

ADULT RESTITUTION FINES GUIDE



RESTITUTION FINES

Restitution fines are a major source of funding for the State's Restitution Fund and the California Victim Compensation Board (CalVCB). CalVCB uses the State's Restitution Fund to assist victims and their families with economic losses suffered as a direct result of a qualifying crime.

MINIMUM AND MAXIMUM FINES BY YEAR*	YEAR	2011 OR PRIOR	2012	2013	2014 AND ON
Minimum fines are determined by the date of the crime.	MISDEMEANOR	\$100 - \$1,000	\$120 - \$1,000	\$140 - \$1,000	\$150 - \$1,000
*AB 898 – Increased the minimum restitution fine amount for adult misdemeanor and felony offenses over a three year period (2012-2014).	FELONY	\$200 - \$10,000	\$240 - \$10,000	\$280 - \$10,000	\$300 - \$10,000

(Penal Code, § 1202.4(b)(1))

- The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. (Penal Code, § 1202.4(c))
- Inability to pay is not a compelling and extraordinary reason for waiving the fine. (Penal Code, § 1202.4(c))
- A separate hearing for the fine is not required. (Penal Code, § 1202.4(d))

DETERMINING A FINE ABOVE THE MINIMUM

To set a misdemeanor or felony fine above the minimum, the court shall consider any relevant factors including, but not limited to (Penal Code, § 1202.4(d)):

- Number of victims
- Seriousness and gravity of the offense
- Circumstances of its commission
- Economic gain derived by the defendant as a result of the crime
- Extent to which any other person suffered losses
- Pecuniary losses to the victim or their dependents
- Psychological harm to the victim or their dependents
- Defendant's inability to pay
- Defendant's future earning capacity

Defendant is presumed to be able to pay above the minimum restitution fine and the statute expressly places the burden on a defendant to prove lack of ability. (People v. Romero (1996) 43 Cal. App.4th 440, 449)

A felony fine above the minimum MAY be determined by using the following formula: minimum fine x years sentenced x felony counts (of which the defendant is convicted, \$10,000 maximum). (Penal Code, § 1202.4(b)(2))

CIVIL JUDGMENT

Restitution fines and orders are enforceable as if they were civil judgments. (Penal Code, § 1214(a) & (b))

DEFENDANT'S STATEMENT OF ASSETS

The defendant must file a statement of assets (Form CR 115) with the clerk no later than the defendant's sentencing date, unless otherwise directed by the court. (Penal Code, § 1202.4(f)(5)-(10))

The defendant must file an updated financial statement with the clerk if there is an unpaid balance on a restitution order or fine 120 days prior to release from probation. (Penal Code, § 1202.4(f)(11))

PROBATION REVOCATION FINE

A trial court shall impose a probation revocation restitution fine, equal to the restitution fine, whenever a sentence includes a period of probation. The probation revocation restitution fine shall be suspended unless probation is revoked. (Penal Code, § 1202.44)

PAROLE, POST-RELEASE COMMUNITY SUPERVISION AND MANDATORY SUPERVISION REVOCATION FINES

In every case where the sentence includes a period of parole, post-release community supervision or mandatory supervision, a trial court shall impose a fine equal to the restitution fine. The parole revocation, post-release community supervision revocation or mandatory supervision revocation fine shall be suspended unless revocation occurs. (Penal Code, § 1202.45)

MANDATORY DIVERSION FEE/DEFERRED ENTRY OF JUDGMENT

\$100 - \$1,000 (Penal Code, § 1001.90(b) and (i))
 Diversion also means deferred entry of judgment pursuant to Chapter 2.5 (commencing with section 1000) of the Penal Code. Exception: Persons whose cases are diverted pursuant to Chapter 2.8 (commencing with section 1001.20) of the Penal Code.

CHILD ABUSE/MOLEST FINE

Additional restitution fines may be imposed for child abuse/molestation crimes. Fines not to exceed \$5,000 for misdemeanor conviction and \$5,000 for felony conviction. The court must consider the defendant's ability to pay. The funds from this fine are deposited in the State's Restitution Fund and transferred to the county children's trust fund for the purposes of child abuse prevention. (Penal Code, § 294)

ADULT RESTITUTION ORDER GUIDE

RESTITUTION ORDERS

The court must order full restitution. A defendant's inability to pay shall not be considered by the court. (Penal Code, § 1202.4(f) and (g)) Victim restitution is mandated by both the California Constitution and Penal Code, section 1202.4. A sentence is invalid if the court fails to address restitution. (People v. Rowland (1997) 51 Cal.App.4th 1754, 1751)

WHO CAN RECEIVE RESTITUTION?

- The victim (People v. Birkett (1999) 21 Cal.4th 226, 232)
- The victim's family, derivative victim, business entities and government (Penal Code, § 1202.4(k))
- Restitution Fund / CalVCB (Penal Code, § 1202.4(f)(4)(A))
- Insurance companies – as direct victims only (People v. Birkett, supra)

RESTITUTION INCLUDES, BUT IS NOT LIMITED TO:

Value of stolen or damaged property, medical expenses, mental health expenses, lost wages or profits interest, relocation expenses, security expenses, non-economic losses for felony violations of Penal Code, § 288, retrofit expenses for a residence or vehicle, reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim, funeral and burial expenses, dental expenses, rehabilitation expenses and support loss. (Penal Code, § 1202.4(f))

The court has broad discretion to order restitution as a condition of probation consistent with the ends of fostering rehabilitation and protecting public safety. (Penal Code, § 1203.1 (j))

BURDEN OF PROOF

The defendant has the burden of proof to show that the restitution recommendations in the probation report or the victim's estimates are inaccurate. The standard of proof for determining the amount of restitution is "preponderance of the evidence." (People v. Gemelli (2008) 161 Cal.App.4th 1539, 1542-1543)

JOINT AND SEVERAL LIABILITY

The court has the authority to order direct victim restitution paid by all defendants jointly and severally. (People v. Blackburn (1999) 72 Cal.App.4th 1520, 1535)

TO BE DETERMINED

If the amount of losses is unknown at the time of sentencing, the amount shall be determined at the direction of the court. (Penal Code, § 1202.4(f))

DUE PROCESS RIGHTS AND CONFRONTATION RIGHTS

A defendant's due process rights at a restitution hearing are very limited. Due process rights are satisfied when the defendant receives notice of the amount of restitution claimed and the defendant has an opportunity to challenge the amount. A defendant does not have the right at a restitution hearing to cross-examine witnesses. (People v. Cain (2000) 82 Cal.App. 4th 81)

PAYMENT BY INSURANCE COMPANIES AND THIRD PARTIES

A victim is entitled to receive restitution regardless of whether the victim has been reimbursed in part or in full by insurance. (People v. Birkett (1999) 21 Cal.4th 226)

The only time a defendant is entitled to an offset is when the defendant's insurance company has made a payment to the victim. (People v. Bernal (2002) 101 Cal.App.4th 155)

Third-party indemnification or subrogation rights do not affect the amount of restitution that is to be ordered. (Penal Code, § 1202.4(f)(2))

CHECKLIST

- Defendant has filed a statement of assets (Judicial Council Form CR-115) (Penal Code, § 1202.4(f)(5)-(11))

RESTITUTION FINES

- Misdemeanor or felony restitution fine (Penal Code, § 1202.4(b)(1)) (Alternate fine formula: minimum fine x years sentenced x felony counts)
- Probation revocation restitution fine (same amount as restitution fine) (Penal Code § 1202.44)
- Parole, post-release community supervision and mandatory supervision revocation restitution fines (same amount as restitution fine) (PC § 1202.45)
- Diversion fee \$100-\$1,000

RESTITUTION ORDERS

- Amount ordered to victim(s)
- Identify each victim and restitution amount
- Amount ordered to CalVCB
- Amount "To Be Determined" (If amount cannot be determined, set review date)
- Income deduction (Ability to Pay) (Penal Code, § 1202.42)
- Notify victim to file a CDCR Form 1707, if the defendant is sentenced to prison
- Prepare a CR-110 form for each victim and CalVCB
- Send a copy of the completed CR-110 form or Minute Order to CalVCB, if the restitution is in favor of CalVCB