victim-library, to pay the cost of changing the victim’s locks, upon concluding that, *inter alia*, defendant did not damage the original locks and although restitution may cover expenses to change locks to repair property damage, it does not cover such expenses to prevent future crime).

<sup>281</sup> *See, e.g.*, 18 U.S.C. § 3663(b)(1); Cal. Penal Code § 1202.4(f)(3)(A); Haw. Rev. Stat. Ann. § 706-646(3)(a); Ky. Rev. Stat. Ann. § 532.350(1)(a); *id.* § 533.030(3); Mont. Code Ann. § 46-18-243(1)(b); N.H. Rev. Stat. § 633:10(II)(c); *id.* § 651:62(III)(c); Ohio Rev. Code Ann. § 2929.01(L); *State v. Simpson*, 328 P.3d 1144, 1148 (Mont. 2014) affirming restitution for, *inter alia*, the value of fourteen tons of stolen scrap metal).

<sup>282</sup> *See, e.g.*, 18 U.S.C. § 1593(b)(3); *id.* § 2248(b)(3)(C); *id.* § 2259(c)(2)(C); N.H. Rev. Stat. § 633:10(II)(b); Ohio Rev. Code Ann. § 2929.18(B)(8)(a).

<sup>283</sup> *See, e.g.*, 18 U.S.C. § 1593(b)(3); *id.* § 2248(b)(3)(C); *id.* § 2259(c)(2)(C); *id.* § 3663(b)(4); *id.* § 3663A(b)(4); N.H. Rev. Stat. § 633:10(II)(b); S.C. Code Ann. § 16-3-1110(A)(11)(f); *State v. Madrid*, 85 P.3d 1054, 1056-58 (Ariz. Ct. App. 2004) (recognizing that full restitution for the victim’s loss is mandatory and affirming restitution for reasonable travel expenses arising from the attendance of the deceased victim’s children at trial); *People v. Graham*, 947 N.E.2d 294, 304-05 (Ill. App. Ct. 2011) (affirming order that defendant, convicted of six counts of criminal sexual assault of his daughter, pay restitution to the child-victim’s grandfather, who had custody of her, for travel expenses incurred in connection with transportation to a support group and transportation relating to the criminal proceedings and holding that the victim’s grandfather was legally a victim of defendant’s crime as a “close relative” and “single representative” for purposes of restitution and was rightfully entitled to restitution, noting that the restitution statute should be construed broadly, to ensure that defendants pay any costs incurred as a result of their actions); *People v. Garrison*, 852 N.W.2d 45, 50–51 (Mich. 2014) (holding that ordering full restitution is mandatory, and “that a restitution order must reflect the total amount of loss caused by a defendant’s criminal conduct, not some lesser amount that a sentencing court might feel is appropriate[,]” and that the victim’s “travel expenses [in order to secure their stolen property and to attend the restitution hearing] were a direct result of defendant’s criminal course of conduct”).

<sup>284</sup> *See supra* note 268.

<sup>285</sup> *See, e.g.*, Mich. Comp. Laws Ann. § 780.766(4) (authorizing restitution for cost of medical and related professional services and devices that have actually incurred and are reasonably expected to be incurred); Mont. Code Ann. § 46-18-243(1)(a), (c) (authorizing restitution for past and future medical expenses); *United States v. Stevens*, 239 F. Supp. 3d 417, 424 (D. Conn. 2017) (“Future lost income is a proper component for restitution in cases in which a victim’s death has resulted.”); *State v. Howard*, 815 P.2d 5, 7 (Ariz. Ct. App. 1991) (holding that “the full amount of a victim’s economic loss includes not only those losses incurred at the time of sentencing, but also those losses reasonably anticipated to be incurred in the future as a result of the defendant’s actions”; and finding that the trial court appropriately included future medical expenses in the restitution order); *People v. Giordano*, 170 P.3d 623, 633–38 (Cal. 2007) (affirming court of appeal order that defendant, convicted of driving under the influence resulting in death of another individual, pay restitution to the victim’s wife, compensating her for future economic losses, holding that a surviving spouse may receive as direct restitution the amount of lost economic support, and that an award of the decedent’s annual salary for five years was not an abuse of discretion); *Koile v. State*, 934 So.2d 1226, 1231–33 (Fla. 2006) (holding that the estate of a murder victim is entitled to restitution for the victim’s future lost income under Fla. Stat. Ann. § 775.089(2)(a)3; *State v. Passwater*, 350 P.3d 382, 384–86 (Mont. 2015) (affirming a restitution order for, *inter alia*, the cost of future care for one of the victims of negligent vehicular assault, which was based on a life care plan prepared by a nurse and certified life care planner in consultation with other experts and finding that the restitution calculations included in the life care plan were not too speculative to support the order); *see generally Future Expenses: A Necessary Component of Restitution*,

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NCVLI Violence Against Women Bulletin (2014), <https://law.lclark.edu/live/files/17049-future-expenses---a-necessary-component-of> (detailing the different approaches jurisdictions tend to take when considering whether to order restitution for future expenses).

<sup>286</sup> See, e.g., 18 U.S.C. § 2264(b)(3) (mandating restitution in domestic violence and stalking cases for certain enumerated losses, as well as “any other losses suffered by the victim as a proximate result of the offense”); Ky. Rev. Stat. Ann. § 532.350(1)(a) (defining “restitution” to mean “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”); Mich. Comp. Laws Ann. § 780.766b (authorizing restitution for victims of human trafficking for certain losses, as well as “[a]ny other loss suffered by the victim as a proximate result of the offense”); N.H. Rev. Stat. § 633:10(II)(e) (authorizing restitution for victims of human trafficking for certain losses, as well as “[a]ny and all other losses suffered by the victim as a result of [a human trafficking] offense”).

<sup>287</sup> See, e.g., *Santiago v. State*, 669 So. 2d 334, 335–36 (Fla. Dist. Ct. App. 1996) (per curiam) (affirming order that defendants, convicted of trespass and battery, pay restitution to the victim for the expenses incurred in taking her daughter to a friend’s house after the offense on the ground that the victim’s expenses in ensuring the safety of her child were directly and significantly related to defendants’ crimes).

<sup>288</sup> Common examples across jurisdictions of such crime-specific compensable losses are: (1) the value of victims’ labor or services in human trafficking cases, see, e.g., 18 U.S.C. § 1593(c); Ariz. Rev. Stat. Ann. § 13-1309; Cal. Penal Code § 1202.4(q); Haw. Rev. Stat. Ann. § 707-785(a)–(b); 720 Ill. Comp. Stat. Ann. 5/10-9(g); Mich. Comp. Laws Ann. § 780.766b; N.H. Rev. Stat. § 633:10(I)–(II); Ohio Rev. Code Ann. § 2929.18(B)(8); S.C. Code Ann. § 16-3-2040(D); Vt. Stat. Ann. tit. 13, § 2657(a); and (2) the unique damages incurred as the result of the disability or death of a service animal, see, e.g., Fla. Stat. Ann. § 413.081(4); Haw. Rev. Stat. Ann. § 711-1109.4(4); *id.* § 711-1109.5(4); Ky. Rev. Stat. Ann. § 525.215; Nev. Rev. Stat. Ann. § 426.810(3); N.H. Rev. Stat. § 167-D:10(III); N.J. Stat. Ann. § 2C:39-3.2(d); 21 Okla. Stat. Ann. § 649.3(E); S.C. Code Ann. § 47-3-970; Vt. Stat. Ann. tit. 13, § 355(f).

<sup>289</sup> See, e.g., 18 U.S.C. § 2264(b)(3)(F) (providing that domestic violence and stalking victims are entitled to the same core six categories loss as available under other federal mandatory restitution provisions, as well as “veterinary services relating to physical care for the victim’s pet, service animal, emotional support animal or horse”); *id.* § 3663(b)(6) (providing that victims of identity theft are entitled to restitution that includes “an amount equal to the value of the time reasonably spent by the victim in an attempt to remediate the intended or actual harm incurred by the victim from the offenses”); Fla. Stat. Ann. § 817.02(2)(a) (providing that victims of offenses related to obtaining property by false personation are entitled to restitution for certain out-of-pocket losses incurred in clearing their credit history or rating or in connection with civil or administrative proceedings to satisfy obligations arising out of the defendant’s actions, in addition to other losses available under the state’s general restitution law); 720 Ill. Comp. Stat. Ann. 5/17-10.5(d)(8) (providing that victims of insurance fraud are entitled to restitution for any financial losses, including court costs and attorney’s fees and providing that a restitution order must include expenses related to medical evaluation or treatment services); Ky. Rev. Stat. Ann. § 532.034 (providing that restitution for victims of identity theft includes financial losses that the victim suffered in correcting their credit history “or any costs incurred in connection with any civil or administrative proceeding to satisfy any debt or other obligation of such victim, including lost wages and attorney’s fees”); N.H. Rev. Stat. § 318-D:2(IV) (“In addition to the restitution authorized in paragraph III, a court may require a person convicted of manufacturing or attempting to manufacture methamphetamine to pay restitution to a property owner who incurred removal or remediation costs as a result of the crime.”); Ohio Rev. Code Ann. § 2913.02(b)(11) (providing additional, non-exclusive categories of loss subject to restitution when an offender is convicted of certain theft violations related to stealing rented property or rental services); Utah Code Ann. § 76-6-107(4) (providing that individuals convicted of graffiti must pay “restitution to the victim in an amount equal to the costs, repair costs, or replacement costs, whichever is less” and “[a]n additional amount of \$1,000 in restitution” for removal costs “if the graffiti is positioned on an overpass or an underpass, requires that traffic be interfered with in order to remove it, or the entity responsible for the area in which the clean-up is to take place must provide assistance in order for the removal to take place safely”).

<sup>290</sup> See, e.g., 730 Ill. Comp. Stat. Ann. 5/5-5-6(c)(1) (“In no event shall the victim be entitled to recover restitution in excess of the actual out-of-pocket expenses, losses, damages, or injuries, proximately caused by the conduct of all of the defendants.”). *But see*, e.g., Mich. Comp. Laws Ann. § 780.766(5) (“If a crime resulting in bodily injury also results in the death of a victim or serious impairment of a body function of a victim, the court may order up to 3 times the amount of restitution otherwise allowed under this section.”).

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<sup>291</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-105(16) (stating that restitution does not include compensation for “damages for pain and suffering, punitive damages or consequential damages”); 730 Ill. Comp. Stat. Ann. 5/5-5-6(b) (providing that “in no event shall restitution be ordered to be paid on account of pain and suffering”); Ky. Rev. Stat. Ann. § 533.030(3) (setting forth the categories of monetary loss for which victims may be compensated in restitution); N.H. Rev. Stat. § 651:62(V) (defining “restitution” as “money or service provided by the offender to compensate a victim for economic loss, or to compensate any collateral source subrogated to the rights of the victim, which indemnifies a victim for economic loss under this subdivision”); Ohio Rev. Code Ann. § 2929.01(L) (providing that victims are not entitled to restitution for “non-economic loss or any punitive or exemplary damages”); S.C. Code Ann. § 16-3-1110(B) (“Restitution does not include awards for pain and suffering, wrongful death, emotional distress, or loss of consortium.”); see also *State v. Jarvis*, 509 A.2d 1005, 1006 (Vt. 1986) (“Damages that are not readily ascertainable, such as pain and suffering, emotional trauma, loss of earning capacity, and wrongful death awards are not proper subjects of restitution.”). But see, e.g., Cal. Penal Code § 1202.4(f)(3)(F) (authorizing restitution for “[n]oneconomic losses, including, but not limited to, psychological harm for violations of [child sex offenses]”).

<sup>292</sup> See, e.g., *People v. McCormick*, 774 N.E.2d 392, 399–400 (Ill. App. Ct. 2002) (holding that a defendant may not be ordered to pay restitution arising out of the claimant’s own illegal actions because it violates public policy, where the victim incurred parking tickets by parking on the street outside of her apartment because she was afraid to park in a public garage as a result of defendant’s harassment).

<sup>293</sup> The preponderance of the evidence standard may be explicit in a statute. See, e.g., 18 U.S.C. § 3664(e) (“Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government.”); Mich. Comp. Laws Ann. § 780.767(4) (“Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney.”); Tex. Crim. Proc. Code, Art. 42.037(k) (“The court shall resolve any dispute relating to the proper amount or type of restitution. The standard of proof is a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the prosecuting attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and the defendant’s dependents is on the defendant. The burden of demonstrating other matters as the court deems appropriate is on the party designated by the court as justice requires.”); Minn. State. § 611A.045, Subd. 3(a) (“A dispute as to the proper amount or type of restitution must be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution.”). Some courts have applied the preponderance of the evidence standard in jurisdictions that do not expressly identify this as the standard in their restitution statutes. See, e.g., *People v. Gemelli*, 74 Cal. Rptr. 3d 901, 904 (Cal. App. Ct. 2008) (recognizing that the standard of proof at a restitution hearing is preponderance of the evidence); *Bellot v. State*, 964 So. 2d 857, 859–60 (Fla. Dist. Ct. App. 2007) (observing that the state must prove the amount of restitution owed by a preponderance of the evidence and the court may only order restitution when it finds that loss or damage is causally connected to the offense and bears a significant relationship to the offense); *Noffsinger v. State*, 850 P.2d 647, 650 (Alaska Ct. App. 1993) (“If uncertainty exists, the appropriate amount for restitution must be proved by a preponderance of the evidence.”).

<sup>294</sup> See, e.g., *People v. Gemelli*, 74 Cal. Rptr. 3d 901, 904 (Cal. App. Ct. 2008) (“Once the victim makes a prima facie showing of economic losses incurred as a result of the defendant’s criminal acts, the burden shifts to the defendant to disprove the amount of losses claimed by the victim.”).

<sup>295</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-804(I) (providing that restitution may be supported by evidence or information introduced or submitted to the court before sentencing or any evidence previously heard by the judge during the proceedings); Cal. Penal Code § 1203.1d(d) (providing that restitution may be based on documentary evidence, including “bills, receipts, repair estimates, insurance payment statements, payroll stubs, business records, and similar documents relevant to the value of the stolen or damaged property, medical expenses and wages and profits lost”); Ohio Rev. Code Ann. § 2929.18(A)(1) (“The court may base the amount of restitution it orders [in a felony case] on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense.”); N.H. Rev. Stat. § 21-M:8-1(II) (stating that if restitution is

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ordered to the victims' assistance fund to reimburse the fund for moneys awarded to the victim, "the amount of assistance provided by the fund shall be established by copies of bills submitted to the victims' assistance commission reflecting the amount paid from the fund and stating that the services for which payment was made were for uninsured pecuniary losses"); see *People v. Kelly*, 274 Cal. Rptr. 3d 158, 166 (Cal. Ct. App. 2020) (internal citations omitted) ("[T]he standard of evidence at a restitution hearing does not necessarily require a crime victim to produce detailed billing records, receipts, or business invoices. . . . A victim's loss statement submitted to probation may be sufficient to support a prima facie showing of loss."); *J.J.N. v. State*, 214 So. 3d 784, 785 (Fla. Dist. Ct. App. 2017) (recognizing that "the victim's testimony at the restitution hearing provided a sufficient evidentiary basis, rather than a 'guesstimate,'" to support restitution reflecting losses within a certain range but remanding for a new restitution hearing because the amount the court ordered fell outside of that range); *State v. Lalain*, 994 N.E.2d 423, 429–30 (Ohio 2013) (holding that trial courts have the authority to order restitution and clarifying that the amount of restitution may be based "on a recommendation of the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information"); *State v. Snowden*, 140 N.E.3d 1112, 1137 (Ohio Ct. App. 2019) (affirming that the amount of restitution "should, if necessary, be substantiated through documentary or testimonial evidence" and reiterating that the "trial court is authorized to base the amount of restitution on an amount recommended by the victim").

<sup>296</sup> See, e.g., *State v. Jauregui*, 964 N.W.2d 358, at \*4 (Iowa Ct. App. 2021) (table) (concluding that the victim's mother was entitled to restitution for wages lost while supporting her child in the aftermath of defendant's criminal conduct where there was documentary evidence to indicate that the mother missed her shifts at work, but finding the mother's testimony alone was insufficient to establish lost wages for the shifts where there was no documentary evidence).

<sup>297</sup> See, e.g., *State v. Gastiaburu*, 508 P.3d 592, 595 (Or. Ct. App. 2022) ("The payment of medical bills by an insurer, without more, is not legally sufficient evidence that the payment was at or below the market rate and, therefore, reasonable, and thus, recoverable as restitution")

<sup>298</sup> See, e.g., Md. Crim. Proc. § 11-615 ("(a) In a restitution hearing held under § 11-603 of this subtitle, a written statement or bill for medical, dental, hospital, counseling, funeral, or burial expenses is legally sufficient evidence of the amount, fairness, and reasonableness of the charges and the necessity of the services or materials provided. (b) A person who challenges the fairness and reasonableness or the necessity of the amount on the statement or bill has the burden of proving that the amount is not fair and reasonable."); D.C. Code § 16-2320.01(e) ("In a restitution hearing, a written statement or bill for medical, dental, hospital, funeral, or burial expenses, or repair and replacement of property shall be prima facie evidence that the amount indicated on the written statement or bill represents a fair and reasonable charge for the services or materials provided. The burden of proving that the amount indicated on the written statement or bill is not fair and reasonable shall be on the person challenging the fairness and reasonableness of the amount.").

<sup>299</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-804(I) (providing that a restitution order "may be supported by evidence or information introduced or submitted to the court before sentencing or any evidence previously heard by the judge during the proceedings"); *United States v. Pickett*, 387 F. App'x 32, 36 (2d Cir. 2010) (finding that affidavits from victims detailing their financial losses were not necessary to establish the amount of loss by a preponderance of the evidence where the court found evidence of such loss in the trial testimony of a case agent and a chart prepared by that agent summarizing the victims' losses).

<sup>300</sup> See, e.g., *United States v. Serawop*, 505 F.3d 1112, 1114–15 (10th Cir. 2007) (recognizing the trial court's appointment, *sua sponte*, of an economist to be its expert on the future lost income of a three-month-old victim of manslaughter); *United States v. Williams*, 946 F. Supp. 2d 112, 117–18 (D.D.C. 2013) (relying on letters prepared by the government's actuarial expert when calculating the value of a murder victim's future lost income for restitution purposes); *State v. Mayberry*, 415 N.W.2d 644, 645–46 (Iowa 1987) (relying on testimony from a "career information specialist" and an insurance agent when determining the amount of restitution owed to a murder victim's parents for the present value of her projected estate); see also, e.g., *Richardson v. State*, 957 S.W.2d 854, 860 (Tex. Ct. App. 1997) (recognizing that the court's restitution calculations for a homicide victim's child for the victim's lost future income during the child's minority were based on the state's child support guidelines and testimony concerning the deceased's income).

<sup>301</sup> See, e.g., Utah Admin. Code R671-403-6(4) ("The rules of evidence do not apply at restitution hearings."); *United States v. Gushlak*, 728 F.3d 184, 197 n.10 (2d Cir. 2013) (concluding that expert testimony regarding restitution is not subject to the rules of evidence because such rules do not apply at sentencing); *People v. Vasseur*, 409 P.3d 524, 528 (Colo. App. Div. 2016) (finding that "the rules of evidence do not apply in a restitution

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proceeding because restitution is a part of the sentencing process”); *State v. Gullede*, 487 S.E.2d 590, 594 (S.C. 1997) (finding that evidentiary rules do not govern the admissibility of evidence at restitution hearings); *State v. Weeks*, 61 P.3d 1000, 1007 (Utah 2002) (affirming restitution order based solely on presentence report, reasoning that defendant did not offer any evidence contesting the amount and that the report’s evidentiary basis was not relevant because the rules of evidence do not apply to restitution hearings); *State v. Morse*, 106 A.3d 902, 906 (Vt. 2014) (internal citation omitted) (holding that the rules of evidence do not apply to restitution because “[r]estitution is part of sentencing, and thus employs rules that ‘are less formal than the criminal trial’”); *see also State v. Dixon*, 162 P.3d 657, 660 (Ariz. Ct. App. 2007) (affirming the evidentiary support underlying the court’s determination of the amount of the victims’ loss where “the evidence of value and absence of insurance coverable for the listed items contained in the presentence report was uncorroborated by other evidence,” but where it was “nonetheless uncontested evidence that was ‘substantiated’ by the victims’ claims,” as the victims reported the value of each item claimed as a loss). *But see, e.g., State v. Willis*, 898 N.W.2d 642, 648 (Minn. 2017) (holding that the state’s rules of evidence apply to restitution proceedings).

<sup>302</sup> *See, e.g., Cal. Penal Code* § 1203.1d(d) (providing that documentary evidence in support of restitution may not be excluded as hearsay evidence); *State v. Gilroy*, 435 P.3d 799, 800–01 (Or. Ct. App. 2019) (affirming trial court’s restitution order that was based on an insurance company’s employee’s testimony at the restitution hearing that consisted of the victim’s hearsay statements and declining to extend defendants’ due process rights to confront witnesses to restitution hearings).

<sup>303</sup> *See, e.g., Fla. Stat. Ann.* § 775.089(7)(c) (“Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The court may consider hearsay evidence for [the purpose of resolving a dispute as to the proper amount of restitution], provided it finds that the hearsay evidence has a minimal indicia of reliability.”); *State v. Gullede*, 487 S.E.2d 590, 594 (S.C. 1997) (finding that evidentiary rules do not govern the admissibility of evidence at restitution hearings, but such admissibility is subject to the constitutional requirements of relevance, reliability and trustworthiness); *State v. Morse*, 106 A.3d 902, 907 (Vt. 2014) (concluding that the rules of evidence do not apply to restitution hearings and hearsay may be admitted to establish the amount of a victim’s loss, if certain requirements are met to ensure its reliability, such as disclosing the evidence sufficiently in advance and allowing defendant an opportunity to rebut it).

<sup>304</sup> *See supra* note 52.

<sup>305</sup> *See supra* note 55.

<sup>306</sup> *See supra* note 56.

<sup>307</sup> *See supra* note 57.

<sup>308</sup> *See supra* note 9.

<sup>309</sup> For information regarding victims’ restitution-related privacy and confidentiality rights and protections, *see supra* Part II.B.

<sup>310</sup> *See supra* note 73.

<sup>311</sup> *See, e.g., People v. Jones*, 114 Cal. Rptr. 3d 8, 15 (Cal. Ct. App. 2010) (“That no published opinion has yet directly applied the principles of proximate causation to victim restitution does not mean those principles do not apply.”); *State v. Shepherd*, 60 A.3d 213, 215–16 (Vt. 2012) (concluding that the trial court did not abuse its discretion in ordering defendant, convicted of multiple sex crimes against a ten-year-old victim, to pay restitution for the relocation expenses of the victim and his family because although a proximate-cause analysis is generally appropriate in determining whether restitution should be granted, exceptions can be made based on the grievousness of the crime, such as when a victim’s “emotional injury and ostracization in a small town were the natural and probable consequences of the sexual assaults, thereby necessitating relocation”).

<sup>312</sup> *See, e.g., Del. Code Ann. tit. 11, § 4106(a)* (requiring restitution for, *inter alia*, “direct out-of-pocket losses, loss of earnings and other expenses and inconveniences incurred by victim as a direct result of the crime”); *Ky. Rev. Stat. Ann.* § 533.030(3) (authorizing restitution for certain losses incurred as a direct result of crime); *Md. Code Ann., Crim. Proc.* § 11-603(a) (authorizing courts to order restitution for losses incurred “as a direct result of the crime,” if the victim suffered certain losses); *N.H. Rev. Stat.* § 651:62(III) (defining “economic loss” for the purposes of restitution as losses or expenses that a victim incurs “as a direct result of a criminal offense”).

<sup>313</sup> *See, e.g., Wash. Rev. Code Ann.* § 9.94A.753(5) (requiring restitution be ordered “whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection”); *State v. Griffith*, 195 P.3d 506, 508 (Wash. 2008) (internal citations omitted) (“Although there is no right to a jury determination of facts supporting the amount of restitution, ‘[r]estitution is allowed only for losses that are “causally connected” to the crimes charged,’ . . . unless the defendant “expressly agrees to pay restitution

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for crimes for which [she] was not convicted.” . . . Losses are causally connected if, but for the charged crime, the victim would not have incurred the loss. . . . ‘In determining whether a causal connection exists, we look to the underlying facts of the charged offense, not the name of the crime to which the defendant entered a plea.’”)

<sup>314</sup> See, e.g., Colo. Rev. Stat. § 18-1.3-602(3)(a) (emphasis added) (affording victims the right to restitution for “any pecuniary loss suffered by a victim . . . [that is] proximately caused by an offender’s conduct”); 730 Ill. Comp. Stat. Ann. 5/5-5-6(a) (requiring restitution for, *inter alia*, “out-of-pocket expenses, damages, losses, or injuries found to have been proximately caused by the conduct of the defendant or another for whom the defendant is legally accountable under the provisions of Article 5 of the Criminal Code of 1961 or the Criminal Code of 2012”); Utah Code Ann. § 77-38b-205(1)(a)(i)(B) (requiring, outside of the context of a plea agreement restitution “for the entire amount of pecuniary damages that are proximately caused to each victim by the criminal conduct the defendant”); *State v. Ogden*, 416 P.3d 1132, 1139–47 (Utah 2018) (holding that the court must find that the criminal activity was the proximate cause of the victim’s pecuniary injury in determining restitution amount and that the foreseeability of the victim’s injury is an aspect of proximate cause analysis).

<sup>315</sup> See, e.g., 18 U.S.C. § 2259(c)(2) (stating that victims of child sexual exploitation are entitled to restitution for certain losses “incurred, or that are reasonably expected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim”); *id.* § 3663(a)(B)(2) (defining the term “victim” for the purposes of the VWPA, as “a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered”); Ala. Code § 15-18-68(a)(4)–(5) (stating that, when determining the manner, method or amount of restitution to be ordered, courts may consider “[a]ny burden or hardship upon the victim as a direct or indirect result of the defendant’s criminal acts” and “the mental, physical, and financial well-being of the victim”); Fla. Const. art. I, § 16(b)(9) (affording victims the right to restitution for losses suffered “both directly and indirectly, by the victim as a result of the criminal conduct”); Fla. Stat. Ann. § 775.089 (requiring restitution for losses directly or indirectly caused by the defendant’s offense); Ohio Rev. Code Ann. § 2929.18(1) (“Restitution by the offender to the victim of the offender’s crime or any survivor of the victim, in an amount based on the victim’s economic loss. . . . If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense.”); *State v. Lewis*, 214 P.3d 409, 412 (Ariz. Ct. App. 2009) (recognizing that a loss is recoverable in restitution if it is economic, would not have been incurred but for the criminal conduct, and the criminal conduct was the direct cause of the economic loss); *People v. Jones*, 114 Cal. Rptr. 3d 8, 12 (Cal. Ct. App. 2010) (recognizing that there are two aspects of causation when evaluating a restitution claim: direct causation and proximate causation); *Schuette v. State*, 822 So.2d 1275, 1282 (Fla. 2002) (observing that the Florida’s “significant relationship” test for determining causation in the restitution context is comparable to “the requirement of proximate causation between the criminal act and the resulting damages because the Court has required both a ‘but for’ causation requirement and a ‘significant relationship requirement’”); *State v. Corbus*, 249 P.3d 398, 401 (Idaho 2011) (observing that, in Idaho, for the purposes of restitution, “causation consists of actual cause and true proximate cause”); *State v. Baker*, 177 A.3d 1093, 1095–96 (Vt. 2017) (observing that the “direct result” test employed to establish whether a court may order restitution for a victim’s losses “is a narrow analysis that utilizes a stringent reasonable foreseeability proximate causation standard, coupled with further limitations such as the exclusion of unliquidated and difficult-to-ascertain losses”).

<sup>316</sup> See, e.g., *Hughey v. United States*, 495 U.S. 411, 422 (1990) (finding that the Victim and Witness Protection Act, 18 U.S.C. § 3663, limits restitution to losses incurred as a result of the offense of conviction); *State v. Wilkinson*, 39 P.3d 1131, 1133 (Ariz. 2002) (en banc) (concluding that the state’s restitution statutes only authorize financial recovery for damages directly caused by the criminal conduct involved, not other conduct by the defendant); *People v. Daniels*, 447 N.E.2d 508, 516–17 (Ill. App. Ct. 1983) (holding that a victim’s wife could not receive restitution for lost property left in a car that was stolen, since the wife was not a “victim” of the crime, where defendant was charged only with theft of the vehicle and not of property that may have been in the vehicle, and where the evidence “did not establish that any such goods were taken”); *State v. Pinault*, 120 A.3d 913, 916 (N.H. 2015) (reversing restitution order because the loss was not directly related to the crime and declining to “develop a test for determining the outer limits of the connection that must exist between harm or loss, on the one hand, and criminal conduct, on the other, to support an order of restitution”); *State v. LaFlam*, 965 A.2d 519, 522–24 (Vt. 2008) (vacating order that defendant, convicted of driving with a suspended license, pay restitution to a store that he drove into because there was no direct link between the conduct for which defendant was convicted and the store’s

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losses, upon observing that “Vermont law requires there to be a direct link between the loss for which restitution is ordered and the conduct for which defendant has been convicted”).

<sup>317</sup> See, e.g., Fla. Stat. Ann. § 775.089(1)(c)1 (defining “victim” as, *inter alia*, “[e]ach person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant’s offense or criminal episode”); Mich. Comp. Laws Ann. § 780.766(2) (mandating restitution, upon conviction of a crime, for “any victim of the defendant’s course of conduct”).

<sup>318</sup> See, e.g., *People v. Stites*, 802 N.E.2d 303, 305 (Ill. App. Ct. 2003) (affirming order that defendant, convicted of criminal trespass and unlawful restraint, pay \$570 in restitution for property damage that occurred when law enforcement broke down the door to the room in which defendant was hiding and holding that the restitution statute does not require that damage be directly caused by defendant’s criminal act, but only that the damage be a result of the criminal act of defendant).

<sup>319</sup> See, e.g., *State v. Phillips*, 382 P.3d 133, 164–65 (Haw. 2016) (affirming restitution order for funeral-related expenses incurred by the victim, who died more than a year after the attempted murder for which defendant was convicted, as a sufficient causal nexus between the attempted murder and the victim’s death was adequately established); *State v. Thomas*, 14 A.3d 961, 966 (Vt. 2010) (affirming, in part, and remanding, part, restitution order of defendant, convicted of aggravated assault by attempting to cause serious bodily injury, on the ground that, *inter alia*, restitution may be ordered for attempt crimes where the state can demonstrate causation between the crime for which a defendant is convicted and the victim’s loss).

<sup>320</sup> See *supra* Part IV.C.3.

<sup>321</sup> See generally *Survey of Select Laws Governing Timelines for Entry of Initial Restitution Order in a Criminal Case*, NCVLI (2020), <https://law.lclark.edu/live/files/29859-ncvlinational-surveyrestitution-timelinespdf> (providing an overview of federal and state laws regarding the timelines for entry of an initial restitution order in a criminal case).

<sup>322</sup> See, e.g., Ariz. Const. art. II, § 2.1(A)(8) (affording victims the right “to receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury”); Fla. Const. art. I, § 16(b)(9) (affording victims the right to “full and timely restitution in every case”); Or. Const. art. I, § 42(1)(d) (affording victims “[t]he right to receive prompt restitution from the convicted criminal who caused the victim’s loss or injury”); S.C. Code Ann. § 16-3-2040(F) (“Restitution must be paid to the victim [of human trafficking] promptly upon the conviction of the defendant.”); see also Wis. Const. art. I, § 9m(2)(d) (guaranteeing victims the right “[t]o timely disposition of the case, free from unreasonable delay”); N.H. R. Crim. P. 29(a)(1) (stating that, upon a finding or verdict of guilty, the court must hold a sentencing hearing and impose a sentence “without unreasonable delay”); Wis. Stat. Ann. § 950.04(1v)(k) (affording victims the right “[t]o a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter”).

<sup>323</sup> See also *People v. Cardenas*, 262 P.3d 913, 914 (Colo. App. Ct. 2011) (citations omitted) (“Timely restitution is necessary to make the criminal justice system effective because it lessens the financial burden of crime on victims, compensates them for ‘suffering and hardship,’ and preserves their ‘individual dignity.’”).

<sup>324</sup> See, e.g., Alaska R. Crim. P. 32.6(c)(1) (requiring the court to enter restitution order at sentencing); Ohio Rev. Code Ann. § 2929.18(A)(1) (directing courts to impose restitution at sentencing in felony cases); *State v. Purnell*, 871 N.E.2d 613, 616 (Ohio Ct. App. 2006) (holding that when a court orders restitution at a sentencing hearing, it must also determine the amount of that restitution at that same hearing and observing that “there is no statutory authority for the trial court to exercise continuing jurisdiction to modify the amount of [restitution]”).

<sup>325</sup> See, e.g., Cal. Penal Code § 1202.4(f) (requiring that courts order restitution at sentencing, unless the amount of loss cannot be ascertained at that time); Colo. Rev. Stat. Ann. § 18-1.3-603(1)(b) (providing that if restitution is not known at the time of conviction, it must be determined within the following ninety-one days); 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(12)(A) (“If the victim has asserted the right to restitution and the amount of restitution is known at the time of sentencing, the court shall enter the judgment of restitution at the time of sentencing.”); Wash. Rev. Code Ann. § 9.94A.753(1) (requiring restitution be ordered at sentencing or within 180 days, subject to certain limitations).

<sup>326</sup> See, e.g., Cal. Penal Code § 1202.4(f) (“If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court.”); Utah R. Crim. P. 21A(c)(2) (providing that “[i]n cases where a specific dollar value is not known [for restitution purposes], and is not an accumulating amount, e.g. continuing medical expenses, the court may continue the sentencing”).

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<sup>327</sup> See, e.g., 18 U.S.C. § 3664(d)(5) (“If the victim’s losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victims losses, not to exceed 90 days after sentencing.”); Colo. Rev. Stat. Ann. § 18-1.3-603(1)(b) (requiring that the court determine restitution within 91 days following the order of conviction, “unless good cause is shown for extending the time period by which the restitution amount shall be determined”); Wash. Rev. Code Ann. § 9.94A.753(1) (“When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within 180 days except as provided in subsection (7) of this section.”); *Ridley v. State*, 890 So.2d 1261, 1262 (Fla. Ct. App. 2005) (“As a general rule, restitution may be imposed at the time of sentencing or within sixty days thereafter.”).

<sup>328</sup> See, e.g., *Dolan v. United States*, 560 U.S. 605, 608 (2010) (holding that the MVRA’s 90-day statutory deadline for courts to determine restitution can be held open longer when the court made clear prior to the deadline’s expiration that it would order restitution, just leaving open the monetary amount); *L.O. v. State*, 718 So. 2d 155, 157 (Fla. 1998) (holding that, if a court enters a restitution order in a timely manner, the amount of restitution may be determined beyond the 60-day period for modifying or reducing a sentence that is set forth in Fla. R. Crim. P. 3.800(c)); *Commonwealth v. Steadman*, 411 S.W.3d 717, 724 (Ky. 2013) (distinguishing between “particular-case” jurisdiction and subject matter jurisdiction when finding a restitution order valid, even though it was ordered 10 days after final judgment imposing the sentence, because defendant had waived the particular-case jurisdiction and the trial court retained subject-matter jurisdiction); *State v. Thompson*, 306 P.3d 731, 736–37 (Or. Ct. App. 2013) (affirming amended order that defendant pay additional restitution to the victim even though the case was no longer pending and a 90-day statutory time limit, under a state law in effect at the time, for the court to make its restitution determination had passed, holding that the Oregon Constitution provided authority for the court to remedy the violation of the victim’s constitutional right); see also *United States v. Zachary*, 357 F.3d 186, 191–94 (2d Cir. 2004) (clarifying that the statutory limit on the determination of losses “is not to protect defendants from drawn-out sentencing proceedings or to establish finality” but instead to “protect crime victims from the willful dissipation of defendants’ assets”; finding that the prosecutor’s error in failing to identify all victims within the 90-day period was harmless error to defendant; and remanding for determination of the victims’ losses and resentencing).

<sup>329</sup> See, e.g., *State v. Chipman*, 309 P.3d 669, 673 (Wash. Ct. App. 2013) (holding that the trial court must comply with the 180-day time limit set forth in the state’s restitution law).

<sup>330</sup> See *State v. Rieker*, 461 P.3d 1083, 1085 (Or. Ct. App. 2020) (affirming restitution order, which was not entered until roughly 18 months after the date of sentencing, on the ground that the court has “constitutional authority to remedy a violation of the victim’s right[] [to prompt restitution] and impose restitution beyond the 90-day deadline”).

<sup>331</sup> See *United States v. Dolan*, 560 U.S. 605, 612–13 (2010) (finding support for its conclusion that the MVRA’s 90-day requirement for ordering restitution did not bar a court from ordering restitution outside the 90-day window in one of the MVRA’s primary purposes: “to help victims of crime secure prompt restitution rather than to provide defendants with certainty as to the amount of their liability.”); *United States v. Dolan*, 571 F.3d 1022, 1024 (10th Cir. 2009), *aff’d*, 560 U.S. 605 (2010) (“[A] tardy restitution order is not an invalid one. Rather than creating a jurisdictional bar to untimely restitution orders, the MVRA’s deadline seeks to prod the government into ensuring victims swift compensation. Sometimes, of course, the government is not so easily prodded. When that happens – when the MVRA’s deadline passes without a restitution order entered – the affected victim may well have cause to complain, and may even seek a mandamus order compelling action.”).

<sup>332</sup> See *infra* Part IV.F.1.

<sup>333</sup> Some jurisdictions allow the parole board to determine the amount of restitution owed and to set forth a payment schedule. See, e.g., Ky. Rev. Stat. Ann. § 439.563(2). Others require that the court determine the amount of restitution owed, but allow other entities – such as the department of corrections or a probation officer – to set the manner of payment. See, e.g., *State v. Bent*, 37 A.3d 390, 392 (N.H. 2012) (concluding that although the department of corrections has authority to set the time and method of restitution payments, only the trial court may set the amount owed); *State v. Cockerham*, 694 N.E.2d 95, 97 (Ohio Ct. App. 1997) (finding that the trial court, and not the probation department, is required to make the determination regarding the amount of restitution, and noting that although “it would be proper to allow the probation department to structure a payment schedule, it is not proper to allow the probation department to make the determination as to what the amount of restitution would be”); see also *State v. Tchadja*, 450 P.3d 59, 59–60 (Or. Ct. App. 2019) (reversing restitution order and remanding for resentencing, holding that the condition of probation requiring defendant to “bear financial responsibility as directed by the supervising officer for any counseling, therapy, treatment and medical costs incurred by the victim(s) as a



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result of [his] offense” constituted “an unlawful delegation of the court’s sentencing authority” to the probation officer).

<sup>334</sup> Some jurisdictions impose costs, fees or surcharges in addition to the amount of restitution owed to the victim. These added costs may be used to cover the administrative expenses associated with restitution collection and disbursement. *See, e.g.*, Fla. Stat. Ann. § 945.31 (authorizing department of collections to collect an administrative processing fee for the purposes of collecting and disbursing restitution); Mont. Code Ann. § 46-18-241(2)(a) (“The offender shall pay the cost of supervising the payment of restitution, as provided in 46-18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5.”); N.H. Rev. Stat. § 651:63(V) (requiring imposition of fee to cover administrative costs when restitution is ordered to be paid through the department of corrections); S.C. Code Ann. § 14-17-725 (imposing a three percent collection cost charge where restitution is paid through installments). In some instances, these fees are imposed with the restitution order. *See, e.g.*, Cal. Penal Code § 1202.4(l); Ohio Rev. Code Ann. § 2929.18(A)(1); N.H. Rev. Stat. § 651:63(V). In other instances they are imposed later in relation to actual collection and distribution of restitution. *See, e.g.*, Cal. Penal Code § 2085.6(d); Fla. Stat. Ann. § 945.31; Ky. Rev. Stat. Ann. § 532.162(2); *id.* § 533.030(3)(b). Fees and surcharges are paid to the government, not the victim.

<sup>335</sup> In determining the amount of restitution owed to a victim, at least one state also requires consideration of the public’s interest in favor of requiring criminals to compensate their victims for damages and injury. *See* Alaska Stat. Ann. § 12.55.045(a)(1) (stating that when determining the amount and method of payment of restitution, the court must consider, *inter alia*, “public policy that favors requiring criminals to compensate for damages and injury, including loss of income, to their victims”).

<sup>336</sup> *See, e.g.*, 18 U.S.C. § 3663(a)(1)(B)(i); Alaska Stat. Ann. § 12.55.045(a); Ariz. Rev. Stat. Ann. § 13-804(C), (E); Fla. Stat. Ann. § 775.089(6); Wis. Stat. Ann. § 973.20(13)(a).

<sup>337</sup> *See, e.g.*, Ala. Code § 15-18-68(a); S.C. Code Ann. § 17-25-322(B).

<sup>338</sup> *See, e.g.*, 18 U.S.C. § 3663(a)(1)(B)(i)(I) (stating that, for the purposes of determining whether to order restitution under the VWPA, the court must consider “the amount of loss sustained by each victim as a result of the offense”); Wis. Stat. Ann. § 973.20(13)(a) (“The court, in determining whether to order restitution and the amount thereof, shall consider . . . [t]he amount of loss suffered by any victim as a result of a crime considered at sentencing.”).

<sup>339</sup> *See, e.g.*, Ala. Code § 15-18-68(a)(4)–(5) (stating that, when determining the manner, method or amount of restitution to be ordered, courts may consider “[a]ny burden or hardship upon the victim as a direct or indirect result of the defendant’s criminal acts” and “the mental, physical, and financial well-being of the victim”); Ariz. Rev. Stat. Ann. § 13-804(E) (stating that in deciding the manner in which restitution is to be paid, the court or individuals designated by the court “shall take into account the views of the victim”); S.C. Code Ann. § 17-25-322(B)(4)–(5) (authorizing courts to consider, *inter alia*, “any burden or hardship upon the victim as a direct or indirect result of the defendant’s criminal acts” and “the mental, physical, and financial well-being of the victim” when determining the manner, method or amount of restitution to order).

<sup>340</sup> *See, e.g.*, S.C. Code Ann. § 17-25-322(B)(1) (“In determining the manner, method, or amount of restitution to be ordered, the court may take into consideration . . . the financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant[.]”).

<sup>341</sup> *See, e.g.*, 18 U.S.C. § 2248(b)(4)(B)(ii); *id.* § 2259(b)(4)(B)(ii); *id.* § 2264(b)(4)(B)(ii); *id.* § 2327(b)(4)(B)(ii); *id.* § 3664(f)(1)(B). *But see* Mich. Comp. Laws Ann. § 780.766(8) (“The court shall not order restitution to be paid to a victim or victim’s estate if the victim or victim’s estate has received or is to receive compensation for that loss, and the court shall state on the record with specificity the reasons for its action.”); *People v. Roop*, 658 N.E.2d 469, 470 (Ill. App. Ct. 1995) (holding that a victim’s estate was not entitled to restitution from a reckless homicide defendant where the estate had already recovered from the defendant’s insurance company and distinguishing prior case law permitting payment of restitution where victims also received insurance money from their own insurance policies).

<sup>342</sup> *See, e.g.*, 18 U.S.C. § 2259(d)(2)(B) (stating that a victim who received monetary assistance from the Child Pornography Victims Reserve “shall not be barred or limited from receiving restitution against any defendant for any offenses not covered by [18 U.S.C. § 2259]”).

<sup>343</sup> *See, e.g.*, 18 U.S.C. § 2259(d)(3); Cal. Penal Code § 1202.4(j); Haw. Rev. Stat. Ann. § 706-646(5).

<sup>344</sup> *See, e.g.*, Conn. Gen. Stat. Ann. § 53a-28(c) (providing that “[i]f the court determines that the current financial resources of the offender or the offender’s current ability to pay based on installments or other conditions are such that no appropriate terms of restitution can be determined, the court may forego setting such terms”); S.C. Code Ann. § 17-25-322(B)(1)–(2) (authorizing courts to consider, *inter alia*, the defendant’s financial resources and

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ability to pay when determining the manner, method or amount of restitution to order); Vt. Stat. Ann. tit. 13, § 7043(d) (providing that, in awarding restitution, the court must make findings with respect to, *inter alia*, the defendant's current ability to pay restitution).

<sup>345</sup> See, e.g., 18 U.S.C. § 2248(b)(4)(B)(i); *id.* § 2259(b)(4)(B)(i); *id.* § 2264(b)(4)(B)(ii); *id.* § 2327(b)(4)(B)(ii); *id.* § 3664(f)(1)(A); Alaska Stat. Ann. § 12.55.045(g); Ariz. Rev. Stat. Ann. § 13-804(C); Cal. Penal Code § 1202.4(g); Haw. Rev. Stat. Ann. § 706-605(7); *id.* § 706-646(3); *State v. Brownback*, 232 P.3d 385, 390 (Mont. 2010) (holding that the sentencing court committed no error in failing to consider defendant's ability to pay because of the statutory mandate that courts order full restitution); see also N.H. Rev. Stat. § 651:61-a(II) ("The legislature does not intend that restitution be contingent upon an offender's current ability to pay or upon the availability of other compensation. The legislature intends that the court increase, to the maximum extent feasible, the number of instances in which victims receive restitution. The legislature does not intend the use of restitution to result in preferential treatment for offenders with substantial financial resources."); *id.* § 651:63(I) ("Restitution may be ordered regardless of the offender's ability to pay and regardless of the availability of other compensation; however, restitution is not intended to compensate the victim more than once for the same injury."). But see 18 U.S.C. § 3663(a)(1)(B)(i)(II) (stating that, for the purposes of determining whether to order restitution under the VWPA, the court must consider "the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate").

<sup>346</sup> See, e.g., Fla. Stat. Ann. § 775.089(6)(b) ("The criminal court, at the time of enforcement of the restitution order, shall consider the financial resources of the defendant, the present and potential future financial needs and earning ability of the defendant and his or her dependents, and such other factors which it deems appropriate.").

<sup>347</sup> See, e.g., Ala. Code § 15-18-68(a)(1)–(2) (stating that, when determining the manner, method or amount of restitution to be ordered, courts may consider "[t]he financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant" and "[t]he ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court"); Or. Rev. Stat. Ann. § 137.106(4) (authorizing courts to impose a payment schedule for restitution if the court concludes defendant lacks an ability to pay at the time of judgment).

<sup>348</sup> See, e.g., 18 U.S.C. § 3664(f)(2) ("Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which the restitution is to be paid, in consideration of (A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled; (B) projected earnings and other income of the defendant; and (C) any financial obligations of the defendant; including obligations to dependents."); Ariz. Rev. Stat. Ann. § 13-804(E) ("In deciding the manner in which the restitution is to be paid, the court or a staff member designated by the court, including a probation officer . . . shall consider the economic circumstances of the defendant. In considering the economic circumstances of the defendant, the court shall consider all of the defendant's assets and income, including workers' compensation and social security benefits."); Haw. Rev. Stat. Ann. § 706-605(7) (mandating restitution and providing that the court "shall not consider the defendant's financial ability to make restitution in determining the amount of restitution to order," but that the court "shall consider the defendant's financial ability to make restitution for the purpose of establishing the time and manner of payment").

<sup>349</sup> See, e.g., 730 Ill. Comp. Stat. Ann. 5/5-5-6(f) ("Taking into consideration the ability of the defendant to pay, including any real or personal property or any other assets of the defendant, the court shall determine whether restitution shall be paid in a single payment or in installments, and shall fix a period of time not in excess of 5 years, except for violations of Sections 16-1.3 and 17-56 of the Criminal Code of 1961 or the Criminal Code of 2012, or the period of time specified in subsection (f-1), not including periods of incarceration, within which payment of restitution is to be paid in full."); *State v. Dwight*, 194 A.3d 1163, 1167–70 (Vt. 2018) (finding that the sentencing court did not abuse its discretion in fashioning a restitution order that considered defendant's future earning capacity when setting the amount owed and the schedule for payment).

<sup>350</sup> See, e.g., 18 U.S.C. § 3664(f)(2)(A) ("Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid, in consideration of . . . the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled[.]"); N.H. R. Crim. P. 29(e)(2) (detailing how courts are to determine a defendant's financial ability to pay restitution).

<sup>351</sup> See, e.g., Cal. Penal Code § 1202.4(f)(5)–(11) (detailing, for the purposes of restitution, defendants' disclosure obligations regarding their present and future income and assets and the effects of failing to meet these obligations).

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<sup>352</sup> See, e.g., *id.* § 155.5 (providing that disposal of property to avoid restitution is a crime); Vt. Stat. Ann. tit. 13, § 7043(q) (“A transfer of property made with the intent to avoid a restitution obligation shall be deemed a fraudulent conveyance for purposes of 9 V.S.A. chapter 57, and the Restitution Unit shall be entitled to the remedies of creditors provided under 9 V.S.A. § 2291.”).

<sup>353</sup> See, e.g., 18 U.S.C. § 3664(k) (“A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant’s economic circumstances that might affect the defendant’s ability to pay restitution.”).

<sup>354</sup> See, e.g., 18 U.S.C. § 1593(b)(3) (providing method for calculating restitution for victims of human trafficking); *id.* § 3663(b)(1) (providing method for calculating restitution for offenses resulting in damage to or loss or destruction of property); Fla. Stat. Ann. § 775.089(b) (“Restitution must be determined on a fair market value basis unless the state, victim, or defendant shows that using another basis, including, but not limited to, replacement cost, purchase price less depreciation, or actual cost of repair, is equitable and better furthers the purposes of restitution.”); Mich. Comp. Laws Ann. § 780.766(3)(b) (directing courts to rely on the fair market value of property that has been damaged, lost or destroyed either when determining restitution, unless it cannot be determined or is impractical to ascertain); Mich. Comp. Laws Ann. § 780.766(3)(e) (detailing how to calculate restitution for costs of homemaking and child care expenses actually incurred and reasonably expected to be incurred as a result of the crime, including when such care is taken on by a family member without compensation); see also *Ensuring Full Restitution for Trafficking Victims: An Overview of Mandatory Restitution Awards Under the Trafficking Victims Protection Act*, NCVLI Victim Law Bulletin (Nov. 2013), at 2–3, <https://law.lclark.edu/live/files/16054-ncvliensuring-full-restitution-for-trafficking> (detailing formula for calculating mandatory restitution under the Trafficking Victims Protection Act).

<sup>355</sup> See *United States v. Steele*, 897 F.3d 606, 610 (4th Cir. 2018) (stating that courts have discretion to determine how to value lost property under the MVRA and noting that Congress did not instruct courts on how to value property for the purposes of restitution).

<sup>356</sup> See, e.g., Fla. Stat. Ann. § 775.089(7)(b) (“Restitution must be determined on a fair market value basis unless the state, victim, or defendant shows that using another basis, including, but not limited to, replacement cost, purchase price less depreciation, or actual cost of repair, is equitable and better furthers the purposes of restitution.”); *United States v. Boccagna*, 450 F.3d 107, 115 (2d Cir. 2006) (“In determining the appropriate measure of value for property relevant to restitution, a district court must consider that the purpose of restitution is essentially compensatory: to restore a victim, to the extent money can do so, to the position he occupied before sustaining injury.”); *People v. Jones*, 114 Cal. Rptr. 3d 8, 12 (Cal. Ct. App. 2010) (providing that courts have “broad discretion to choose a method for calculating the amount of restitution,” but that they “must employ a method that is rationally designed to determine the . . . victim’s economic loss”); *State v. Dodson*, 265 P.3d 1254, 1256–57 (Mont. 2011) (holding that when actual losses are uncertain, a court may use reasonable methods based on the best evidence available under the circumstances to calculate them, and that reasonable methods include reasonably close estimates of the loss).

<sup>357</sup> See *United States v. Howard*, 887 F.3d 1072, 1076 (10th Cir. 2018) (recognizing that courts have discretion in calculating restitution, which allows them to employ the measure of value that best reflects the victim’s actual loss); see also *United States v. Boccagna*, 450 F.3d 107, 115 (2d Cir. 2006) (determining the method of calculation for determining restitution based on which method will best serve the MVRA’s compensatory purpose). For instance, when determining the appropriate method of determining restitution for property loss, a court may, depending on the property at issue, rely on fair market value, replacement cost, foreclosure price, cost to the victim, repair or restoration costs, and other appropriate measures of value. See, e.g., *Dickerson v. Commonwealth*, No. 2015-CA-000482-MR, 2016 WL 6134903, at \*3–4 (Ky. Ct. App. Oct. 21, 2016) (citations omitted) (emphasis in original) (finding that there is no rigid and precise formula a trial court judge must use when calculating restitution damages and that courts have a “great deal” of discretion when determining restitution amounts, but that they should bear in mind that “restitution is intended to fully compensate for the loss incurred” and observing that, while fair market value is one way to determine restitution, it is also appropriate for the trial court to use replacement value upon concluding that fair market would not fully compensate the victim); *People v. Hamilton*, 555 N.E.2d 785, 789 (Ill. App. Ct. 1990), *rev’d in part on other grounds sub nom.*, *People v. Williams*, 599 N.E.2d 913 (Ill. 1992) (holding that out-of-pocket losses should be determined by the fair-market value of the property at the time of the crime and that replacement costs listed in a victim impact statement may be sufficient to prove the fair-market value for a restitution order); *In re White*, No. 342771, 2019 WL 6138537, at \*4 (Mich. Ct. App. Nov. 19, 2019) (“The value of a victim’s loss to due damaged property . . . is not based on the cost to repair it or return it to the condition it was in before the damage. Rather, the value of a victim’s loss due to damaged property is based on the decrease in the

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property's fair market value due to the damage."); *State v. Campbell*, 438 P.3d 448, 454–55 (Or. Ct. App. 2019), *rev'd in part*, 470 P.3d 369 (Or. 2020) (concluding that when proving economic damages for restitution, the state can establish that charges for medical services are reasonable (as required by statute) by providing evidence that the charges reflect the usual and customary rates for those services in the market and finding that the state provided sufficient evidence of reasonableness when it showed that a publicly funded health insurer made payments for medical expenses at state Medicaid rates that were "much lower" than "standard" rates, amounting to a fraction of the original charges).

<sup>358</sup> See, e.g., 18 U.S.C. § 3664(f)(3)(A), (4); Fla. Stat. Ann. § 775.089(1)(a)2; 730 Ill. Comp. Stat. Ann. 5/5-5-6(a); Ky. Rev. Stat. Ann. § 533.030(3); Mich. Comp. Laws Ann. § 780.766(6); Mont. Code Ann. § 46-18-244(3)(b), (4); Vt. Stat. Ann. tit. 13, § 7043(b).

<sup>359</sup> See, e.g., 18 U.S.C. § 3664(f)(4) (providing that an in-kind payment of restitution make take the form of "(A) return of property; (B) replacement of property; or (C) if the victim agrees, services rendered to the victim or a person or organization other than the victim"); Mich. Comp. Laws Ann. § 780.766(6) (authorizing restitution in services in lieu of money, if the victim or the victim's estate consents); Mont. Code Ann. § 46-18-244(4) (authorizing courts to order an offender to make restitution in services in lieu of money, where the victim consents to such a restitution format); Utah Code Ann. § 76-7-107(6) (providing that, with the consent of the property owner, an individual convicted of graffiti may remove the graffiti and have the removal costs be credited against court-ordered restitution); Vt. Stat. Ann. tit. 13, § 7043(b) (authorizing payments in kind as a form of restitution "if acceptable to the victim").

<sup>360</sup> 18 U.S.C. § 3663A(c)(3)(A) (stating that restitution is not mandatory "if the court finds, from facts on the record, that . . . the number of identifiable victims is so large as to make restitution impracticable").

<sup>361</sup> *id.* § 3663A(c)(3)(B) (stating that restitution is not mandatory "if the court finds, from 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 to a degree that the need to provide restitution by any victim is outweighed by the burden on the sentencing process"); W. Va. Code Ann. § 61-11A-4(d) ("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.").

<sup>362</sup> See, e.g., *In re Brown*, 932 F.3d 162, 173–74 (4th Cir. 2019) (finding that court's discretion in ordering restitution "is not unfettered" under the VWPA, and the court must consider the amount of loss sustained by each victim, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate; and holding that the lower court abused its discretion in denying restitution without stating why the burden of complexity or delay in sentencing outweighed the victim's need for restitution); see also *State v. Tucker*, 465 P.3d 173, 174 (Kan. 2020) ("[R]estitution is the rule, and unworkability is the exception.").

<sup>363</sup> See, e.g., Fla. Stat. Ann. § 812.14(13) ("The amount of restitution that a defendant may be ordered to pay [with respect to trespass and larceny with relation to utility fixtures and theft of utility services] is not limited by the monetary threshold of any criminal charge on which the restitution order is based."); *J.O.S. v. State*, 689 So. 2d 1061, 1063–64 (Fla. 1997) (per curiam) (holding that, in the absence of a plea agreement, restitution is permissible in an amount greater than the maximum dollar value defining the offense for which a defendant is convicted or juvenile is adjudicated delinquent, if the damage has a "significant relationship" with the offense); *State v. VanDusen*, 691 A.2d 1053, 1055 (Vt. 1997) (holding a court may award restitution beyond the amount contained in a misdemeanor charge because (1) nothing in Vermont's restitution statute indicates that the Legislature intended to limit damages based on the dollar amount in the charge against a defendant; and (2) the fact that the state could not prove a higher value of loss at trial, but could during sentencing, is consistent with the fact that sentencing proceedings are less formal than criminal trials and only require that matters be proven by a preponderance of the evidence).

<sup>364</sup> See, e.g., Ky. Rev. Stat. Ann. § 533.030(3) ("Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded."); N.Y. Penal Code § 60.27(5) (capping restitution at \$15,000 for felonies and \$10,000 for other crimes, but providing court with some discretion to impose restitution in excess of such caps, where the excess is "limited to the return of the victim's property, including money, or the equivalent value thereof; and reimbursement for medical expenses actually incurred by the victim prior to sentencing as a result of the offense committed by the defendant").

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<sup>365</sup> See, e.g., 18 U.S.C. § 2259(b)(2)(B) (stating that a defendant convicted of trafficking in child abuse images must pay restitution “in an amount that reflects the defendant’s relative role in the causal process that underlies the victim’s losses, but which is no less than \$3,000”); Ala. Code § 15-18-68(b) (stating that, when a defendant has been convicted of certain capital offenses, the court must order restitution in an amount not less than \$50,000 for each conviction, and that, when a defendant has been convicted of certain rape offenses, the court must order restitution in an amount not less than \$10,000 for each conviction); Ohio Rev. Code Ann. §§ 4510.11, 4510.111, 4510.14, 4510.16, 4510.19, 4549.02, 4549.0211, 4549.03 (providing that a person convicted of certain driving and motor vehicle accident offenses who cannot provide proof of financial responsibility may be subject to restitution in an amount not exceeding \$5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender’s operation of the vehicle before, during, or after committing the offense); Utah Code Ann. § 21-22-12.5(1)(f)(ii) (mandating restitution “not to exceed \$500 for any damage caused by the unlawful motor vehicle travel” in cases involving the illegal operation of a motor vehicle on privately-owned land).

<sup>366</sup> See *State v. Patel*, 486 P.3d 188, 194–95 (Ariz. 2021) (holding that statute capping restitution resulting from a crime causing serious physical injury or death by a moving violation “is an unconstitutional limitation of a crime victim’s right to receive prompt restitution and is thus void”).

<sup>367</sup> See, e.g., *Kirkland v. State*, 629 So. 2d 1057, 1057 (Fla. Dist. Ct. App. 1993) (holding that where a defendant commits a criminal offense in concert with others, the court has discretion to require the defendant to pay the full amount of restitution).

<sup>368</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-804(F) (“If more than one defendant is convicted of the offense that caused the loss, the defendants are jointly and severally liable for the restitution.”); 730 Ill. Comp. Stat. Ann. 5/5-5-6(c) (“In cases where more than one defendant is accountable for the same criminal conduct that results in out-of-pocket expenses, losses, damages, or injuries, each defendant shall be ordered to pay restitution in the amount of the total actual out-of-pocket expenses, losses, damages, or injuries to the victim proximately caused by the conduct of all of the defendants who are legally accountable for the offense.”); Ky. Rev. Stat. Ann. § 437.429 (directing courts to impose restitution jointly and severally in cases involving criminal violations of the laws protecting animal facilities); *State v. Miller*, 842 N.W.2d 474, 475–76 (Minn. Ct. App. 2014) (holding that the district court did not abuse its discretion by imposing joint and several liability where the state proved that both defendants caused the victim’s injuries “under circumstances that prevent the victim or the district court from identifying the assailant who inflicted any particular wound”); *State v. Hughes*, 5 A.3d 926, 929–30 (Vt. 2010) (affirming order that defendant, convicted of grand larceny and unlawful mischief for the theft and destruction of three motorized shopping carts after defendant and two friends drove the carts from the grocery store lot into a nearby river, be held jointly and severally liable for the cost of the destroyed carts because, even though defendant only drove one cart into the river, the indictment and defendant’s admissions established a direct link between the victim’s losses and defendant’s crime, as required by the state’s restitution statute).

<sup>369</sup> See, e.g., 18 U.S.C. § 3664(h) (“If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim’s loss and economic circumstances of each defendant.”); *id.* § 2259(b)(2) (detailing how restitution amounts are determined for defendants convicted of trafficking in child pornography based on the “defendant’s relative role in the causal process that underlies the victim’s losses, but which is no less than \$3,000”); 730 Ill. Comp. Stat. Ann. 5/5-5-6(c) (“(2) As between the defendants, the court may apportion the restitution that is payable in proportion to each co-defendant’s culpability in the commission of the offense. (3) In the absence of a specific order apportioning the restitution, each defendant shall bear his pro rata share of the restitution. (4) As between the defendants, each defendant shall be entitled to a pro rata reduction in the total restitution required to be paid to the victim for amounts of restitution actually paid by co-defendants, and defendants who shall have paid more than their pro rata share shall be entitled to refunds to be computed by the court as additional amounts are paid by co-defendants.”); Ky. Rev. Stat. Ann. § 533.030(3) (“Where there is more than one (1) defendant or more than (1) victim, restitution may be apportioned.”); *Paroline v. United States*, 572 U.S. 434 (2014) (holding that where defendant possesses child abuse imagery and that victim has outstanding losses caused by the continuing trafficking in the victim’s images, but that it is impossible to trace a particular amount of those losses to an individual defendant, a court should order restitution in an amount that comports with the defendant’s relative role in the causal process underlying the victim’s general losses).

<sup>370</sup> See, e.g., *State v. Algeo*, 311 P.3d 865, 869–73 (Or. 2013) (affirming restitution order where trial court applied civil comparative fault principles and reduced award to an amount equal to ten percent of victim’s overall damages because victims were jaywalking when they were hit by defendant, who was driving under the influence of

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intoxicants, finding that the State Supreme Court only had jurisdiction to directly review the victim’s constitutional claim and could not review statutory claims; and holding that the constitutional provision granting victims the right to receive prompt restitution does not provide victims with the right to receive restitution in the full amount of economic damages as is provided for in statute); *State v. Laycock*, 214 P.3d 104, 113 (Utah 2009) (holding “that issues of comparative negligence may be relevant in determining restitution”); *see also* Mont. Code Ann. § 46-18-244(2) (stating that in the proceeding to determine the total amount of restitution that the offender owes, the offender may assert any defense that they could raise in a civil action for the losses for which the victim seeks compensation). *But see State v. Gutierrez-Medina*, 442 P.3d 183, 185, 191 (Or. 2019) (affirming order that defendant, convicted of driving under the influence of intoxicants and assault in the third degree, pay restitution for the victim’s medical expenses in the full amount, holding that it was proper not to reduce the amount of restitution by the victim’s alleged comparative fault without reaching the issue of whether comparative fault belongs in restitution analysis because, “even [assuming] that the legislature intended to incorporate the civil law defense of comparative fault into the calculation of criminal restitution under [Or. Rev. Stat. Ann. §] 137.106, the defense would be unavailable to a defendant who commits third-degree assault[,]” which amounts to reckless or wanton conduct, and comparative fault does not apply in civil actions for conduct involving a mental state more culpable than gross negligence).

<sup>371</sup> *See People v. Gregory*, 469 P.3d 507, 512 (Colo. Ct. App. 2019) (internal citation omitted) (“[W]here a civil claim precedes the restitution proceeding, the court must first determine the total amount of the victim’s pecuniary damages subject to restitution and then subtract ‘any proceeds attributable to those damages received by the victim’ from the civil claim.”).

<sup>372</sup> *See, e.g., People v. Vasquez*, 119 Cal. Rptr. 3d 29, 35–39 (Cal. Ct App. 2010) (holding that defendant in a criminal proceeding bears the burden of proving that certain expenses ordered in restitution are subject to an offset or credit as a result of a civil settlement before a modification of the restitution order will be granted); *State v. Bruun*, 443 P.3d 756, 760–64 (Utah Ct. App. 2019), *cert. granted* 455 P.3d 1061 (affirming restitution order on the ground that, *inter alia*, settlement agreements between defendants and victims offset restitution awards only to the extent that the agreements demonstrably compensated victims for the pecuniary losses occasioned by the crimes for which defendants were convicted); *see also, e.g., People v. Schrauben*, No. 346134, 2020 WL 2601206, at \*7 (Mich. Ct. App. May 21, 2020) (finding that the trial court erred in offsetting the restitution amount by a promissory note between the victim and the defendant, as the note was unrelated to the amount of loss the victim suffered as a result of the crime and resolution of the rights and duties established by the note was outside the scope of the criminal case and irrelevant to the determination of restitution owed); *see State v. Crowell*, 413 P.3d 810, at \*2 (Kan. Ct. App. 2018) (table) (concluding that a district court is “not prohibited from ordering restitution beyond the civil settlement,” where such a settlement did not include all losses compensable in restitution). *But see State v. Driscoll*, 839 N.W.2d 188, 192 (Iowa 2013) (concluding defendant was entitled to a setoff in restitution for settlement payments made to the victims’ estate even based on broad-form releases because “what matters is not whether the parties specifically intended to release a potential restitution claim, but whether the parties intended to settle the matter in a fashion with the same legal consequences as a preclusive civil judgment”).

<sup>373</sup> *See, e.g., People v. Bernal*, 123 Cal. Rptr. 2d 622, 629–30 (Cal. Ct. App. 2002) (concluding that the trial court must offset against defendant’s restitution obligation monies that defendant’s insurance company paid to the victim for losses subject to the restitution order).

<sup>374</sup> *See, e.g., Cal. Penal Code § 1204.4(f)(12)* (providing that in cases where an employer is convicted of a crime against an employee, payments to the employee or the employee’s dependent made by the employer’s workers’ compensation insurance carrier may not be used to offset the amount of restitution, “unless the court finds that the defendant substantially met the obligation to pay premiums for that insurance coverage”); *People v. Hume*, 126 Cal. Rptr. 3d 824, 827–28 (Cal. Ct. App. 2011) (emphasis in original) (observing that “payments to the victim by the victim’s own insurer as compensation for economic losses attributed to a defendant’s criminal conduct may not offset the defendant’s restitution obligation”). Although criminal restitution generally may not result in a windfall for the victim, 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. *Hume*, 126 Cal. Rptr. 3d at 828; *see People v. Duong*, 103 Cal. Rptr. 3d 678, 681 (Cal. Ct. App. 2010) (“[T]he possibility that the victim may receive a windfall because the third party fails to exercise its remedies does not diminish the victim’s right to receive restitution of the full amount of economic loss caused by the perpetrator’s offense.”).

<sup>375</sup> *See, e.g., 18 U.S.C. § 3612(f)(1), (f)(3), (h)* (requiring defendants in federal cases to pay interest on any restitution order over \$2,500 that has not been paid in full before the fifteenth day after the date of judgment, but setting forth circumstances under which the court may modify or waive restitution interest); *Ariz. Rev. Stat. Ann.*

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§ 13-105(16) (defining “economic losses” for which a victim is entitled to restitution as including “lost interest”); *id.* § 13-805(E) (“Enforcement of a criminal order by any person or by the state on behalf of any person who is entitled to restitution includes the collection of interest that accrues at a rate of ten percent a year.”); 730 Ill. Comp. Stat. Ann. 5/5-5-6(n) (requiring interest on restitution orders enforced as judgment liens).

<sup>376</sup> *See, e.g.*, Cal. Penal Code § 1202.4(f)(3)(G) (directing the court to order restitution in the full amount of the victim’s economic losses, including “[i]nterest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court”); *id.* § 1214.5(a) (authorizing, in any case in which a defendant is ordered to pay more than fifty dollars in restitution, interest on restitution at the rate of 10 percent per annum on the remaining principal amount, if the court concludes the defendant has the ability to pay).

<sup>377</sup> *See, e.g.*, Ky. R. Crim. P. 11.06(1) (“When ordering restitution pursuant to KRS 532.032, 532.033, 533.020, and 533.030(3), the court shall not order the defendant to pay interest on the restitution.”).

<sup>378</sup> *See, e.g.*, 18 U.S.C. § 3612(f)(1) (requiring defendants in federal cases to pay interest on any restitution order over \$2,500 that has not been paid in full before the fifteenth day after the date of judgment); Cal. Penal Code § 1214.5(a) (authorizing, in any case in which a defendant is ordered to pay more than fifty dollars in restitution, interest on restitution at the rate of 10 percent per annum on the remaining principal amount, if the court concludes the defendant has the ability to pay); Fla. Stat. Ann. § 775.089(5) (providing that an outstanding unpaid amount of restitution bears interest); 730 Ill. Comp. Stat. Ann. 5/5-9-3(e) (“A default in payment of . . . restitution . . . shall draw interest at the rate of 9% per annum.”); Or. Rev. Stat. § 137.183(1)(b) (“When a person is sentenced to a term of imprisonment, interest on a judgment in a criminal action does not begin to accrue until the first day of the second full calendar month after the person’s initial release from custody following the sentencing in which the monetary obligation was imposed. If the judgment includes a money award for restitution, the judgment accrues interest for a period of 20 years after the first day of the second full calendar month after the person’s initial release from custody following the sentencing in which the monetary obligation was imposed.”).

<sup>379</sup> *See, e.g.*, 18 U.S.C. § 3612(f)(2) (setting forth computation method for determining restitution interest).

<sup>380</sup> *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-805(G) (stating that monies received as part of a criminal restitution order are distributed to cover “associated interest” after the original restitution amount has been paid); Or. Rev. Stat. Ann. § 137.183(7) (“After any payment of costs of collection, any interest collected on an award for restitution on and after January 1, 2012, must be paid to the person in whose favor the award of restitution was made.”).

<sup>381</sup> *See, e.g.*, 18 U.S.C. § 3664(f)(3)(A); *id.* § 3572(d)(1); Ala. Code § 15-18-70; Fla. Stat. Ann. § 775.089(3); Mich. Comp. Laws Ann. § 780.766(10); N.H. Rev. Stat. § 651:64(I); Or. Rev. Stat. Ann. § 161.675(1); Vt. Stat. Ann. tit. 13, § 7043(e)(1).

<sup>382</sup> *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-603(C) (stating that restitution “shall be paid to the clerk of the court for disbursement to the victim”); Fla. Stat. Ann. § 775.089(11) (“(a) The court may order the clerk of the court to collect and dispense restitution payments in any case. (b) The court may order the Department of Corrections to collect and dispense restitution and other payments from persons remanded to its custody or supervision.”); Ohio Rev. Code Ann. § 2929.18(A)(1) (“If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court.”).

<sup>383</sup> *See, e.g.*, 18 U.S.C. § 3572(d)(2) (“If the judgment, or, in the case of a restitution order, the order, permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.”); 730 Ill. Comp. Stat. Ann. 5/5-5-6(f) (“Complete restitution shall be paid in as short a time period as possible.”).

<sup>384</sup> *See, e.g.*, Fla. Stat. Ann. § 775.089(3)(a) (authorizing the court to order restitution be paid in installments within certain time frames); 730 Ill. Comp. Stat. Ann. 5/5-5-6(f) (same).

<sup>385</sup> *See, e.g., United States v. Hughes*, 914 F.3d 947, 950 (5th Cir. 2019) (concluding that the government could not require the immediate payment of full restitution where the terms of the restitution order specified that most of defendant’s restitution obligations were to be paid on an installment basis).

<sup>386</sup> *See, e.g.*, 18 U.S.C. § 3664(f)(3)(B) (“A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.”).

<sup>387</sup> *See, e.g.*, Ala. Code § 15-18-69 (“At such restitution hearings, the defendant, the victim, the district attorney, or other interested party may object to the imposition, amount or distribution of restitution or the manner or method thereof.”); Cal. Penal Code § 1202.4(f)(1) (“The defendant has the right to a hearing before a judge to dispute the

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determination of the amount of restitution.”); *id.* § 1202.41(a)(1) (detailing the scope of a defendant’s participation at hearings to impose or amend restitution); *id.* § 1203.1k (providing that defendants have the right to a hearing before a judge to dispute restitution determinations made by a probation officer regarding restitution as a condition of probation); Or. Rev. Stat. Ann. § 137.106(5) (“If the defendant objects to the imposition, amount or distribution of the restitution, the court shall allow the defendant to be heard on such issue at the time of sentencing or at the time the court determines the amount of restitution.”); Utah R. Crim. P. 21A(c)(2) (requiring restitution hearing where there is disagreement about restitution amount); *see also* Colo. Stat. Ann. § 18-1.3-603(3)(a)(I) (“Any order for restitution may be . . . [i]ncreased if additional victims or additional losses not known to the judge or the prosecutor at the time the order of restitution was entered are later discovered and the final amount of restitution due has not been set by the court[.]”).

<sup>388</sup> For more information regarding restitution hearings, *see supra* Part IV.B.1.vi.

<sup>389</sup> *See, e.g.*, Alaska R. Crim. P. 32.6(c)(2) (“Within 30 days after receipt of the proposed judgment for restitution, the defense shall file any objection to the proposed judgment and a statement of grounds for the objection. If ordered, the defense shall also file a financial statement on a form designated by the Administrative Director. . . . If the defendant does not file an objection, the court may enter the judgment for restitution without further proceedings. If the defendant files an objection and either party requests a hearing, the court shall schedule a hearing.”).

<sup>390</sup> *See, e.g.*, *People v. Harris*, 745 N.E.2d 717, 719–20 (Ill. App. Ct. 2001) (affirming order that defendant, convicted of second degree murder, pay restitution in the amount of \$7,652.95 for the costs of the victim’s funeral and airfare to fly the victim’s mother and four other people to fly from Oregon to Chicago to attend the funeral, holding that “where the actual victim is deceased, a broad definition of victim to include the decedent’s family is necessary to effectuate the purpose of the statute[.]” and observing that defendant had waived any objection to the order because he had failed to object to the airfare bill presented by the state at sentencing).

<sup>391</sup> *See, e.g.*, Fla. Stat. Ann. § 775.089(7)(c) (“Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. . . . The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the state attorney. . . .”); Mich. Comp. Laws Ann. § 780.767(4) (“Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney.”); Vt. R. Crim. P. 32(g)(1) (“Unless the amount of restitution is agreed to by the parties, a restitution hearing must be held. The court must issue findings either on the record or in writing as to any matters of factual dispute in the determination of the amount of restitution or the defendant’s current ability to pay restitution. The state has the burden of establishing the amount of restitution and a defendant’s ability to pay by a preponderance of the evidence. The court must enter a restitution judgment order establishing the defendant’s restitution obligation.”).

<sup>392</sup> *See, e.g.*, 18 U.S.C. § 3664(e) (providing that federal disputes regarding restitution must resolved by a preponderance of the evidence, with the defendant bearing the burden of demonstrating their financial resources and the financial needs of their dependents); *People v. Keichler*, 29 Cal. Rptr. 3d 120, 124–26 (Cal. Ct. App. 2005) (reiterating that “[t]he trial court ‘must use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious’” and observing that defendant bears the burden of coming “forward with contrary information” to challenge the amount of restitution included in a probation report).

<sup>393</sup> *See, e.g.*, 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(12)(B) (providing that if a defendant files an objection to a proposed restitution order “and either party requests a hearing, the court shall schedule a hearing”); Vt. R. Crim. P. 32(g)(1) (“Unless the amount of restitution is agreed to by the parties, a restitution hearing must be held.”); *Jones v. Commonwealth*, 382 S.W.3d 22, 31–32 (Ky. 2011) (concluding that when the issue of restitution has not been resolved by an agreement between the Commonwealth and the defendant, constitutional due process requires an adversarial hearing that includes certain protections like notice and an opportunity to be heard).

<sup>394</sup> *See supra* note 55.

<sup>395</sup> *See supra* note 56.

<sup>396</sup> *See supra* note 57.

<sup>397</sup> *See supra* note 61.

<sup>398</sup> *See supra* note 62.

<sup>399</sup> *See supra* note 63.

<sup>400</sup> *See supra* note 70.



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<sup>401</sup> See *supra* note 9.

<sup>402</sup> For information regarding victims' restitution-related privacy and confidentiality rights and protections, see *supra* Part II.B.

<sup>403</sup> See *supra* note 73.

<sup>404</sup> See, e.g., 18 U.S.C. § 3612(b) (detailing information to be contained in restitution order); Ariz. Rev. Stat. Ann. § 13-804(H) (same); Ky. Rev. Stat. Ann. § 532.033 (same); Vt. Stat. Ann. tit. 13, § 7043(d)(2) (same).

<sup>405</sup> See, e.g., Ohio Rev. Code Ann. § 2929.18(A)(1).

<sup>406</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-603(C); Ohio Rev. Code Ann. § 2929.18(A)(1). For additional information regarding the entities responsible for restitution collection and disbursement, see *infra* Part IV.G.1.i.

<sup>407</sup> See, e.g., *Rollins v. Commonwealth*, 294 S.W.3d 463, 465–67 (Ky. Ct. App. 2009) (holding that the court's initial order did not create a valid restitution judgment because the court failed to set the amount or the frequency of payments).

<sup>408</sup> See, e.g., 18 U.S.C. § 3612(b)(1)(G); Cal. Penal Code § 1203c(d).

<sup>409</sup> See, e.g., Cal. Penal Code § 1203.9(a)(3) (noting that if restitution is ordered as a condition of probation or mandatory supervision, the transferring court must determine the amount of restitution before the transfer unless such a determination cannot be made at that time).

<sup>410</sup> See *supra* Part IV.C.2.

<sup>411</sup> See, e.g., Mich. Comp. Laws Ann. § 780.766(11); Mont. Code Ann. § 46-18-201(5); N.H. Rev. Stat. § 651:63(I); see also *Commonwealth v. O'Bryan*, 97 S.W.3d 454, 457 (Ky. Ct. App. 2003) (holding that Ky. Rev. Stat. Ann. § 532.032(1) requires a trial court to order restitution to the named victim even if defendant is sentenced to a term of imprisonment).

<sup>412</sup> See, e.g., 18 U.S.C. § 3563(a)(6)(A); *id.* § 5B1.3(a)(2); Ariz. Rev. Stat. Ann. § 13-808(B); Cal. Penal Code § 1202.4(m); *id.* § 1203.1(a)(3); Fla. Stat. Ann. § 775.089(4); *id.* § 948.032; Haw. Rev. Stat. Ann. § 706-624(1)(g); Ky. Rev. Stat. Ann. § 439.563(1); *id.* § 532.032(4); Mich. Comp. Laws Ann. § 780.766(11); Mont. Code Ann. § 46-18-241(1).

<sup>413</sup> See, e.g., 18 U.S.C. § 3563(b)(2); N.H. Rev. Stat. § 651:2(V)(g); *id.* § 651:63(II); Or. Rev. Stat. Ann. § 137.540(1); Vt. Stat. Ann. tit. 13, § 7043(f)(1); Vt. Stat. Ann. tit. 28, § 252(b)(6).

<sup>414</sup> See, e.g., Haw. Rev. Stat. Ann. § 806-73(d) (“Notwithstanding any law to the contrary, payment of restitution and judgments to victims, or surviving immediate family members of a victim, shall be a precondition for release on parole for any imprisoned person whom the Hawaii paroling authority determines has the financial ability to make complete or partial restitution payments or complete or partial judgment payments to the victim of the person’s crime, or to the surviving immediate family members of a victim.”).

<sup>415</sup> See, e.g., 18 U.S.C. § 3583(d); *id.* § 5D1.3(a)(6); Ala. Code § 15-18-71; Ala. Code § 15-18-72(b); Cal. Penal Code § 3453(t); Fla. Stat. Ann. § 775.089(4); Ky. Rev. Stat. Ann. § 532.032(3); Mich. Comp. Laws Ann. § 780.766(11); Mont. Code Ann. § 46-18-241(1).

<sup>416</sup> See, e.g., N.H. Rev. Stat. § 651:63(II); Or. Rev. Stat. Ann. § 144.102(5)(a); Vt. Stat. Ann. tit. 13, § 7043(f)(1).

<sup>417</sup> See, e.g., Mich. Comp. Laws Ann. § 780.766(2); Mont. Code Ann. § 45-5-205(4); *id.* § 46-18-201(5); S.C. Code Ann. § 24-23-110.

<sup>418</sup> See, e.g., N.H. Rev. Stat. § 651:63(II).

<sup>419</sup> See, e.g., Mich. Comp. Laws Ann. § 780.766(2) (mandating restitution when an offense is resolved, *inter alia*, in any “way that is not an acquittal or unconditional dismissal”).

<sup>420</sup> See, e.g., 18 U.S.C. § 3563(b)(2) (authorizing restitution as a discretionary condition of probation where the underlying offense falls outside scope of the MVRA and the VWPA); *id.* § 3583(d) (authorizing courts to impose, as a condition of supervised release, any condition set forth as a discretionary condition of probation under 18 U.S.C. § 3563(b)(2), which expressly authorizes restitution as a discretionary condition of probation that is not subject to the limitations of the MVRA and the VWPA); Or. Rev. Stat. Ann. § 144.102(5)(b) (“The board may require a person to pay restitution as a condition of post-prison supervision imposed for an offense other than the offense for which the restitution was ordered if the person: (A) Was ordered to pay restitution as a result of another conviction; and (B) Has not fully paid the restitution by the time the person has completed the period of post-prison supervision imposed for the offense for which the restitution was ordered.”); *United States v. Batson*, 608 F.3d 630, 636 (9th Cir. 2010) (finding that courts have authority to order restitution as a condition of supervised release for any criminal offense for which supervised release is properly imposed); *State v. Bynes*, 403 S.E.2d 126, 127 (S.C. Ct. App. 1991) (holding that (1) a sentencing court can order, as a condition of probation, restitution for unindicted offenses, where defendant knowingly consented to consideration of those offenses and there was an evidentiary basis for the amount

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of restitution; and (2) defendant's consent to full restitution as a condition of probation barred him from challenging such a condition on appeal).

<sup>421</sup> See *supra* note 48.

<sup>422</sup> See *supra* note 42.

<sup>423</sup> See *supra* note 49.

<sup>424</sup> See *supra* note 60.

<sup>425</sup> For information regarding victims' restitution-related privacy and confidentiality rights and protections, see *supra* Part II.B.

<sup>426</sup> See *State v. Purnell*, 871 N.E.2d 613, 616 (Ohio Ct. App. 2006) (observing that because a restitution order is a final judgment, in the absence of clear statutory authority for continued jurisdiction over restitution, the trial court lacks the authority to modify the amount of restitution ordered).

<sup>427</sup> See, e.g., Cal. Penal Code § 1202.4(f)(1); 730 Ill. Comp. Stat. Ann. 5/5-5-6(f-1)(3); Mich. Comp. Laws Ann. § 780.766(22); Wyo. Stat. Ann. § 7-9-115.

<sup>428</sup> See, e.g., Cal. Penal Code § 1202.4(f)(1); Mich. Comp. Laws Ann. § 780.766(22).

<sup>429</sup> See, e.g., Cal. Penal Code § 1202.4(f)(1); Haw. Rev. Stat. Ann. § 706-645(2); 730 Ill. Comp. Stat. Ann. 5/5-5-6(f-1)(3); Mich. Comp. Laws Ann. § 780.766(22); Mont. Code Ann. § 46-18-246; N.H. Rev. Stat. § 651:66; Wyo. Stat. Ann. § 7-9-115.

<sup>430</sup> See, e.g., Cal. Penal Code § 1202.4(f)(1); 730 Ill. Comp. Stat. Ann. 5/5-5-6(f-1)(3).

<sup>431</sup> See, e.g., Cal. Penal Code § 1202.46 (providing that courts "retain jurisdiction over a person subject to a restitution order for the purposes of . . . modifying restitution until such time as the [victim's economic] losses may be determined").

<sup>432</sup> See, e.g., Cal. Penal Code § 1203.1g (stating that, when a defendant is convicted of sexual assault on a minor and ordered to pay restitution for the victim's medical and psychological treatment as a condition of probation, the defendant is entitled to a hearing concerning any modification of the amount of restitution "based on the costs of medical and psychological treatment incurred by the victim subsequent to the issuance of the order of probation"); *id.* § 1203.1j (stating that, when a defendant is convicted of certain assault or battery crimes involving victim age 65 or older and is ordered to pay restitution for the victim's medical and psychological treatment as a condition of probation, the defendant is entitled to a hearing concerning any modification of the amount of restitution "based on the costs of medical and psychological treatment incurred by the victim subsequent to the issuance of the order of probation"); 730 Ill. Comp. Stat. Ann. 5/5-5-6(f-1)(3) (authorizing modification of restitution orders for long-term physical care as to the amount of monthly payments based upon substantial changes in circumstances relating to the cost of long-term physical health care or the defendant or victim's financial condition); Mont. Code Ann. § 46-18-246 ("If the court finds that that the circumstances upon which it based the imposition of restitution, amount of the victim's pecuniary loss, or method or time of payment no longer exist . . . the court may adjust or waive unpaid restitution or the amount to be paid pursuant to 46-18-241(2)(a) or modify the time or method of making restitution."); N.H. Rev. Stat. § 651:66 (providing that, upon a request by the supervising agency or an offender for a revocation of restitution, "[i]f the court finds that the circumstances which warranted the imposition of the restitution have changed . . . the court may revoke the unpaid portion of the restitution in whole or in part, or modify the time and method of payment"); Wyo. Stat. Ann. § 7-9-115 (authorizing modification of restitution orders for long-term physical care as to the amount of monthly payments based upon substantial changes in circumstances relating to the cost of long-term physical health care or the defendant or victim's financial condition).

<sup>433</sup> See, e.g., 18 U.S.C. § 3664(o)(1)(A) (noting that a sentence that imposes an order of restitution is a final judgment that may subsequently be corrected under Fed. R. Crim. P. 35, which, *inter alia*, allows for the correction of a sentence that resulted from arithmetical, technical, or other clear error, within 14 days after sentencing, or under 18 U.S.C. § 3742, which governs appeals by a defendant or the government); Or. Rev. Stat. Ann. § 137.107.

<sup>434</sup> See, e.g., 18 U.S.C. § 3664(o)(1)(B) (stating that a sentence that imposes an order of restitution is a final judgment notwithstanding the fact that it can be amended under 18 U.S.C. § 3742, which authorizes the government or defendant to appeal a final sentence imposed in violation of law and provides that if the court of appeals finds that the sentence was imposed in violation of law, the court may remand for further sentencing proceedings); Cal. Penal Code § 1202.46 (providing that victims, prosecutors and courts may correct, at any time, a sentence that is "invalid due to the omission of a restitution order"); *People v. Brown*, 54 Cal. Rptr. 887, 896 (Cal. Ct. App. 2007) (stating that when a sentence is invalid due to the omission of a restitution order, a victim or the state may request a correction of the sentence); *Kittelson v. State*, 980 So. 2d 533, 534–35 (Fla. Dist. Ct. App. 2008) (recognizing that restitution is a mandated part of sentencing and holding that the failure to impose restitution at initial sentencing,

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without stating compelling reasons for not ordering restitution, results in an incomplete sentence that is subject to timely modification). *But see, e.g., Ely v. State*, 855 So. 2d 90, 91 (Fla. Dist. Ct. App. 2003) (reversing order adding restitution as a condition of defendant’s probation upon concluding that the court lacked authority to increase defendant’s sentence after entry of a final order given double jeopardy concerns).

<sup>435</sup> *See, e.g., Colo. Stat. Ann. § 18-1.3-603(3)(b)(I)* (“Any order for restitution may be . . . [d]eferred . . . with the consent of the prosecuting attorney and the victim or victims to whom the restitution is owed[.]”).

<sup>436</sup> *See, e.g., id. § 18-1.3-603(3)(b)(II)* (“Any order for restitution may be . . . [d]eferred . . . if the defendant has otherwise compensated the victim or victims for the pecuniary losses suffered.”);

<sup>437</sup> *See, e.g., 18 U.S.C. § 3664(d)(5)* (“If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.”); *Mich. Comp. Laws Ann. § 780.766(22)* (“The court may amend an order of restitution entered under this section on a motion by the prosecuting attorney, the victim, or the defendant based upon new information related to the injury, damages, or loss for which the restitution was ordered.”).

<sup>438</sup> *See, e.g., Cal. Penal Code § 1202.4(f)(1)* (“The court may modify the amount [of restitution], on its own motion or on the motion of the district attorney, the victim or victims, or the defendant.”).

<sup>439</sup> *See, e.g., Haw. Rev. Stat. Ann. § 706-645(2)* (authorizing the court, upon motion by defendant, to revoke or modify restitution “[i]f it appears to the satisfaction of the court that the circumstances which warranted the imposition of . . . restitution have changed, or that it would otherwise be unjust to require payment, the court may revoke . . . restitution or the unpaid portion thereof in whole or in part”); *Mont. Code Ann. § 46-18-246* (“If the court finds that . . . it [ ] would be unjust to require payment as imposed, the court may adjust or waive unpaid restitution.”); *N.H. Rev. Stat. § 651:66* (providing that, upon a request by the supervising agency or an offender for a revocation of restitution, “[i]f the court finds . . . that it would [ ] be unjust to require payment, the court may revoke the unpaid portion of the restitution in whole or in part, or modify the time and method of payment”); *N.C. Gen. Stat. Ann. § 15A-1340.39(b)* (“If the court finds that the remission of the [restitution] order is warranted and serves the interests of justice, the court may remit the order of restitution.”).

<sup>440</sup> *See, e.g., Ariz. Rev. Stat. Ann. § 13-905(A)* (stating that persons convicted of certain crimes, “on fulfillment of the conditions of probation or sentence and discharge by the court, may apply to the court to have the judgment of guilt set aside”).

<sup>441</sup> *See, e.g., Cal. Penal Code § 1202.46* (providing that victims, prosecutors and courts may seek to correct, at any time, a sentence that is “invalid due to the omission of a restitution order”); *see United States v. Patel*, No. CRIM.A. 06-60006, 2009 WL 3232792, at \*3 (W.D. La. Sept. 30, 2009) (recognizing that the government may seek to amend a restitution order upon discovery of additional victim losses under 18 U.S.C. § 3664(d)(5), where the losses had not been known at the time of sentencing due to the victims having not been accorded their right to notice of their right to apply for restitution, because the failure to provide such notice constitutes “good cause” for failure to include the victims’ losses in the initial restitution claim). *But see, e.g., Ely v. State*, 855 So. 2d 90, 91 (Fla. Dist. Ct. App. 2003) (reversing order adding restitution as a condition of defendant’s probation, where probation modification was made within the 60-day modification period set forth in the state’s rules of criminal procedure, but after entry of a final order directing that no restitution should be paid, on the ground that a court lacks authority to increase defendant’s sentence after entry of a final order because defendant’s double jeopardy rights attach upon entry of such an order).

<sup>442</sup> *See, e.g., Haw. Rev. Stat. Ann. § 707-785(2)* (providing that the return of a trafficking victim to the victim’s home country or other absence from the jurisdiction does not relieve the defendant of their obligation to pay restitution); *N.H. Rev. Stat. § 633:10(III)* (same); *S.C. Code Ann. § 16-3-2040(F)* (same); *Vt. Stat. Ann. tit. 13, § 2657(c)* (same); *Wyo. Stat. Ann. § 6-2-710(c)* (same).

<sup>443</sup> *See, e.g., Mich. Comp. Laws Ann. § 780.766(7)*; *N.Y. Crim. Proc. Law § 420.10(2)*; *Neb. Rev. Stat. Ann. § 29-2286*; *S.C. Code Ann. § 16-3-2040(B)*; *Vt. Stat. Ann. tit. 13, § 2657(b)*; *Wyo. Stat. Ann. § 6-2-710(b)*.

<sup>444</sup> Restitution typically survives a defendant’s death. *See, e.g., 18 U.S.C. § 3613(b)*; *N.H. Rev. Stat. § 651:64(I)*. Courts disagree, however, as to whether restitution survives a defendant’s death when the defendant dies pending an appeal. *Compare United States v. Christopher*, 273 F.3d 294, 299 (3d Cir. 2001) (finding that the doctrine of abatement *ab initio* applies to convictions and fines, but not to restitution, which is “an equitable remedy . . . intended to reimburse a person wronged by the actions of another,” such that abating restitution would grant defendant’s estate “an undeserved windfall”); *People v. Peters*, 537 N.W.2d 160, 161–66 (Mich. 1995) (holding that

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when a defendant dies during the pendency of their direct appeal, only the appeal abates; the underlying convictions and restitution orders remain); *State v. Al Mutory*, 581 S.W.3d 741, 740 (Tenn. 2019) (concluding that Tennessee would no longer apply the doctrine of abatement *ab initio* on the grounds that, *inter alia*, the doctrine was obsolete and a contrary the state’s public policy of affording rights to crime victims); *with United States v. Volpendesto*, 755 F.3d 448, 454 (7th Cir. 2014) (holding that restitution was void *ab initio* under abatement doctrine when defendant died while pending appeal of right); *People v. Johnson*, 487 P.3d 1262, 1265 (Colo. Ct. App. 2020), *cert. granted in part*, No. 20SC790, 2021 WL 982282 (Colo. Mar. 8, 2021) (citation omitted) (concluding that “when a defendant dies during the pendency of his direct appeal, the doctrine of abatement *ab initio* operates to extinguish not only his conviction but ‘everything associated with the case,’ including any restitution order”). Abating restitution upon a defendant’s death violates victims’ rights to restitution and to fundamental fairness. *See generally Abatement Ab Initio and a Crime Victim’s Right to Restitution*, NCVLI Victim Law Bulletin (2020), <https://law.lclark.edu/live/files/29856-ncvlibulletinabatement-ab-initiopdf> (discussing the relationship between the doctrine of abatement *ab initio* and victims’ right to restitution); *see also Johnson*, 487 P.3d at 1266 (acknowledging that application of the doctrine of abatement *ab initio* to restitution orders can lead to unjust results for crime victims).

<sup>445</sup> *See, e.g.*, 18 U.S.C. § 3613(e); Ariz. Rev. Stat. Ann. § 13-603(C); Fla. Stat. Ann. § 775.089(10)(b); N.H. Rev. Stat. § 651:63(IV); Vt. Stat. Ann. tit. 13, § 7043(p)(1); *cf.* Mich. Comp. Laws Ann. § 780.766(23) (“A court that receives notice that a defendant who has an obligation to pay restitution under this section has declared bankruptcy shall forward a copy of that notice to the prosecuting attorney. The prosecuting attorney shall forward the notice to the victim at the victim’s last known address.”).

<sup>446</sup> *See, e.g.*, 18 U.S.C. § 3664(k); Ariz. Rev. Stat. Ann. § 13-804(M); Ohio Rev. Code Ann. § 2929.18(A)(1).

<sup>447</sup> *See, e.g.*, Alaska R. Crim. P. 32.6(d); Ariz. Rev. Stat. Ann. § 13-804(M); Fla. Stat. Ann. § 945.091(6)(b); Mich. Comp. Laws Ann. § 780.766(12); Mont. Code Ann. § 46-18-246; *id.* § 46-18-246; Ohio Rev. Code Ann. § 2929.18(A)(1); N.H. Rev. Stat. § 651:66.

<sup>448</sup> *See, e.g.*, S.C. Code Ann. § 17-25-323(A) (“The trial court retains jurisdiction of the case for the purpose of modifying the manner in which court-ordered payments are made until paid in full, or until the defendant’s active sentence and probation or parole expires.”).

<sup>449</sup> *See, e.g.*, 18 U.S.C. § 3664(k) (“Upon receipt of the notification [of a material change to a defendant’s economic circumstances], the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.”); Alaska R. Crim. P. 32.6(d) (“A defendant who is unable to pay restitution because of financial circumstances may request a hearing to ask the court to modify the restitution payment schedule. If the court holds a hearing and the defendant proves by a preponderance of the evidence that the defendant is unable through good faith efforts to satisfy the payment schedule in the judgment for restitution, the court may modify the payment schedule, but may not reduce the amount of restitution.”); Or. Rev. Stat. Ann. § 153.090 (affording defendants the right, when restitution has been ordered as part of a default judgment to request a hearing to determine whether a defendant is able to pay or establish a payment schedule); Vt. Stat. Ann. tit. 13, § 7043(l) (“The sentencing court may modify the payment schedule of a restitution order if, upon motion by the Restitution Unit or the offender, the court finds that modification is warranted by a substantial change in circumstances.”); *see also* Mont. Code Ann. § 46-18-250(2) (providing that, if for reasons beyond the offender’s control, they are unable to make restitution payments, money from the state restitution fund may be used to pay the victim and the offender may repay the restitution fund through community service).

<sup>450</sup> *See supra* note 55.

<sup>451</sup> *See supra* note 38.

<sup>452</sup> *See supra* note 61.

<sup>453</sup> *See supra* note 63.

<sup>454</sup> *See supra* note 9.

<sup>455</sup> For information regarding victims’ restitution-related privacy and confidentiality rights and protections, *see supra* Part II.B.

<sup>456</sup> *See, e.g.*, 18 U.S.C. § 3771(d)(3) (authorizing victims to petition for a writ of mandamus when a district court violates their rights to, *inter alia*, restitution); Ohio Const. art. I, § 10a(B) (authorizing victims to file a petition with the court of appeals when they are denied their rights to, *inter alia*, restitution); Utah Code Ann. § 77-38-11(2)(a)(i) (authorizing victims to petition for a writ of mandamus enforcing their rights to, *inter alia*, restitution); *In re Brown*, 932 F.3d 162, 170 (4th Cir. 2019) (recognizing that victims have a statutory right, under the CVRA, to petition for a

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writ of mandamus to challenge the restitution component of a defendant’s sentence and granting the victim’s mandamus petition on the ground that the court abused its discretion in denying the victim’s request based on its determination that restitution would complicate and prolong the sentencing process); *Crump v. Appellate Division of Superior Court*, 249 Cal. Rptr. 3d 611, 616 (Cal. Ct. App. 2019) (holding that victims may enforce their right to restitution in an appellate court by filing a writ of mandate); *State ex rel. Howery v. Powers*, 154 N.E.3d 146, 148–51 (Ohio Ct. App. 2020) (holding that victims may petition the court of appeals to compel a restitution hearing); see also *United States v. Monzel*, 641 F.3d 528, 540 (D.C. Cir. 2011) (“Since the enactment of the CVRA, every [federal] circuit . . . has held that mandamus is a crime victim’s only recourse for challenging a restitution order”).

<sup>457</sup> See, e.g., Md. Crim. Proc. § 11-103(b) (providing that “[a]lthough not a party to a criminal or juvenile proceeding, a victim of a crime for which the defendant or child respondent is charged may file an application for leave to appeal to the Court of Special Appeals from an interlocutory order or appeal to the Court of Special Appeals from a final order that denies or fails to consider a right secured to the victim by subsection (e)(4) of this section [which affords victims the right to file a motion requesting relief if their right to restitution is not considered or was improperly denied] . . . [or] § 11-302 [which affords victims the right to restitution]”); 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(13)(A) (“If the trial court denies the relief requested, the victim, the victim’s attorney, or the prosecuting attorney may file an appeal within 30 days of the trial court’s ruling.”); Utah Code Ann. § 77-38-11(2)(b) (authorizing victims to appeal an adverse ruling on, *inter alia*, a motion or request brought by a victim).

<sup>458</sup> See, e.g., 18 U.S.C. § 3771(d)(4) (“In any appeal in a criminal case, the Government may assert as error the district court’s denial of any crime victim’s right in the proceeding to which the appeal relates.”); Fla. Stat. Ann. § 924.07(1)(k) (“The state may appeal from: . . . “[a]n order denying restitution”); 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(13)(A) (“In any appeal in a criminal case, the State may assert as error the court’s denial of any crime victim’s right in the proceeding to which the appeal relates.”); see also *State v. Allen*, 743 So.2d 532, 534 (Fla. Ct. App. 1997) (holding that the state has authority to appeal complete and partial denials of restitution orders).

<sup>459</sup> See, e.g., 18 U.S.C. § 3742(b)(1) (affording the government the right to appeal a sentence “imposed in violation of law”); Fla. Stat. Ann. § 924.07(1)(e) (“The state may appeal from: . . . [t]he sentence, on the ground that it is illegal”); *State v. Kinneman*, 95 P.3d 1277, 1282 (Wash. Ct. App. 2004) (holding that the state has the right to appeal an order of restitution based on errors of law or for an abuse of discretion in a grant or denial of restitution.).

<sup>460</sup> Some jurisdictions have concluded that victims lack standing to appeal a restitution award. See, e.g., *United States v. Kovall*, 857 F.3d 1060, 1063 (9th Cir. 2017) (citing cases) (holding, along with the First, Third, Fifth, Eighth, and Tenth Circuit Courts of Appeals, “that a victim may not directly appeal the restitution component of a criminal defendant’s sentence under the Mandatory Victims Restitution Act.”); *Crump v. Appellate Division of Superior Court*, 249 Cal. Rptr. 3d 611, 616 (Cal. Ct. App. 2019) (holding that victims do not have an independent right to appeal a restitution order); *State v. Doehler*, 844 N.W.2d 469, at \*3 (Iowa Ct. App. Jan. 23, 2014) (table) (observing that victims lack standing to appeal a criminal defendant’s restitution order); *State v. Olson*, No. 77627-4-I, 2019 WL 7373499 (Wash. Ct. App. Dec. 30, 2019) (noting that victims do not have a right under the state’s constitutional or statutory victims’ rights provisions to appeal a restitution order). Others have observed that there is uncertainty regarding the issue. See *People v. Hannon*, 209 Cal. Rptr. 3d 409, 419 (Cal. Ct. App. 2016) (recognizing that there is some uncertainty regarding whether a victim has standing to appeal a restitution award, especially given the clear constitutional right of crime victims in California to enforce their rights in an appellate court); *Kelley v. State*, 11 N.E.3d 973, 976–77 (Ind. Ct. App. 2014) (expressing “serious doubts” concerning the victim’s standing to challenge the court’s decision to grant a credit toward a restitution order, but “conclud[ing] that [defendant] has waived appellate review of her argument concerning [the victim’s standing]”).

<sup>461</sup> See, e.g., *State v. Fisk*, No. 28798, 2021 WL 2394580, at \*6–7 (Ohio Ct. App. June 11, 2021) (concluding that the state lacked standing to appeal the trial court’s denial of restitution under statute governing appeal of denial of victims’ rights); *State v. Conry*, 951 N.W.2d 226, 228 (N.D. 2020) (holding that the state does not have standing to appeal a restitution under state appeal statute).

<sup>462</sup> See *Cani v. United States*, 331 F.3d 2010, 1215 (11th Cir. 2003) (recognizing that defendants may challenge a restitution calculation on direct appeal); *State v. Lessner*, 626 N.W.2d 869, 871 (Iowa 2001) (“A defendant challenging a restitution order entered as part of the original sentence has two options, to file a petition in district court under section 910.7 [to modify a restitution amount or manner of payment], or to file a direct appeal.”); *State v. Bradley*, 138 A.3d 1210, 1212 (Me. 2016) (recognizing that defendant could challenge a restitution order through discretionary sentence appeal or direct appeal, depending on the nature of the challenge to restitution).

<sup>463</sup> See, e.g., *United States v. Harrison*, 823 Fed. App’x 430, 433–34 (7th Cir. 2020) (stating that where restitution was ordered after defendant filed an appeal challenging his conviction, the proper procedure for challenging

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restitution was filed a second notice of appeal, specific to the restitution order, and ask the court to consolidate the appeals); *State v. Long*, 281 P.3d 176, 177 (Kan. 2012) (finding that appellate court had jurisdiction over issues related to restitution in appeal from defendant’s conviction, even though restitution was ordered after notice of appeal was filed, where the district court specifically left restitution open at sentencing and defendant’s notice of appeal stated their intention to appeal the sentence and all adverse rulings).

<sup>464</sup> See *supra* note 444.

<sup>465</sup> See, e.g., *United States v. Ward*, 732 F.3d 175, 187 (3d Cir. 2013) (concluding that defendant lacked standing to appeal trial court’s failure to order restitution on the ground that only the crime victim, the victim’s legal representative or the government could assert rights related to a restitution award under federal statutes governing restitution).

<sup>466</sup> See, e.g., *State v. Doehler*, 844 N.W.2d 469 (Iowa Ct. App. 2014) (finding that a criminal defendant lacks standing to appeal or otherwise challenge the restitution order issued in a co-defendant’s case).

<sup>467</sup> See, e.g., *United States v. Berry*, 795 F. App’x 229, 237 (5th Cir. 2019) (finding that defendant lacked constitutional standing to appeal the recipient of restitution “because any error concerning to whom the restitution is to be paid will not harm [defendant]: no matter the ultimate recipient, she remains liable for paying the same amount.”); *Maillette v. State*, 276 P.3d 476, 478 (Alaska Ct. App. 2012) (noting that defendant lacked standing to complain that the sentencing court ordered them “to pay an uncontested amount of restitution to one person as opposed to another”).

<sup>468</sup> See, e.g., *Fay v. Fox in & for Cty. of Maricopa*, 494 P.3d 1105, 1106, 1110 (Ariz. 2021) (recognizing that defendant’s effort to file a delayed appeal implicates multiple constitutional victims’ rights and holding, therefore, “that a crime victim has a constitutional and statutory right to be heard on the merits of a defendant’s motion for a delayed appeal of a restitution order”).

<sup>469</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-603(C); Fla. Stat. Ann. § 775.089(11)(a); 730 Ill. Comp. Stat. Ann. 5/5-5-6(g); Ky. Rev. Stat. Ann. § 532.0329(5); N.H. Rev. Stat. § 651:64(I); Ohio Rev. Code Ann. § 2929.18(F); S.C. Code Ann. § 14-1-202.

<sup>470</sup> See, e.g., Fla. Stat. Ann. § 775.089(3)(c); Ky. Rev. Stat. Ann. § 532.033(2), (5)–(8); Mont. Code Ann. § 46-18-241(2)(c); Utah Code Ann. § 78A-2-214(2).

<sup>471</sup> See, e.g., Cal. Penal Code § 2085.5(c)–(d), (g)–(h); Fla. Stat. Ann. § 775.089(11)(b); Mont. Code Ann. § 46-18-241(2)(b); N.H. Rev. Stat. § 651:64(II); Utah R. J. Admin. 6-303.

<sup>472</sup> See, e.g., Vt. Stat. Ann. tit. 13, § 7043 (Restitution Unit); 19-1 Vt. Code R. § 1:I through § 1:X (Administrative Rules Governing the Crime Victims’ Restitution Special Fund and Related Policies).

<sup>473</sup> See, e.g., 18 U.S.C. § 3664(m)(2); Ala. Code § 15-18-74; Ariz. Rev. Stat. Ann. § 12-253(8); Cal. Penal Code § 1202.42(h); *id.* § 1202.8(c); *id.* § 1203.1(b); Haw. Rev. Stat. § 706-624; Ky. Rev. Stat. Ann. § 439.563(3); Mich. Comp. Laws Ann. § 780.766(18); Mich. Comp. Laws Ann. § 791.236(13); Mont. Code Ann. § 46-18-245; N.H. Rev. Stat. § 504-A:12(VI); S.C. Code Ann. § 24-21-490(A).

<sup>474</sup> See, e.g., Cal. Penal Code § 1202.42(h); Ky. Rev. Stat. Ann. § 532.032(5).

<sup>475</sup> See, e.g., N.Y. Crim. Proc. Law § 420.10(8) (authorizing designation of official or organization other than the district attorney to be responsible for the collection and administration of restitution).

<sup>476</sup> See, e.g., Haw. Rev. Stat. Ann. § 706-644(5); *id.* § 706-647(1); N.Y. Crim. Proc. Law § 420.10(6)(a).

<sup>477</sup> For additional information regarding default in restitution payments, see *infra* Part IV.G.4.

<sup>478</sup> See, e.g., Cal. Penal Code § 1297; Haw. Rev. Stat. Ann. § 706-646(4); 725 Ill. Comp. Stat. Ann. 5/110-7(f); 730 *id.* 5/5-5-6(e); Mich. Comp. Laws Ann. § 765.6c; S.C. Code Ann. § 17-15-15(C). *But see*, e.g., Mont. Code Ann. § 46-9-503(5) (providing that a surety bail bond cannot be held or forfeited for restitution).

<sup>479</sup> See, e.g., Cal. Penal Code § 1463.009(b); Mont. Code Ann. § 46-9-512(1).

<sup>480</sup> A restitution order typically directs payment to be made to the relevant clerk of court or another court mechanism. See, e.g., 18 U.S.C. § 1593(b)(1) (directing defendants to pay restitution to victims “through the appropriate court mechanism”); *id.* § 2248(b)(1) (same).

<sup>481</sup> In some instances, the clerk has the authority to compromise restitution to the extent necessary to collect it. See, e.g., S.C. Code Ann. § 14-1-202 (B).

<sup>482</sup> In speaking with practitioners nationally, conversations revealed that some jurisdictions are implementing technology-enhanced means of both reminding convicted persons of their restitution obligations and facilitating restitution payment (including automated email or U.S. Mail reminders, text message payment reminders, online payment portals, links to online payment pages, or kiosks where restitution payments may be made). NCVLI Online Practitioner Interviews (June 2021).

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<sup>483</sup> Some jurisdictions authorize the entity tasked with collecting restitution to contract with a public or private debt collecting agency to collect restitution. *See, e.g.*, Alaska Stat. Ann. § 12.55.051(j); Cal. Penal Code § 3000.05(a); Haw. Rev. Stat. Ann. § 601-17.5; 730 Ill. Comp. Stat. Ann. 5/5-9-3(e); Mont. Code Ann. § 46-18-241(2)(b); N.H. Rev. Stat. § 651:63(V); Ohio Rev. Code Ann. § 2929.18(F); Or. Rev. Stat. Ann. § 137.118(1)–(2); *see also* Vt. Stat. Ann. tit. 28, § 102(b)(12) (stating that the Commissioner of Corrections has the power to enter into contracts with private collection agencies for the collection of, *inter alia*, restitution).

<sup>484</sup> Depending on the jurisdiction, a victim may be entitled to express their preference for the type of collecting agency with which the state contracts for this purpose. *See, e.g.*, Cal. Rev. & Tax Code § 19280(a)(1)(A), (C) (“If the crime victim entitled to restitution in the order notifies either the Department of Corrections and Rehabilitation or the designated county agency with regard to their preference of a collecting agency, that preference shall be honored and the collection shall be performed in accordance with the preference of the victim.”).

<sup>485</sup> *See, e.g.*, 18 U.S.C. § 981(e)(6) (providing that the government may transfer forfeited property “as restoration to any victim of the offense giving rise to the forfeiture”); Cal. Penal Code § 1202.4(f) (providing that a court, in general, may specify that funds confiscated at the time of defendant’s arrest are applied to a restitution order if they are not exempt for spousal or child support or otherwise subject to a legal exemption); Ohio Rev. Code Ann. § 2981.13(B)(2) (providing that the proceeds from the sale of forfeited property shall be used, in a criminal forfeiture case “to satisfy any restitution ordered to the victim of the offense or, in a civil forfeiture case, to satisfy any recovery ordered for the person harmed, unless paid from other assets”); Or. Rev. Stat. Ann. § 131.588(4) (“Upon motion of the state, the court may include in the judgment of criminal forfeiture an order that directs the seizing agency to distribute to the victim of the crime of conviction a portion of any proceeds from property received by the seizing agency if the court included an order of restitution in the criminal judgment.”); Utah Code Ann. § 24-3-103(1)(a) (providing that, if a prosecutor determines that seized property does not need to be retained for court proceedings, they may “petition the court to apply the property that is money towards restitution . . . owed by the owner of the property”); *id.* § 24-3-104(2)(b) (providing that after an opportunity for an expedited hearing, the court may order that seized property or the proceeds from the sale of seized property be applied to restitution in an amount set by the court); *United States v. Carter*, 742 F.3d 440, 446 (9th Cir. 2014) (“[T]he government may choose to assign forfeited proceeds to victims.”).

<sup>486</sup> *See, e.g.*, 18 U.S.C. § 1593(f) (sex or labor trafficking); Fla. Stat. Ann. § 895.09(1)(d) (racketeering); 725 Ill. Comp. Stat. Ann. 5/124B-180 (certain enumerated crimes, including child pornography, human trafficking and animal fighting); Mich. Comp. Laws Ann. § 750.159r(1)(b) (racketeering); N.H. Rev. Stat. § 633:8(XVI), (XVIII) (human trafficking); Ohio Rev. Code Ann. § 2981.13(B) (criminal forfeiture); Vt. Stat. Ann. tit. 23, § 1213c(j) (drunk driving).

<sup>487</sup> *See, e.g.*, Mont. Code Ann. § 46-18-244(3)(a).

<sup>488</sup> *See, e.g.*, Ariz. Rev. Stat. § 13-804(A); Or. Rev. Stat. Ann. § 137.101(1); *State v. McLaughlin*, 269 P.3d 104, 105 (Or. Ct. App. 2011) (withdrawing original opinion that vacated defendant’s order of restitution and remanding for resentencing because, although restitution was no longer an option at sentencing, the court still had authority to impose a compensatory fine under ORS 137.101 that would be paid to the victim and thus satisfy the goal of restitution).

<sup>489</sup> Government collection units may be: contained within a jurisdiction’s court-system, *see, e.g.*, Alaska R. Crim. P. 32.6(d); part of a prosecutor’s office, *see, e.g.*, S.C. Code Ann. § 17-22-710(B); or exist as an independent entity, *see, e.g.*, Vt. Stat. Ann. tit. 13, § 5362. Some government-run collection programs only become involved in restitution collection when an offender defaults on their restitution obligations. *See, e.g.*, Cal. Penal Code § 1463.007(b) (providing that the state’s comprehensive restitution collection program may be implicated when, *inter alia*, an offender is delinquent in their restitution payments). Other such programs entirely control the process of restitution collection and enforcement. *See, e.g.*, Vt. Stat. Ann. tit. 13, § 5362 (Restitution Unit). These programs may cease their efforts when a victim pursues enforcement civilly. *See, e.g.*, Alaska R. Crim. P. 32.6(f) (providing that the restitution collection unit established within the court system will execute on the defendant’s permanent fund as needed to collect restitution, but when a victim seeks restitution more broadly through civil enforcement, the victim “may elect to proceed without the collection unit’s assistance”). The State of Hawaii recently increased the success of its collection of restitution from those convicted persons who are incarcerated or on parole. A summary of its program and its implementation and results are available from The Council of State Governments & The State of Hawai’i’s Crime Victim Compensation Commission, *Victim Restitution Matters: Four Lessons from Hawai’i to Ensure Financial Justice for Crime Victims* (Jan. 2021), <https://csgjusticecenter.org/publications/victim-restitution-matters/>.

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<sup>490</sup> Restitution statutes may expressly provide that a certain portion of an inmate’s spendable account may be used to fulfill that inmate’s restitution obligations. *See, e.g.*, Cal. Penal Code § 2085.5(d); 730 Ill. Comp. Stat. Ann. 125/20(a-5); Mont. Code Ann. § 53-1-107(2)(a); Utah Code Ann. § 64-13-23(5)(b). In some jurisdictions, use of a portion of such accounts for restitution purposes is mandatory. *See, e.g.*, Ariz. Rev. Stat. Ann. § 31-230(C); Haw. Rev. Stat. Ann. § 353-22.6; Mich. Comp. Laws Ann. § 780.767a(1)–(2). If an incarcerated person’s financial resources grow substantially from any source – including inheritance, settlement or other judgment – restitution laws may require that person to apply the full value of such resources to any outstanding restitution. *See, e.g.*, 18 U.S.C. § 3664(n); *see also* Mont. Code Ann. § 46-18-237(2) (providing that, when the department of corrections becomes aware that an incarcerated individual is entitled to receive money from any source, it must submit such information to the office of victims services and the county attorney, either of whom may petition for a garnishment of the person’s money for the payment of, *inter alia*, restitution); Haw. Rev. Stat. Ann. § 801D-4(c) (providing the department of public safety, the Hawaii paroling authority, the judiciary probation divisions and branches, and the department of the attorney general must make good faith efforts to notify crime victims and their surviving immediate family when a person imprisoned for a crime against the victim “has received a civil judgment that exceeds \$10,000, a civil settlement that exceeds \$10,000, or any income that exceeds \$10,000 in one fiscal year, whenever the income is known to the agency”).

<sup>491</sup> Income that a prisoner earns while imprisoned or in a work release program is typically subject to the prisoner’s restitution obligations. *See, e.g.*, Ariz. Rev. Stat. Ann. § 31-334; Cal. Penal Code § 2085.5(c)–(d); Fla. Stat. Ann. § 946.513(1); Haw. Rev. Stat. Ann. § 353-17(a); N.H. Rev. Stat. § 30-B:19(I)(a); *id.* § 651:22; Mich. Comp. Laws Ann. § 800.327a(3)(b)(i); Mont. Code Ann. § 53-30-132(3)(b); Ohio Rev. Code Ann. § 5145.16(C)(8)(b)(i); Or. Rev. Stat. Ann. § 137.520(4); S.C. Code Ann. § 24-1-295(1); Vt. Stat. Ann. tit. 28, § 755(2)(B); *see also* Utah Code Ann. § 64-9b-5(1) (stating that the legislative intent of work programs for prisoners is to encourage inmates to use their personal earnings from jobs created under the programs to pay, *inter alia*, restitution for victims). Additionally, restitution centers, which house nonviolent offenders while they work in outside facilities during the day, provide another means for imprisoned individuals to pay their restitution obligations. *See, e.g.*, Cal. Penal Code § 6220 through 6236 (California Restitution Centers); S.C. Code Ann. § 24-21-480 (Restitution Center Program); *see also* Fla. Stat. Ann. § 944.026(c) (authorizing development of system of restitution centers). A court may also require a defendant who has received a suspended sentence to surrender to the department of corrections or other relevant entity all or part of their income earned during the time they are not confined under the sentence for the purposes of restitution. *See, e.g.*, N.H. Rev. Stat. § 651:22 (authorizing courts, in cases involving a suspended sentence, to require defendants “to surrender to the department of corrections or other agency designated by the court all or part of his wages or other income, less standard payroll deduction required by law, earned during the time he is not confined under the sentence” and allowing the court to “direct that, after deducting therefrom the cost of his maintenance while not confined, the balance be applied as needed for restitution payments made to authorized claimants”).

<sup>492</sup> *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-804(L) (“Any monies that are owed by this state to a person who is under a restitution order shall be assigned first to discharge the restitution order, including any tax refund that is owed to the defendant.”).

<sup>493</sup> *See, e.g.*, Ariz. Rev. Stat. Ann. § 12-1721(A); Cal. Penal Code § 2085.8(a)–(b); Ohio Rev. Code Ann. § 2969.27(A).

<sup>494</sup> *See, e.g.*, Colo. Rev. Stat. Ann. § 16-18.5-106.5(2); Vt. Stat. Ann. tit. 13, § 7043(n)(1).

<sup>495</sup> *See, e.g.*, Colo. Rev. Stat. Ann. § 16-18.5-106.7; Vt. Stat. Ann. tit. 13, § 7043(n)(1).

<sup>496</sup> *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-804(L); Colo. Rev. Stat. Ann. § 16-18.5-106.8; Mont. Code Ann. § 46-18-244(7); Utah Code Ann. § 59-10-529(1)(b)(i); Vt. Stat. Ann. tit. 13, § 7043(n)(1).

<sup>497</sup> Under the Son of Sam laws in some jurisdictions, restitution must be paid from the proceeds that a person convicted of a crime receives pursuant to the sale of certain works, memorabilia and other property related to the offense. *See, e.g.*, Mich. Comp. Laws Ann. § 780.768(1) (providing that someone convicted of a crime may not derive any profit from the sale of certain works, memorabilia and property, until the victim receives restitution and certain other obligations are met); 22 Okla. Stat. Ann. § 17(B) (providing that proceeds from an offender’s work about their crime must be used to pay, *inter alia*, restitution); Or. Rev. Stat. Ann. § 147.275 (same); Utah Code Ann. § 77-38-303(3)–(4) (providing that profits from a notoriety of crime contract must be remitted to the Crime Victim Reparations Fund and that the Utah Office for Victims of Crime may use such proceeds to pay victims of the crime any outstanding restitution). At least one state expressly authorizes the county attorney or attorney general, upon a defendant’s conviction, to petition the court to order the defendant to forfeit all or any part of such proceeds. *See,*



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*e.g.*, Mich. Comp. Laws Ann. § 780.768(2). Any balance remaining in the escrow or other fund that collects such proceeds may be paid to state funds that support crime victims compensation and services. *See, e.g., id.*

§ 780.768(5) (stating that any balance remaining in an escrow account containing the profits from an offender's work, memorability and property related to the offense must be paid to the victim's rights fund); Utah Code Ann. § 77-38-303(4) (providing that, once victim restitution is paid, any remaining profits from a notoriety of crime contract are deposited into the Crime Victim Reparations Fund).

<sup>498</sup> Some states pay restitution to victims from a restitution fund, which, depending on the jurisdiction, may be used for the payment of all court-ordered criminal restitution. *See, e.g.*, Vt. Stat. Ann. tit. 13, § 5363 (providing that the Crime Victims' Restitution Special Fund, which holds and disburses restitution to victims, consists of monies collected by the Restitution Unit and any donated funds or amounts that a victim declines to accept). Such funds can also be limited to situations where the victim is otherwise unable to collect directly from the defendant. *See, e.g.*, Me. Rev. Stat. Ann. § 1214-A(4) (Elder Victims Restitution Fund); Mont. Code Ann. § 46-18-250(2) (County Restitution Fund); N.Y. Crim. Proc. Law § 420.10(7) (undisbursed restitution payments). Some jurisdictions also rely on restitution funds derived from administrative or civil actions in the securities fraud setting to backfill victims' losses when restitution cannot be secured from the perpetrators of certain financial crimes. *See, e.g.*, Mont. Code Ann. § 30-10-1002 (terminates June 30, 2021) (Securities Restitution Assistance Fund); Vt. Stat. Ann. tit. 9, § 5616 (Vermont Financial Services Education and Victim Restitution Special Fund).

<sup>499</sup> *See, e.g.*, Ala. Code § 15-18-78(a); Alaska Stat. Ann. § 12.55.045(1); Cal. Penal Code § 1214(b)(1); Fla. Stat. Ann. § 775.089(5); Haw. Rev. Stat. Ann. § 706-647(1); Mich. Comp. Laws Ann. § 600.4805(2); *id.* § 780.766(13); Mont. Code Ann. § 46-18-24(3); *id.* § 46-18-249(1); Ohio Rev. Code Ann. § 2929.18(D); Or. Rev. Stat. Ann. § 137.450.

<sup>500</sup> *See, e.g.*, 18 U.S.C. § 3613(a) (authorizing the United States to enforce a restitution order in accordance with the practices and procedures for the enforcement of civil judgments under Federal or State law, subject to limited exceptions); Haw. Rev. Stat. Ann. § 706-644(5) (authorizing the victim to collect restitution "in the same manner as a judgment in a civil action"); N.Y. Crim. Proc. Law § 420.10(6)(a) (authorizing the victim or the victim's estate to collect restitution "in the same manner as a civil action").

<sup>501</sup> *See, e.g.*, Ohio Rev. Code Ann. § 2929.18(D) (authorizing victims, once a restitution order is issued in a felony case, to obtain a judgment of certificate from the clerk of court and obtain execution of the judgment through any available procedure).

<sup>502</sup> *See, e.g.*, Mont. Code Ann. § 46-18-247(3) ("An order to pay restitution constitutes a judgment rendered in favor of the state, and following a default in the payment of restitution or any installment of restitution, the sentencing court may order the restitution to be collected by any method authorized for the enforcement of other judgments."); S.C. Code Ann. § 17-25-323(B) (providing that when a defendant is in default regarding their restitution obligations, the court, upon its own motion, must hold a hearing to require the defendant to show cause as to why such default "should not be treated as a civil judgment and a judgment lien attached"); Alaska R. Crim. P. 32.6(e) ("Civil execution to enforce the judgment may issue if restitution is ordered to be paid by a specified date and defendant fails to make full payment by that date. If restitution is ordered to be paid in specified installments and defendant fails to make one or more installment payments, civil execution to collect the entire remaining balance may issue. The automatic stays on enforcement provided in Civil Rule 62(a) and District Court Civil Rule 24(a) do not apply to the enforcement of restitution judgments.").

<sup>503</sup> *See* 18 U.S.C. § 3613(a) (authorizing the United States to enforce a restitution order in accordance with the practices and procedures for the enforcement of civil judgments under Federal or State law, subject to limited exceptions); Ala. Code § 15-18-78(a) ("The victim on whose behalf restitution is ordered, the executor or administrator of the victim's estate, or anyone else acting on behalf of the victim, shall be entitled to all the rights and remedies to which a plaintiff would be entitled in a civil action under the laws of this state as well as any other right or remedy pertaining to such restitution order as may be provided by law."); Cal. Penal Code § 1214(b)(2) ("In any case in which a defendant is ordered to pay restitution, the order to pay restitution . . . shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as provided for the enforcement of any other money judgment."); *id.* § 1214(b) (providing victims with "access to all resources available under the law to enforce the restitution order"); Fla. Stat. Ann. § 775.089(10)(a) ("Any default in payment of restitution may be collected by any means authorized by law for enforcement of a judgment."); Haw. Rev. Stat. Ann. § 706-644(5) (providing that restitution "may be collected in the same manner as a judgment in a civil action"); N.Y. Crim. Proc. L. § 420.10(6)(a) (authorizing the collection of restitution via civil proceedings).

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<sup>504</sup> See, e.g., Ala. Code § 15-18-78(a) (“The victim on whose behalf restitution is ordered, the executor or administrator of the victim’s estate, or anyone else acting on behalf of the victim, shall be entitled to all the rights and remedies to which a plaintiff would be entitled in a civil action under the laws of this state as well as any other right or remedy pertaining to such restitution order as may be provided by law.”).

<sup>505</sup> See, e.g., Haw. Rev. Stat. Ann. § 706-644(5) (authorizing the victim to collect restitution “in the same manner as a judgment in a civil action”); N.Y. Crim. Proc. Law § 420.10(6)(a) (authorizing the victim or the victim’s estate to collect restitution “in the same manner as a civil action”).

<sup>506</sup> See, e.g., Haw. Rev. Stat. Ann. § 706-644(5) (authorizing the state to collect restitution “in the same manner as a judgment in a civil action”); N.Y. Crim. Proc. Law § 420.10(6)(b) (“The district attorney may, in his or her discretion, and must, upon order of the court, institute proceedings to collect such . . . restitution . . .”).

<sup>507</sup> See Vt. Stat. Ann. tit. 13 § 7043(j) (authorizing the Restitution Unit to initiate civil proceedings against a defendant for the purposes of restitution collection).

<sup>508</sup> See, e.g., 18 U.S.C. § 3613(c); Ariz. Rev. Stat. Ann. § 13-804(J); Cal. Penal Code § 1202.42(g); Fla. Stat. Ann. § 960.294; *id.* § 775.089(5); 730 Ill. Comp. Stat. Ann. 5/5-5-6(m); Ky. Rev. Stat. 532.164(1); Mich. Comp. Laws Ann. § 780.766(13); Vt. Stat. Ann. tit. 12, § 2901.

<sup>509</sup> A restitution lien may be automatically created in a victim’s favor to ensure that any money received from the defendant or money owed to the defendant by the state are applied to the defendant’s restitution obligation. See, e.g., Ariz. Rev. Stat. Ann. § 13-804(L). In some instances, a motion by the state, victim, or the court *sua sponte* is necessary to convert a restitution order into a lien. See, e.g., 18 U.S.C. § 3664(m)(1)(B); *id.* § 3613(c); Fla. Stat. Ann. § 960.929(2). In some jurisdictions, however, only a state attorney – and not the victim – may prepare and file lien documents for money to be restored to the victim. See, e.g., Cal. Penal Code § 1202.42(g) (authorizing the court to order that the state be given authority to use lien procedures when a defendant has failed to meet their restitution obligations); Ky. Rev. Stat. Ann. § 532.164(4) (“The attorney for the Commonwealth, and not the crime victim, shall prepare and file lien documents for moneys to be restored to the crime victim.”). Some jurisdictions authorize the operation of a restitution order as a lien only once a defendant has defaulted on their restitution obligations. See, e.g., Cal. Penal Code § 1202.42(g) (authorizing the use of liens and other encumbrances on a defendant’s real property to enforce restitution orders); Fla. Stat. Ann. § 775.089(5) (providing that the outstanding unpaid amount of an order of restitution becomes a lien on real estate, when properly recorded). The filing and recording fees that usually accompany liens may not apply in the restitution context. See, e.g., Ariz. Rev. Stat. Ann. § 13-806(A) (“The state or any person entitled to restitution pursuant to a court order may file in accordance with this section a restitution lien. A filing fee, recording fee or any other charge is not required for filing a restitution lien.”); Fla. Stat. Ann. § 960.294(3) (“No charge may be assessed for the recording of the civil restitution lien order.”). *But see*, e.g., Ky. Rev. Stat. Ann. § 532.164(5) (directing the state attorney to pay the county clerk a fee for filing a lien to collect money owed to the victim in restitution). Liens may expire after a certain period of time. See, e.g., Fla. Stat. Ann. § 960.294(4) (“A civil restitution lien order continues for a period of 20 years after the date of entry of the civil restitution lien.”).

<sup>510</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-812(B)(5); Ky. Rev. Stat. Ann. § 532.160(2)(e).

<sup>511</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-812(B)(4); Ky. Rev. Stat. Ann. § 532.160(2)(d).

<sup>512</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-812(B)(2)–(3); Ky. Rev. Stat. Ann. § 532.160(2)(b)–(c).

<sup>513</sup> Courts may order garnishment of the wages of non-confined offenders to secure payment of restitution. See, e.g., Ariz. Rev. Stat. Ann. § 13-812(B)(1); Cal. Penal Code § 1202.42(a)–(b); Fla. Stat. Ann. § 775.089(12); Ky. Rev. Stat. Ann. § 532.160(2)(a); Mont. Code Ann. § 46-18-244(6)(b); N.H. Rev. Stat. § 651:64(III). In limited instances, the court may order that a specific portion of a defendant’s income be applied to restitution. See, e.g., Cal. Penal Code § 1203.1g (providing that the court must order probationers to seek and maintain employment and apply a portion of earnings specified by the court to pay restitution for the medical and psychological treatment expenses of minor victims of sexual assault); *id.* § 1203.1j (providing that the court must order probationers to seek and maintain employment and apply a portion of earnings specified by the court to pay restitution for the medical and psychological treatment expenses of senior victims of assault, battery or assault with a deadly weapon).

<sup>514</sup> See, e.g., Cal. Penal Code § 1202.4(l); *id.* § 2085.6(b)–(c); 730 Ill. Comp. Stat. Ann. 5/5-5-6(n); Mich. Comp. Laws Ann. § 780.766(13); Mont. Code Ann. § 27-2-201(5); *id.* § 46-18-241(1); Vt. Stat. Ann. tit. 13, § 7043(p)(2); *People v. Bruun*, 27 N.E.3d 1046, 1047–49 (Ill. Ct. App. 2015) (rejecting defendant’s argument that a restitution order was no longer enforceable after the lapse of the five-year period over which defendant was to make monthly payments specified in the order and concluding that “even though the obligation to make installment payments expired, the trial court correctly ruled that the restitution order remained in effect”).

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<sup>515</sup> See, e.g., 18 U.S.C. § 3613(b) (providing that liability to pay federal restitution orders terminates “on the date that is the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person ordered to pay restitution”); Or. Rev. Stat. Ann. § 18.194(3) (“Judgment remedies for a judgment in a criminal action in a justice or municipal court that includes a money award for restitution expire 50 years after the entry of the judgment.”); see also N.Y. Civ. Prac. L. R. § 211(b) (stating that there is a twenty-year statute of limitations on money judgments).

<sup>516</sup> *State v. Brasher*, 170 N.E.3d 920, 922 (Ohio 2021) (finding that trial court lacked jurisdiction to impose restitution through a modification of defendant’s sentence when the modification was made after defendant was released from prison upon completion of their sentence).

<sup>517</sup> See, e.g., Ga. Code Ann. § 17-10-1(A)(i) (“Active probation supervision shall terminate in all cases no later than two years from the commencement of active probation supervision unless specially extended or reinstated by the sentencing court upon notice and hearing and for good cause shown; provided, however, that in those cases involving: . . . The collection of restitution, the period of active probation supervision shall remain in effect for so long as any such obligation is outstanding, or until termination of the sentence, whichever first occurs.”); Md. Crim. Ann., Crim. Proc. § 11-616(a)(2) (stating that “if probation or other supervision is terminated and restitution is still owed, [the Department of Parole and Probation] shall refer the overdue restitution account for collection to the Central Collection Unit”).

<sup>518</sup> See *United State v. Little*, No. 3:10-CR-00027-MOC, 2014 WL 1875000, at \*2 (W.D.N.C. May 9, 2014) (granting motion for early termination of supervision despite defendant’s outstanding restitution obligations, where, *inter alia*, “the government has at its disposal a number of tools to continue to collect restitution [such as collection through the Financial Litigation Unit, garnishment and IRS offset], while the probation is overwhelmed with defendants needing close supervision”).

<sup>519</sup> See, e.g., Cal. Penal Code § 1214(b) (recognizing that the government generally loses its authority to collect restitution once an offender is longer on probation, parole, postrelease community supervision, or mandatory supervision or after a term in custody); *Commonwealth v. Adams*, 566 S.W.3d 225, 233 (Ky. Ct. App. 2018) (finding that the court lacked jurisdiction to order defendant to pay restitution after his probationary period had already expired and observing that the Commonwealth failed to utilize any of its “many opportunities to seek an appropriate court order requiring [defendant] to pay restitution and maintaining him on probation until he completed his restitution,” such as filing “a timely petition for restitution,” requesting “at any time during [defendant’s] five year probation that the terms of his probation be altered to require him to pay restitution, with specific terms of to whom, how much, and in what amounts being specified”; and recognizing that “[i]f the Commonwealth had requested a proper order of restitution through any of these means, it could have also requested that [defendant’s] term of probation be extended for a sufficient length of time for him to pay this restitution, either as part of an original order imposing restitution or throughout a subsequent order”).

<sup>520</sup> See, e.g., Cal. Penal Code § 1214(b) (“Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation, parole, postrelease community supervision . . . , or mandatory supervision . . . or after a term in custody pursuant . . . is enforceable by the victim pursuant to this section. . . . A local collection program may continue to enforce victim restitution orders once a defendant is no longer on probation, postrelease community supervision, or mandatory supervision or after completion of a term in custody. . . .”); see Thompson County, New York, *Frequently Asked Questions About Restitution*, available at <http://tompkinscountyny.gov/probation/faqs-restitution#6> (“When a case is closed and the victim has not been satisfied, the name of the unsatisfied victim shall be placed in a pool of unsatisfied victims. Interest payments and restitution which cannot be disbursed to named victims shall be disbursed to this pool of victims. . . . So, if you are a victim and have not been fully reimbursed, and have been notified that we are closing our interest in a case, it is very important that you continue to keep your address up to date so that we are able to locate you when your name is reached.”).

<sup>521</sup> See, e.g., N.Y. Civ. Prac. L. R. § 211(b) (stating that there is a twenty-year statute of limitations on money judgments).

<sup>522</sup> See, e.g., Ala. Code § 15-18-72(c) (“The court shall cause all restitution payments to be transmitted in not less than 15 days of receipt of such payment.”); Ariz. Code of Jud. Admin. § 5-204(K)(2) (providing timelines pursuant to which the court clerk or other responsible entity must disburse restitution to victims, depending on the method of payment by the offender and the amount at stake); Cal. Penal Code § 1203.1(b) (“Any restitution payment received by a court or probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a court or probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date

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the payment is received, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the court or probation department total less than fifty dollars (\$50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.”); *id.* § 2085.5(n)(1) (providing that amounts transferred from the California Victim Compensation Board from imprisoned or paroled offenders “for payment of direct orders of restitution shall be paid within 60 days from the date the restitution revenues are received”).

<sup>523</sup> *See, e.g.*, Ariz. Const. art. II, § 2.1(A)(8) (affording victims the right “[t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury”); Or. Const. art. I, § 42(1)(d) (affording victims “[t]he right to receive prompt restitution from the convicted criminal who caused the victim’s loss or injury”); Ariz. Rev. Stat. Ann. § 13-804(E) (“The court shall make all reasonable efforts to ensure that all persons who are entitled to restitution pursuant to a court order promptly receive full restitution.”); S.C. Const. art. I, § 24(A)(9) (affording victims the right to “receive prompt and full restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury, including both adult and juvenile offenders”).

<sup>524</sup> *See, e.g.*, Cal. Penal Code § 2085.5(n)(2) (stating that, if a victim cannot be located for the purposes of disbursing collected restitution, the money “shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner”).

<sup>525</sup> *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-809(A); Cal. Const. art. I, § 28(b)(13)(C); Cal. Penal Code § 1203.1d(b); Haw. Rev. Stat. Ann. § 706-642(3); *id.* § 706-651; Fla. Stat. Ann. § 948.09(6); N.H. Rev. Stat. § 651:63(VI); Nev. Const. art. I, § 8A(1)(p); *see also* Mich. Comp. Laws Ann. § 775.22 (providing that when a person is subject to payment of restitution and any other payments in a criminal case – such as fines, costs and assessments – 50% of all money collected must be applied to restitution and the remainder to the other payment obligations); Mont. Code Ann. § 46-18-251(2) (same); Or. Rev. Stat. Ann. § 137.153 (same).

<sup>526</sup> *See, e.g.*, 18 U.S.C. § 2259A(d)(2) (stating that any money received from a defendant in a child abuse images case must first be used to pay a special assessment under 18 U.S.C. § 3013, then “[r]estitution to victims of any child pornography production or trafficking offense that the defendant committed,” and then other assessments, costs, penalties and fines); *id.* § 3612(c)(1) (providing that restitution received by the Attorney General from the defendant must be disbursed first to pay a penalty assessment under 18 U.S.C. § 3013, next to pay restitution to victims and then to pay other fines, penalties and costs); Ky. Rev. Stat. Ann. § 534.020(2)(c) (“Installment payments shall be applied first to court costs, then to restitution, then to fees, and then to fines.”); Ohio Rev. Code Ann. § 2949.111(B)(3) (requiring that court costs and state fines and costs are to be paid before restitution in misdemeanor cases); Mont. Code Ann. § 46-18-251(2) (providing that if a defendant is subject to a payment of restitution and any combination of fines, costs, charges or other payments, 50% of all money collected must be applied to the payment of restitution and the balance must be applied to other payments).

<sup>527</sup> *See, e.g.*, 18 U.S.C. § 3664(i); Ky. Rev. Stat. Ann. § 533.030(3); Mont. Code Ann. § 46-18-248; *id.* § 46-18-251(3).

<sup>528</sup> *See, e.g.*, Ariz. Code of Jud. Admin § 3-401(D); Mich. Comp. Laws Ann. § 780.766(8).

<sup>529</sup> *See, e.g.*, 18 U.S.C. § 3664(j)(1); Mont. Code Ann. § 46-18-248(1).

<sup>530</sup> *See, e.g.*, 18 U.S.C. § 3664(i); Or. Rev. Stat. Ann. § 137.153(3).

<sup>531</sup> *See* 18 U.S.C. § 3664(i) (“If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may provide for a different payment schedule for each victim based on the type and amount of each victim’s loss and accounting for the economic circumstances of each victim.”).

<sup>532</sup> *See, e.g.*, Ariz. Rev. Stat. Ann. § 12-287(B)(1), (C) (stating that the clerk of superior court may use victim location fund to “[l]ocate victims of crime whose restitution monies are being held by the clerk of the superior court” and that “[m]onies in the fund shall be used to supplement, not supplant, monies that would otherwise be allocated to the clerk for the purpose of locating victims of crime”); Cal. Gov’t Code § 50050 (stating that local victims’ services agencies may rely on certain fees to “offset the reasonable cost of locating and notifying the victim to whom restitution is owed” before utilizing such money themselves).

<sup>533</sup> *See, e.g.*, Ariz. Rev. Stat. Ann. § 12-286(E) (directing that twenty-five per cent of the interest earned on restitution monies are to be collected monthly and deposited into a victim location fund); Cal. Gov’t Code § 50050

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(stating that before a local victims' services agency may use restitution funds that have gone unclaimed for three years, the agency must attempt to notify the victim and may rely on restitution-related administrative fees "to offset the reasonable cost of locating and notifying the victim to whom restitution is owed").

<sup>534</sup> See, e.g., Fla. Stat. Ann. 945.31(3); S.C. Code Ann. § 17-22-710(B); see also Me. Rev. Stat. Ann., tit. 17-A § 2400(2) ("Restitution may be authorized for . . . [t]he county where the offense was prosecuted if the victim voluntarily refuses restitution or if the identity of the victim cannot be ascertained.").

<sup>535</sup> See, e.g., N.Y. Crim. Proc. Law § 420.10(7); Mont. Code Ann. § 46-18-250; Vt. Stat. Ann. tit. 13, § 5363.

<sup>536</sup> See, e.g., Ariz. Rev. Stat. Ann. § 22-116; Cal. Gov't Code § 50056; Cal. Gov't Code § 68084.1; Ga. Code Ann. § 17-14-18; Mich. Comp. Laws Ann. § 780.766(21); N.J. Stat. Ann. § 2C:46-4a(1)(a); Neb. Rev. Stat. Ann. § 29-2286; N.H. Rev. Stat. § 651:63(III); S.C. Code Ann. § 17-25-322(D).

<sup>537</sup> See, e.g., Cal. Penal Code § 2085.5(3); Ga. Code Ann. § 17-14-18; Mich. Comp. Laws Ann. § 780.766(21); Mont. Code Ann. § 46-18-250(1).

<sup>538</sup> See, e.g., Ga. Code Ann. § 17-14-18 (providing that if a victim cannot be located or refuses to claim restitution within two years after they could have claimed it, the restitution must be deposited into the Crime Victims Emergency Fund); Mich. Comp. Laws Ann. § 780.766(21) (providing that if a victim cannot be located or refuses to claim restitution within two years of when they should have, the restitution must be deposited into the crime victim's rights fund); N.J. Stat. Ann. § 2C:46:4a(1)(a) (providing that the Department of Corrections must maintain a restitution payment that it has collected for two years, during which time it must attempt to locate the victim, and that, if the victim is not located or does not come forward to claim restitution within this two-year period, the payment is transferred to the Victims of Crime Compensation Office Account).

<sup>539</sup> See, e.g., Ga. Code Ann. § 17-14-18 (providing a victim may claim reallocated restitution any time within five years of the date on which they should have claimed it by applying to the Georgia Crime Victims Compensation Board); Tex. Gov't Code Ann. § 508.322(e) ("If a victim who is entitled to restitution does not make a claim for payment before the fifth anniversary of the date the department receives the initial restitution payment or if, after the victim makes a claim for payment, the department is unable to locate the victim for a period of five years after the date the department last made a payment to the victim, any unclaimed restitution payments being held by the department for payment to the victim are presumed abandoned. The department shall report and deliver to the comptroller all unclaimed restitution payments presumed abandoned under this section in the manner provided by Chapter 77, Property Code.").

<sup>540</sup> See, e.g., Mich. Comp. Laws Ann. § 780.766(21) ("[A victim may claim reallocated restitution] any time by applying to the court that originally ordered and collected it.").

<sup>541</sup> See, e.g., Or. Rev. Stat. Ann. § 137.105 ("(1) The trial court retains authority during the pendency of an appeal to determine restitution and to enter a supplemental judgment specifying the amount and terms of restitution or an order denying restitution. (2) If the trial court enters a supplemental judgment or an order under subsection (1) of this section during the pendency of an appeal, the trial court administrator shall immediately provide a copy of the supplemental judgment or the order to the appellate court."); *United States v. Harrison*, 823 Fed. App'x. 430, 433 (7th Cir. 2020) (stating that, under federal case law, a defendant's notice of appeal regarding a conviction does not divest a district court of jurisdiction to award restitution); Alaska R. App. P. 204(5)(B) (providing that the pendency of an appeal does not divest the trial court of jurisdiction to consider issues related to restitution).

<sup>542</sup> See, e.g., *Jenkins v. State*, 954 So.2d 738, 738 (Fla. Ct. App. 2007) (stating that the filing of a notice of appeal divests a trial court of its jurisdiction to enter a restitution order).

<sup>543</sup> See, e.g., *United States v. Patel*, No. CRIM.A. 06-60006, 2009 WL 3232792, at \*2 (W.D. La. Sept. 30, 2009) (concluding that the district court lacked jurisdiction, while an appeal of a restitution order was pending, to grant the government's motion to amend the order based on the victims' not having timely received notice of the procedure for submitting loss affidavits because such an amendment "would change an existing restitution order's dollar amount to include additional payments to new victims and would be wholly unrelated to explanation or enforcement).

<sup>544</sup> See, e.g., *United States v. Vanhorn*, 296 F.3d 713, 720 (8th Cir. 2002) (finding that appeal did not divest the district court of jurisdiction to clarify a restitution order by setting a schedule for payments while defendant was incarcerated, as required by law).

<sup>545</sup> See, e.g., Fed. R. Crim. Proc. 38(e)(1) (providing that courts "may stay – on any terms considered appropriate – any sentence providing for restitution under 18 U.S.C. § 3556").

<sup>546</sup> See, e.g., Fed. R. Crim. Proc. 38(e)(2) (providing that "[t]he court may issue any order reasonably necessary to ensure compliance with a restitution order or a notice order after disposition of an appeal, including: (A) a

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restraining order; (B) an injunction; (C) an order requiring the defendant to deposit all or part of any monetary restitution into the district court's registry; or (D) an order requiring the defendant to post a bond").

<sup>547</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-804(D) (prohibiting the stay of restitution payments when a defendant files a notice of appeal, while allowing the court to hold the payments pending the outcome of the appeal); *State v. Bradley*, No. 2006-L-257, 2007 WL 4564874, at \*2 n.1 (Ohio Ct. App. Dec. 28, 2007) (noting that the court granted defendant's request to stay the execution of his sentence pending appeal, with the condition that he continue to comply with the terms of his community control sanctions, including the requirement that he make monthly restitution payments to the probation department); *State v. Freeman*, 831 P.2d 84, 84–85 (Or. Ct. App. 1992) (observing that defendant had no choice but to pay restitution as ordered because conditions of probation cannot be stayed pending appeal).

<sup>548</sup> Or. Unif. Trial Ct. R. 4.110 (authorizing a defendant's motion for reimbursement of restitution and setting forth related procedures).

<sup>549</sup> See, e.g., Ala. Code § 15-18-72(b) ("When the defendant is sentenced to the penitentiary by the court, and the court orders restitution, it shall be made a condition of his parole that restitution be made. When the parolee defaults in the payment thereof or any installment, the parole board on motion of the victim or the district attorney or the supervising parole officer, may require the defendant to show cause why his default should not be treated as a violation of a condition of parole, and the board may declare the parolee delinquent and after due process may revoke his parole."); Ariz. Rev. Stat. Ann. § 13-810 ("In addition to any other remedy provided by law, including a writ of execution or other civil enforcement, if a defendant who is ordered to pay restitution defaults in the payment of the restitution or of any installment as ordered, the court, on motion of the prosecuting attorney, on petition of any person entitled to restitution pursuant to a court order or on its own motion, shall require the defendant to show cause why the defendant's default should not be treated as contempt and may issue a summons or a warrant of arrest for the defendant's appearance."); Haw. Rev. Stat. Ann. § 70-644(1) (stating that, upon a default in a defendant's restitution obligations, "the court, upon the motion of the prosecuting attorney or upon its own motion, may require the defendant to show cause why the defendant's default should not be treated as contumacious and may issue a summons or a warrant of arrest for the defendant's appearance"); 730 Ill. Comp. Stat. Ann. 5/5-6-2(e-5) ("If payment of restitution as ordered has not been made, the victim shall file a petition notifying the sentencing court, any other person to whom restitution is owed, and the State's Attorney of the status of the ordered restitution payments unpaid at least 90 days before the probation or conditional discharge expiration date."); *id.* 5/5-6-3.1(c-5) ("If payment of restitution as ordered has not been made, the victim shall file a petition notifying the sentencing court, any other person to whom restitution is owed, and the State's Attorney of the status of the ordered restitution payments unpaid at least 90 days before the supervision expiration date. If payment as ordered has not been made, the court shall hold a review hearing prior to the expiration date, unless the hearing is voluntarily waived by the defendant with the knowledge that waiver may result in an extension of the supervision period or in a revocation of supervision. If the court does not extend supervision, it shall issue a judgment for the unpaid restitution and direct the clerk of the circuit court to file and enter the judgment in the judgment and lien docket, without fee, unless it finds that the victim has recovered a judgment against the defendant for the amount covered by the restitution order. If the court issues a judgment for the unpaid restitution, the court shall send to the defendant at his or her last known address written notification that a civil judgment has been issued for the unpaid restitution."); Mont. Code Ann. § 46-18-247(1) ("If an offender sentenced to make restitution is in default, the sentencing court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-18-203 requiring the offender to show cause why the offender should not be confined for failure to obey the sentence of the court."); Or. Rev. Stat. Ann. § 161.685(1) ("When a defendant who has been sentenced or ordered to pay a fine, or to make restitution, defaults on a payment or installment ordered by the court, the court on motion of the district attorney or upon its own motion may require the defendant to show cause why the default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for the appearance of the defendant."); S.C. Code Ann. § 17-25-323(B) ("When a defendant is placed on probation by the court or parole by the Board of Probation, Parole and Pardon Services, and ordered to make restitution, and the defendant is in default in the payment of them or any installment or any criminal fines, surcharges, assessments, costs, and fees ordered, the court, before the defendant completes his period of probation or parole, on motion of the victim or the victim's legal representative, the Attorney General, the solicitor, or a probation and parole agent, or upon its own motion, must hold a hearing to require the defendant to show cause why his default should not be treated as a civil judgment and a judgment lien attached.").

<sup>550</sup> See, e.g., Ariz. Code of Jud. Admin. § 6-103(E)(1)(B)(8)(g) (requiring probation officers to "[n]otify the court having jurisdiction upon finding that the probationer has become in arrears in an amount totaling two full court-

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ordered monthly payments of restitution” and providing that such “notification shall consist of a petition to modify, petition to revoke, or memorandum to the court outlining the reasons for the delinquencies and expected duration thereof”); Ariz. Rev. Stat. Ann. § 13-804(N) (“The adult probation department that is supervising a probationer shall notify the court having jurisdiction over the case when the probationer becomes in arrears in an amount that totals four full court-ordered monthly payments of victim restitution.”); Mich. Comp. Laws Ann. § 780.766(18) (“The probation officer assigned to the case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. If the restitution was ordered to be made within a specific period of time, the probation officer assigned to the case shall review the case at the end of the specific period of time to determine if the restitution has been paid in full. The final review shall be conducted not less than 60 days before the probationary period expires. If the probation officer determines at any review that restitution is not being paid as ordered, the probation officer shall file a written report of the violation with the court on a form prescribed by the state court administrative office or shall petition the court for a probation violation. The report or petition shall include a statement of the amount of the arrearage and any reasons for the arrearage known by the probation officer.”).

<sup>551</sup> See, e.g., Ky. Rev. Stat. Ann. § 439.563(3) (providing that when the Parole Board orders restitution, the Department of Probation and Parole must: “(a) [m]onitor and oversee the collection of the restitution; (b) [i]nstitute parole violation proceedings if the restitution is not being paid; (c) [i]nstitute sanctions against the defendant if restitution is not being paid and good cause is not shown for the nonpayment; [and] (d) [m]aintain parole supervision over the defendant until restitution has been paid in full”).

<sup>552</sup> See, e.g., Ky. Rev. Stat. Ann. § 533.030(3)(c) (“When a defendant fails to make restitution ordered to be paid through the circuit clerk or a court-authorized program run by the county attorney or the Commonwealth’s attorney, the circuit clerk or court-authorized program shall notify the court[.]”); Utah R. J. Admin. 6-303(2) (providing that when a defendant fails to pay court-ordered restitution, the Department of Corrections, which is responsible for restitution collection and distribution, must file a progress/violation report with the court).

<sup>553</sup> See, e.g., Mich. Comp. Laws Ann. § 780.766(18) (“If a petition or motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance.”).

<sup>554</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-804(N) (affording victims the right to notice when a “probationer becomes in arrears in an amount that totals four full court-ordered monthly payments of victim restitution” and detailing the contents of such notice); Mich. Comp. Laws Ann. § 780.766(18) (requiring that probation officers provide immediate notice to the prosecuting attorney when a probationer defaults on their restitution obligations); *id.* § 791.236(13) (requiring that probation officers provide immediate notice to the court, prosecuting attorney and victim when a parolee defaults on their restitution obligations).

<sup>555</sup> See, e.g., 18 U.S.C. § 3613A(a)(1); Ariz. Rev. Stat. Ann. § 13-810(F)(1) (stating that courts may modify the manner in which restitution is paid upon finding that a defendant’s default was not willful and that the defendant cannot pay despite good faith efforts to obtain the money to do so); Haw. Rev. Stat. § 706-644 (stating that where defendant’s default in restitution was not contumacious, the court may, *inter alia*, “make an order allowing defendant extra time for payment”); 730 Ill. Comp. Stat. Ann. 5/5-5-6(i) (stating that the court may extend the period of time within which defendant must make restitution, for up to two years, where the failure to make restitution payments was not willful); Or. Rev. Stat. Ann. § 161.685(5) (“If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or installments due on the payment, or revoking the fine or order of restitution in whole or in part.”); Vt. Stat. Ann. tit. 13, § 7043(m)(2)(A) (providing that the court may amend a restitution order’s payment schedule to ensure compliance with restitution order).

<sup>556</sup> See, e.g., 18 U.S.C. § 3613A(a)(1); Ariz. Code of Jud. Admin. § 5-204(L); Ariz. Rev. Stat. Ann. § 13-810(B) (“In addition to any other remedy provided by law, including a writ of execution or other civil enforcement, if a defendant who is ordered to pay restitution defaults in the payment of the restitution or of any installment as ordered, the court, on motion of the prosecuting attorney, on petition of any person entitled to restitution pursuant to a court order or on its own motion, shall require the defendant to show cause why the defendant’s default should not be treated as contempt and may issue a summons or a warrant of arrest for the defendant’s appearance.”); Ky. Rev. Stat. Ann. § 439.563(4) (“The [Parole] board, in addition to any other sanctions which may be imposed on the defendant, may ask a court to hold a defendant who is not paying restitution in the manner or amount prescribed in contempt of court.”); Ky. Rev. Stat. Ann. § 532.033(7) (“If the restitution is not being paid and no good reason exists therefor, [the court that issued the restitution order must] institute sanctions against the defendant[.]”); Ky. Rev. Stat. Ann. § 532.358 (providing that a sentencing court may use its contempt powers to enforce a restitution

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order); N.H. Rev. Stat. § 651:67(I) (“Any offender who is sentenced to make restitution under RSA 651:63, and who purposely violates the court’s order by either failing to make restitution or by defaulting in the payment or performance of the restitution authorized, may be prosecuted for contempt.”); Or. Rev. Stat. Ann. § 161.685(1)–(2) (stating that if the court finds a default in restitution obligations to constitute contempt, the court may impose sanctions).Vt. Stat. Ann. tit. 13, § 7043(m)(3) (providing that, if the court finds that an offender has the ability to pay restitution but refuses to do so, the offender may be subject to contempt proceedings).

<sup>557</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-810(E)(4) (stating that the court may order a defendant to perform community restitution, upon a finding that defendant willfully failed to pay restitution or that they intentionally refused to make a good effort to obtain the monies owed).

<sup>558</sup> See, e.g., Ariz. Code of Jud. Admin. § 6-103(E)(8)(h); 730 Ill. Comp. Stat. Ann. 5/5-6-2(e), (g); Or. Rev. Stat. Ann. § 144.085(4).

<sup>559</sup> See, e.g., 18 U.S.C. § 3612(g)–(h); 730 Ill. Comp. Stat. Ann. 5/5-9-3(e).

<sup>560</sup> See, e.g., 18 U.S.C. § 3614(b)–(c); Ariz. Rev. Stat. Ann. § 13-810(E)(1); Cal. Penal Code § 1203.2(a); Fla. Stat. Ann. § 948.06(5); Haw. Rev. Stat. Ann. § 706-644(1); Mich. Comp. Laws Ann. § 780.766(11); Mont. Code Ann. § 46-18-247(2); N.Y. Crim. Proc. Law § 420.10(3); N.H. R. Crim P. 29(e)(5); Or. Rev. Stat. Ann. § 161.685(4); see also *State v. Hamilton*, 511 S.E.2d 94, 97 (S.C. Ct. App. 1999) (“Only when there is a willful violation for failure to pay is the court justified in using imprisonment as a sanction to enforce collection of the fine or restitution.”).

<sup>561</sup> See, e.g., Ky. Rev. Stat. Ann. § 439.3105(3)(a) (“If supervised individual on administrative caseload supervision . . . [d]oes not fulfill his or her restitution . . . obligations . . . , he or she may be placed on a higher level of supervision at the discretion of the department [of probation and parole].”).

<sup>562</sup> See, e.g., Cal. Penal Code § 1202.42(g); 730 Ill. Comp. Stat. Ann. 5/5-6-2(e-5); *id.* 5/5-6-3.1(c-5); see also *supra* note 508.

<sup>563</sup> See, e.g., 18 U.S.C. § 3613A(a)(1).

<sup>564</sup> See, e.g., S.C. Code Ann. § 17-25-323(B).

<sup>565</sup> See, e.g., Or. Rev. Stat. Ann. § 161.685(7).

<sup>566</sup> See, e.g., 18 U.S.C. § 3613A(a)(1); *id.* § 3614(a).

<sup>567</sup> See, e.g., *id.* § 3613A(a)(1).

<sup>568</sup> See, e.g., *id.*; Ala. Code § 15-18-71; Ariz. Rev. Stat. Ann. § 13-804(E); *id.* § 13-810(E)(2); Fla. Stat. Ann. § 775.089(4); *id.* § 948.032; Mich. Comp. Laws Ann. § 780.766(11); Mich. Comp. Law Ann. § 791.240a(11); Mont. Code Ann. § 46-18-247(2); see also *People v. Moore*, 990 N.E.2d 1264, 1266–67 (Ill. App. Ct. 2013)

(observing, *inter alia*, that “upon the revocation of probation, a defendant is no longer subject to the original conditions of probation, including an order to pay restitution[.]” but that the court may resentence defendant to pay restitution upon revocation). Notably, in some jurisdictions parole can only be revoked for a parole violation based upon a finding that the defendant’s nonpayment was willful. See, e.g., Or. Rev. Stat. Ann. § 137.540(10) (“A court may not order revocation of probation as a result of the probationer’s failure to pay restitution unless the court determines from the totality of the circumstances that the purposes of the probation are not being served.”); Mont. Code Ann. § 46-23-1025(5) (stating that parole may not be revoked for failure to pay restitution if the parole hearing panel finds that the prisoner was unable to make the required restitution payments”).

<sup>569</sup> See, e.g., 18 U.S.C. § 3613A(a)(1); 730 Ill. Comp. Stat. Ann. 5/5-5-6(b); Or. Rev. Stat. Ann. § 137.540(2)(c).

<sup>570</sup> See, e.g., Vt. Stat. Ann. tit. 13, § 7043(m)(2)(D) (providing that the court may suspend recreational licenses owned by the offender to ensure compliance with restitution order).

<sup>571</sup> See, e.g., Cal. Penal Code § 1202.42(a) (authorizing income deduction orders to meet a defendant’s restitution obligations); Vt. Stat. Ann. tit. 13, § 7043(m)(2)(C) (providing that the court may order trustee process against an offender’s wages to ensure compliance with restitution order).

<sup>572</sup> See, e.g., 18 U.S.C. § 3613A(a)(1) (“Upon a finding that the defendant is in default on a payment of . . . restitution, the court may, pursuant to section 3565 . . . take any other action necessary to obtain compliance with the order of . . . restitution.”); Ariz. Rev. Stat. Ann. § 13-810(E)(2) (stating that, if a defendant’s failure to pay restitution is not willful “and that the defendant cannot pay despite sufficient good faith efforts to obtain the monies, the court may take any lawful action including: . . . [e]nter any reasonable order that would assure compliance with the order to pay”); Mich. Comp. Laws Ann. § 780.766(18) (“If a motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance.”); Vt. Stat. Ann. tit. 13, § 7043(m)(2) (“If the court determines the offender has failed to comply with the restitution order, the court may take any action the court deems necessary to ensure the offender will make the required restitution payment,



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including: [non-exclusive list of actions related to enforcement].”); *see also* Or. Rev. Stat. Ann. § 161.685(5) (“If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or installments due on the payment, or revoking the fine or order of restitution in whole or in part.”).

<sup>573</sup> *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-804(N) (authorizing the adult probation department to recommend that no further action is warranted when defendant fails to meet their restitution obligations).

<sup>574</sup> *See, e.g., id.* § 13-810(D) (describing a hearing on an order to show cause as to why a defendant’s default on their restitution obligations should not be treated as contempt of court); 730 Ill. Comp. Stat. Ann. 5/5-6-2(e-5) (“If [restitution] payment as ordered has not been made, the court shall hold a review hearing prior to the expiration date, unless the hearing is voluntarily waived by the defendant with the knowledge that waiver may result in an extension of the probation or conditional discharge period or in a revocation of probation or conditional discharge. If the court does not extend probation or conditional discharge, it shall issue a judgment for the unpaid restitution and direct the clerk of the circuit court to file and enter the judgment in the judgment and lien docket, without fee, unless it finds that the victim has recovered a judgment against the defendant for the amount covered by the restitution order. If the court issues a judgment for the unpaid restitution, the court shall send to the defendant at his or her last known address written notification that a civil judgment has been issued for the unpaid restitution.”); *id.* 5/5-6-3.1(c-5) (“If payment of restitution as ordered has not been made, the victim shall file a petition notifying the sentencing court, any other person to whom restitution is owed, and the State’s Attorney of the status of the ordered restitution payments unpaid at least 90 days before the supervision expiration date. If payment as ordered has not been made, the court shall hold a review hearing prior to the expiration date, unless the hearing is voluntarily waived by the defendant with the knowledge that waiver may result in an extension of the supervision period or in a revocation of supervision. If the court does not extend supervision, it shall issue a judgment for the unpaid restitution and direct the clerk of the circuit court to file and enter the judgment in the judgment and lien docket, without fee, unless it finds that the victim has recovered a judgment against the defendant for the amount covered by the restitution order. If the court issues a judgment for the unpaid restitution, the court shall send to the defendant at his or her last known address written notification that a civil judgment has been issued for the unpaid restitution.”); Ky. Rev. Stat. Ann. § 532.033(6) (“If restitution is not being paid as ordered, [the court that issued the restitution order must] hold a hearing to determine why restitution is not being paid.”); Mont. Code Ann. § 46-18-247(1) (“If an offender sentenced to make restitution is in default, the sentencing court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-18-203 requiring the offender to show cause why the offender should not be confined for failure to obey the sentence of the court. The court may order the offender to appear at a time, date, and place for a hearing or, if the offender fails to appear as ordered, issue a warrant for the offender’s arrest.”).

<sup>575</sup> *See, e.g.*, Cal. Penal Code § 1202.42(b), (g), (j) (providing defendants with the ability to show “good cause” as to why they failed to meet their restitution obligations and defining “good cause” to mean “[t]hat there has been a substantial change in the defendant’s economic circumstances, such as involuntary unemployment, involuntary cost-of-living increases, or costs incurred as the result of medical circumstances or a natural disaster,” “[t]hat the defendant reasonably believes there has been an administrative error with regard to his or her obligation for payment” and “[a]ny other similar and justifiable reasons”); Haw. Rev. Stat. Ann. § 706-644(1) (providing defendants with an opportunity to show “good cause” for a default in restitution obligations).

<sup>576</sup> *See, e.g.*, 18 U.S.C. § 3613A(a)(2) (listing factors courts must consider when determining the consequences of nonpayment of restitution); Ariz. Rev. Stat. Ann. § 13-810(D) (listing factors courts may take into account when determining the consequence of nonpayment of restitution); Fla. Stat. Ann. § 948.032 (listing courts’ considerations when determining whether to revoke a defendant’s probation for failure to pay restitution); Mich. Comp. Laws Ann. § 780.766(11) (listing factors the court must take into account when determining whether to revoke probation or parole or impose imprisonment for failure to comply with restitution).

<sup>577</sup> *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-907(A) (“On final discharge, any person who has not previously been convicted of a felony offense shall automatically be restored any civil rights that were lost or suspended as a result of the conviction if the person pays any victim restitution imposed.”); Ky. Rev. Stat. Ann. § 196.045(3)(c) (providing that one condition for the full restoration of a felony offender’s civil rights is the payment of full restitution, as ordered by a court or parole board).

<sup>578</sup> *See, e.g.*, Utah Code Ann. § 77-40-105(4)(b); Vt. Stat. Ann. tit. 3, § 164(g)(1)(D); Vt. Stat. Ann. tit. 13, § 7041(e)–(f); Vt. Stat. Ann. tit. 13, § 602(b)(1)(C), (c)(1)(D), (d)(2), (g)(3), (h)(3); Vt. Stat. Ann. tit. 13, § 7609(a); *see also* Utah Code Ann. § (4)(c)(ii), (d) (providing that if, within 35 days of receiving notice that a case is eligible

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for automatic expungement, the prosecuting agency objects to such expungement on the ground that there are outstanding restitution obligations, the may not proceed with the expungement).

<sup>579</sup> See, e.g., Cal. Penal Code § 11177.2(a); 730 Ill. Comp. Stat. Ann. 5/5-9-1.13.

<sup>580</sup> See, e.g., Fla. Stat. Ann. § 11.0451 (requiring payment of court-ordered restitution after a felony conviction before a person can register to be a lobbyist appearing before the legislative branch); *id.* § 112.32151 (requiring payment of court-ordered restitution after a felony conviction before a person can register to be a lobbyist appearing before the executive branch or constitution revision commission); Mont. Code Ann. § 87-6-922(2) (providing that if a license to hunt, trap, fish or use state lands is forfeited due to violations related to such licenses, the license may only be restored if the offender, *inter alia*, pays any outstanding restitution or is in compliance with installment payments specified by the court); Vt. Stat. Ann. tit. 13, § 7043a (providing that a certain state-issued professional and recreational licenses may not be issued to anyone who is not in good standing with respect to a restitution order).

<sup>581</sup> See, e.g., Haw. Rev. Stat. Ann. § 291E-61.6(b)(1); Ky. Rev. Stat. Ann. § 532.356(3); N.H. Rev. Stat. § 265-A:22; see also Utah Code Ann. § 41-6a-521.1(6) (providing that a person’s driving privilege may be suspended for failure to pay, *inter alia*, restitution). *But cf.* Mont. Code Ann. § 46-18-201(6)(n) (“A person’s license or driving privilege may not be suspended due to nonpayment of . . . restitution.”).

<sup>582</sup> See, e.g., S.C. Code Ann. § 17-25-322(E) (“An offender may not be granted a pardon until the restitution and collection fees required by the restitution order have been paid in full.”).

<sup>583</sup> See, e.g., Utah Code Ann. § 77-41-112(1)(a)(vi), (b)(v) (providing that an offender who is required to register with the Utah Sex and Kidnap Offender Registry may petition the court for an order removing the offender from the registry if, *inter alia*, the offender has paid all restitution); Utah Code Ann. § 77-42-108(1)(d) (providing that an offender who is required to register with the Utah White Collar Crime Offender Registry may petition the court for an order removing the offender from the registry if, *inter alia*, the offender has paid all restitution).

<sup>584</sup> See, e.g., Fla. Stat. Ann. § 98.0751(2)(a)5; Tenn. Code Ann. § 40-29-202(b)(2).

<sup>585</sup> See, e.g., 18 U.S.C. § 3572(f) (“If a sentence includes a fine, special assessment, restitution or other monetary obligation (including interest) with respect to an organization, each individual authorized to make disbursements for the organization has a duty to pay the obligation from assets of the organization.”); Ala. Code § 15-18-73 (“When an order of restitution is imposed upon a defendant which is a corporation, unincorporated association, partnership or other business entity, it shall be the duty of the person or persons authorized to make disbursements from the assets of such defendant to make restitution from those assets and a failure to do so by such person or persons may be held to be in contempt of court unless a showing be made to the contrary as pursuant to the provisions of Section 15-18-72.”).

<sup>586</sup> See, e.g., 18 U.S.C. § 3572(f) (“If [restitution] is imposed on a director, officer, shareholder, employee, or agent of an organization, payments may not be made, directly or indirectly, from assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.”).

<sup>587</sup> See, e.g., Ala. Code § 15-18-73 (“Any corporation, unincorporated association, or other business entity which fails to make restitution as ordered by the court or forfeit its rights to do business within the State of Alabama and its charter or other legal grant of the right to do such business may be dissolved by the court.”).

<sup>588</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-810(G); Ala. Code § 15-18-73; Fla. Stat. Ann. § 775.089(9); Haw. Rev. Stat. Ann. § 706-644(2); Or. Rev. Stat. Ann. § 161.685(3).

<sup>589</sup> See, e.g., Ky. Rev. Stat. Ann. § 439.552(1)(a)(4) (providing that early termination of probation is only available when an offender has fulfilled all of their restitution obligations); *id.* § 439.563(5) (“Any statute relating to the length of parole supervision notwithstanding, the parole for a person owing restitution shall be until the restitution is paid in full, even if this would lengthen the period of supervision beyond the statutory limit of parole supervision or the statutory limit for serving out the sentence imposed.”); *id.* § 532.033(8) (barring the court that issues a restitution order from “releas[ing] the defendant from probation supervision until restitution has been paid in full and all other aspects of the probation order have been successfully completed); S.C. Code Ann. § 24-21-550 (“A probation term ordered to end upon the payment of fines, court costs, assessments, and restitution must continue until the clerk of court certifies in writing that all monies have been paid, or the probation term has expired, or the expiration of probation has been changed by a subsequent order.”).

<sup>590</sup> See, e.g., Ariz. Rev. Stat. Ann. § 13-805(E) (“A criminal restitution order does not expire until paid in full.”); Cal. Penal Code § 1202.4(m) (“Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.”); *id.* § 2085.6(b)–(c) (providing that offenders subject to postrelease community supervision or mandatory

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supervision have a continuing obligation to pay restitution in full and that victims retain the right to enforce any outstanding restitution obligations after offenders are released from postrelease community supervision or mandatory supervision); Haw. Rev. Stat. § 706-630 (“Upon the termination of the period of the probation or the earlier discharge of the defendant, the defendant shall be relieved of any obligations imposed by the order of the court and shall have satisfied the disposition of the court, except as to any action under this chapter to collect unpaid . . . restitution[.]”); Ohio Rev. Code Ann. § 2929.25(E) (providing that fulfilling the conditions of misdemeanor community control sanctions do not relieve an offender of their duty to pay court-ordered restitution).

<sup>591</sup> See, e.g., *Commonwealth v. Adams*, 566 S.W.3d 225, 233 (Ky. Ct. App. 2018) (finding that the court lacked jurisdiction to order defendant to pay restitution after his probationary period had already expired and observing that the Commonwealth failed to utilize any of its “many opportunities to seek an appropriate court order requiring [defendant] to pay restitution and maintaining him on probation until he completed his restitution,” such as filing “a timely petition for restitution,” requesting “at any time during [defendant’s] five year probation that the terms of his probation be altered to require him to pay restitution, with specific terms of to whom, how much, and in what amounts being specified”; and recognizing that “[i]f the Commonwealth had requested a proper order of restitution through any of these means, it could have also requested that [defendant’s] term of probation be extended for a sufficient length of time for him to pay this restitution, either as part of an original order imposing restitution or throughout a subsequent order”).

<sup>592</sup> See *supra* note 41.

<sup>593</sup> See *supra* note 49.

<sup>594</sup> See *supra* note 55.

<sup>595</sup> See *supra* note 59.

<sup>596</sup> See *supra* note 39.

<sup>597</sup> See *supra* note 56.

<sup>598</sup> See *supra* note 57.

<sup>599</sup> See *supra* note 66.

<sup>600</sup> For information regarding victims’ restitution-related privacy and confidentiality rights and protections, see *supra* Part II.B.

<sup>601</sup> See *supra* note 70.

<sup>602</sup> See *supra* note 9.

<sup>603</sup> See, e.g., Ala. Code § 15-18-75 (“Nothing in this article limits or impairs the right of a person injured by a defendant’s criminal activities to sue or recover damages from the defendant in a civil action.”); Ariz. Rev. Stat. Ann. § 13-807 (“An order of restitution in favor of a person does not preclude that person from bringing a separate civil action and proving in that action damages in excess of the amount of the restitution order that is actually paid.”); Fla. Stat. Ann. § 775.089(8) (“An order of restitution hereunder will not bar any subsequent civil remedy or recovery, but the amount of such restitution shall be set off against any subsequent independent civil recovery.”); Idaho Code Ann. § 19-5304(11) (“An order of restitution shall not preclude the victim from seeking any other legal remedy.”); 730 Ill. Comp. Stat. Ann. 5/5-5-6(n) (“An order of restitution under this Section does not bar a civil action for: (1) Damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damages that is the basis of restitution ordered by the court; and (2) Other damages suffered by the victim.”); Iowa Code Ann. § 915.100(2)(i) (“The right to victim restitution for the pecuniary damages incurred by a victim as the result of a crime does not limit or impair the right of the victim to sue and recover damages from the offender in a civil action.”); Ky. Rev. Stat. Ann. § 533.030(3)(d) (“An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant.”); N.H. Rev. Stat. § 651:65 (stating that restitution provisions do not “bar, suspend, or otherwise affect any right or liability for damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in such civil action constitutes an economic loss”); N.Y. Penal Code § 60.27(6) (“Any payment made as restitution or reparation pursuant to this section shall not limit, preclude or impair any liability for damages in any civil action or proceeding for an amount in excess of such payment.”); Ohio Rev. Code Ann. § 2929.18(H) (“No financial sanction imposed [in a criminal case] shall preclude a victim from bringing a civil action against the offender.”); Wis. Stat. Ann. § 973.20(8) (“Restitution ordered under this section does not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action.”); *United States v. Karam*, 201 F.3d 320, 328 (4th Cir. 2000) (“A civil settlement does not preclude an award of restitution under the VWPA because restitution under the VWPA is primarily penal in nature.”); *Teggatz v.*

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*Ringleb*, 610 N.W.2d 527, 532 (Iowa 2000) (concluding “that the amount of restitution ordered by the district court in the criminal case does not preclude [the victim] from relitigating, in [a] later civil suit, the amount of damages he sustained as a result of [defendant’s] criminal conduct”); *State v. Applegate*, 976 P.2d 936, 941 (Kan. 1999) (“The judge’s order of restitution in a criminal action does not bar a victim from seeking damages in a separate civil action.”).

<sup>604</sup> See, e.g., *Vereen v. State*, 703 So. 2d 1193, 1194 (Fla. Dist. Ct. App. 1997) (finding that “the fact that a victim has an enforceable civil obligation covering a loss does not divest the court of the power to order restitution” because “[o]ne purpose of the statute is to provide the victim full compensation,” “[r]estitution as a condition of probation contains coercive elements not available in civil court,” the state’s restitution law provides that an restitution paid “shall be set off against any subsequent independent civil recovery”); *State v. Applegate*, 976 P.2d 936, 941 (Kan. 1999) (“[T]he judge, when sentencing a defendant in a criminal action, is not foreclosed from ordering restitution just because the victim has received compensation in a civil action.”).

<sup>605</sup> See, e.g., Ala. Code § 15-18-75 (“[T]he court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in [a] civil action.”); Cal. Civ. Proc. Code § 340.3(e) (“Any restitution paid by the defendant to the victim shall be credited against any judgment, award, or settlement obtained pursuant to this section.”); Fla. Stat. Ann. § 775.089(8) (“An order of restitution hereunder will not bar any subsequent civil remedy or recovery, but the amount of such restitution shall be set off against any subsequent independent civil recovery.”); Ky. Rev. Stat. Ann. § 533.030(3)(d) (“A civil verdict shall be reduced by the amount paid under the criminal restitution order.”); N.H. Rev. Stat. § 652:65 (“Any restitution ordered and paid shall be deducted from the amount of any judgment awarded in a civil action brought by the victim or other authorized claimant against the offender based on the same facts.”); Ohio Rev. Code Ann. § 2929.18(A)(1) (“All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.”); see *Coble v. Shepherd*, 190 P.3d 1202, 1203–04 (Okla. Ct. Civ. App. 2008) (internal footnotes omitted) (noting that “a number of states have enacted legislation to require a credit for criminal restitution paid against an award of damages arising from the same event” and that “[e]ven absent statutory authority, at least one state recognizes the trial court’s authority to grant or deny a credit for criminal restitution previous paid”); see also *Teggatz v. Ringleb*, 610 N.W.2d 527, 532 (Iowa 2000) (noting that once criminal restitution has been awarded to a victim, damages in a subsequent civil action may be denied as double recovery).

<sup>606</sup> See, e.g., *People v. Gregory*, 469 P.3d 507, 512 (Colo. Ct. App. 2019) (“[A] defendant is entitled to a setoff against the restitution order for any money actually paid to the victim for the same damages covered by the order.”); see *United States v. Bryant*, 655 F.3d 232, 254 (3rd Cir. 2011) (holding that defendant has burden of establishing offsets to restitution and that, without sufficient proof on the record, the court will not make the offset); *Kelley v. State*, 11 N.E.3d 973, 979 (Ind. Ct. App. 2014) (stating that, after defendant and the victim reached a civil settlement, the court had discretion to grant defendant a credit toward a restitution order that was entered prior to the civil settlement).

<sup>607</sup> See *supra* note 371.

<sup>608</sup> See *supra* note 372.

<sup>609</sup> See *supra* note 373.

<sup>610</sup> See *supra* note 374.

<sup>611</sup> See, e.g., *State v. Morgan*, 790 S.E.2d 27, 30–31 (S.C. Ct. App. 2016) (holding that the execution of a civil settlement and covenant not to execute between the victim and defendant prior to sentencing does not preclude a sentencing court from ordering restitution because, *inter alia*, the constructs of restitution and civil damages are separate and distinct); *State v. Blake*, 174 A.3d 126, 133–36 (Vt. 2017) (finding that a civil release from liability has no bearing on the criminal court’s statutory duty and authority regarding restitution and that although a crime victim may seek a separate remedy in an action for civil damages, they have no standing and are not a party in a restitution proceeding).

<sup>612</sup> See, e.g., *State v. Kirby*, 818 So. 2d 689, 691 (Fla. Dist. Ct. App. 2002), *approved*, 863 So. 2d 238 (Fla. 2003) (“The settlement between the victim and the defendant in a civil proceeding did not bar the state from seeking restitution, as it was not a party to the settlement and its interests go beyond the interests at stake in the civil settlement.”); *State v. Applegate*, 976 P.2d 936, 938 (Kan. 1999) (“The State was not a party to the agreement. A civil release of claims does not and cannot specifically preclude court-ordered restitution in a criminal case”).

