

# Adult Restitution Orders – Quick Reference Sheet

## RESTITUTION ORDERS

The court SHALL order full restitution unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. A defendant's inability to pay shall not be a compelling and extraordinary reason. (Pen. Code §1202.4(f) and (g))

Victim restitution is mandated by both the Constitution and Penal Code section 1202.4. The trial court retains discretion in fixing the amount of the award. A sentence is invalid if the court fails to address restitution. *People v. Rowland* (1997) 51 Cal.App.4th 1745, 1751

## WHO CAN RECEIVE RESTITUTION

- The victim - *People v. Birkett* (1999) 21 Cal.4th 226, 232
- Victim's family, derivative victim, business entities, and government (Pen. Code §1202.4(k))
- Restitution Fund/Victim Compensation and Government Claims Board (Pen. 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 (Pen. 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/burial expenses, dental expenses, rehabilitation expenses, and support loss. (Pen. 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. (Pen. 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 to be ordered is "preponderance of the evidence." *People v. Baumann* (1985) 176 Cal.App.3d 67, 80

## 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

## DUE PROCESS RIGHTS AND CONFRONTATION RIGHTS

A defendant's due process rights at a restitution hearing are very limited. Due process rights are protected 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 the victim's psychotherapist. *People v. Cain* (2000) 82 Cal.App.4th 81

## 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. (Pen. Code §1202.4(f))

## PAYMENT BY INSURANCE COMPANIES & 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. (Pen. Code §1202.4(f)(2))

## Check List

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

### Restitution Fines

- ☐ Misdemeanor \$100 - \$1,000 or Felony \$200 - \$10,000  
(Alternate fine formula:  $\$200 \times \text{years sentenced} \times \text{felony counts}$ )
- ☐ Probation revocation restitution fine (same amount as restitution fine) PC §1202.44
- ☐ Parole revocation restitution fine (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 the Victim Compensation & Government Claims Board (Board)
- ☐ Amount "To Be Determined" (If amount cannot be determined, set review date)
- ☐ Income deduction (Ability to Pay) PC §1202.42
- ☐ Notify victim to file a CDC Form 1707, if the defendant is sentenced to prison
- ☐ Prepare a CR-110 form for each victim and the Board
- ☐ Send a copy of the completed CR-110 form or Minute Order to the Board, if the restitution is in favor of the Board