



Adult Restitution Fines – Quick Reference Sheet

RESTITUTION FINES

Restitution fines are a major source of funding for the Victim Compensation and Government Claims Board (Board) and the state Restitution Fund (Fund). The Board uses the Fund to assist victims and their families with economic losses suffered as a direct result of a qualifying crime.

Misdemeanor Conviction

\$100 - \$1,000
(Pen. 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. (Pen. Code §1202.4(c))
- A separate hearing for the fine is NOT required. (Pen. Code §1202.4(d))

Felony Conviction

\$200 - \$10,000
(Pen. Code §1202.4(b)(1))

- Inability to pay is NOT a compelling and extraordinary reason for waiving the fine. (Pen. Code §1202.4(c))
- The fine CANNOT be stayed

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**:

- 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 his/her dependents
- Psychological harm to the victim or his/her 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:
\$200 x years sentenced x felony counts (of which the defendant is convicted, \$10,000 maximum). (Pen. Code §1202.4(b)(2))

CIVIL JUDGMENT

Restitution fines and orders are enforceable as if they were civil judgments. (Pen. 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. (Pen. Code §1202.4(f)(5)-(10)) California Judges Benchguide 2005, §§83.68, 83.85

The defendant must file an updated financial statement with the clerk 90 days prior to release from probation if there is an unpaid balance on a restitution order or fine 120 days prior to release from probation. (Pen. Code §1202.4(f)(11))

PROBATION REVOCATION RESTITUTION 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 permanently revoked. (Pen. Code §1202.44)

PAROLE REVOCATION RESTITUTION FINE

A trial court shall impose a parole revocation restitution fine equal to the restitution fine whenever a sentence includes a period of parole. The parole revocation restitution fine shall be suspended unless parole is revoked. (Pen. Code §1202.45)

INCOME DEDUCTION ORDER

Restitution orders to victims require an order (Form CR-119) for income deduction on determination of defendant's ability to pay. The defendant bears the burden to show inability to pay. (Pen. Code §1202.42) California Judges Benchguide 2005, §§83.64, 83.87

MANDATORY DIVERSION FEE/DEFERRED ENTRY OF JUDGMENT

\$100 - \$1,000
(Pen. 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

Restitution fine specifically for child abuse/molest crimes. Fine not to exceed \$1,000 for misdemeanor conviction and \$5,000 for felony conviction. Court must consider the defendant's ability to pay. The funds from this fine are deposited in the Restitution Fund and transferred to the county children's trust fund for the purposes of child abuse prevention. (Pen. Code §294) California Judges Benchguide 2005, §83.8