

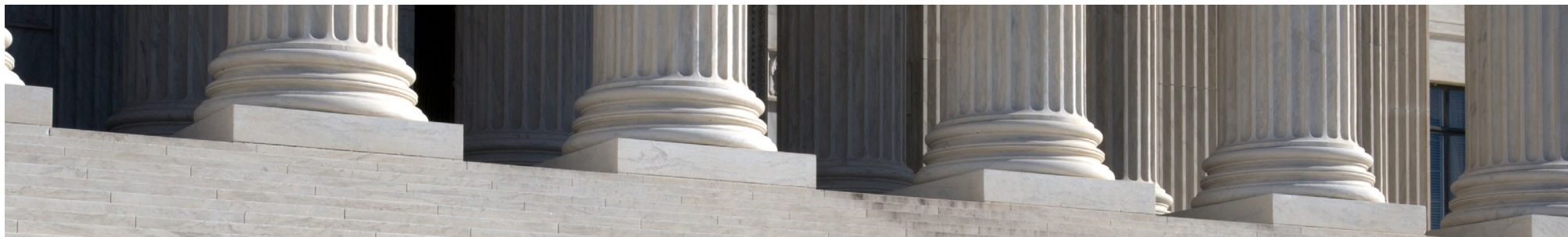
JUVENILE RESTITUTION FINES GUIDE

RESTITUTION FINES



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

- The restitution fine shall be proportionate with the seriousness of the offense. (Welf. & Inst. Code, § 730.6(b))
- The court may waive the felony fine only for compelling and extraordinary reasons. (Welf. & Inst. Code, § 730.6(g))
- A separate hearing for the fine is not required. (Welf. & Inst. Code, § 730.6)
- Misdemeanors - not to exceed \$100
- Felonies - \$100 - \$1,000



SETTING THE FINE AMOUNT

The restitution fine shall be in addition to any other disposition or fine imposed and shall be imposed regardless of the minor's inability to pay. (Welf. & Inst. Code, § 730.6(c))

Under Welfare and Institutions Code section 730.6(d)(1), the court shall consider any relevant factors including, but not limited to:

- Seriousness of the offense
- Extent to which any other person suffered losses
- Pecuniary losses to the victim or their dependents
- Psychological harm to the victim or their dependents
- Minor's economic gain
- Minor's ability to pay
- Minor's future earning capacity (Welf. & Inst. Code, § 730.6(d)(2))
- The minor bears the burden of showing inability to pay (Welf. & Inst. Code, § 730.6(d)(2))

CONDITION OF PROBATION

The court shall require, as a condition of probation, the payment of restitution fines and orders imposed. (Welf. & Inst. Code, § 730.6(1))

PRESUMPTION OF JOINT LIABILITY FOR FINES AND ORDERS

Pursuant to Welfare and Institutions Code section 730.7(a), a parent or guardian who has joint or sole legal and physical custody of the minor is rebuttably presumed to be jointly and severally liable with the minor for restitution orders, fines and penalty assessments, up to the limits of Civil Code sections 1714.1 and 1714.3.

Under Welfare and Institutions Code section 730.7(a):

- The parent or guardian's inability to pay is considered
- The parent or guardian has the burden of showing an inability to pay
- The court may consider parent or guardian's present income and future earning capacity
- This section does not apply to foster parents

Under Welfare and Institutions Code section 729.5(b), prior to the hearing, the parent or guardian must be given notice that they may be held liable.

JUVENILE RESTITUTION STATUTES

- Welf. & Inst. Code § 729 Restitution for Victim of Battery on School Property
- Welf. & Inst. Code § 729.1 Restitution for Crime on Public Transit
- Welf. & Inst. Code § 729.5 Notice to Parents or Guardians
- Welf. & Inst. Code § 729.7 Performance of Service Contrast Between Victim and Minor
- Welf. & Inst. Code § 730.6 Restitution Fines, Orders, Hearings and Condition of Probation
- Welf. & Inst. Code § 730.7 Joint and Several Liability of Parents

JUVENILE RESTITUTION ORDER GUIDE



RESTITUTION ORDERS

It is the intent of the legislature that a victim of conduct, for which a minor is found to be a person described in Welfare and Institutions Code section 602, who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor. (Welf. & Inst. Code § 730.6(a)(1)) The court SHALL order full restitution.

INVALIDITY OF SENTENCE

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 direct victim and their family. (People v. Scott H., 221 Cal.App.4th 515)
For more information please see victims.ca.gov.
- Restitution Fund/CalVCB (Welf.& Inst. Code, § 730.6(i))
- Insurance companies – only if they are the direct victims – People v. Birkett, supra.
- Corporations, partnerships, government, legal or commercial entities that are direct victims (Welf. & Inst. Code, § 730.6(k))

Restitution shall be ordered in an amount to fully reimburse the victim(s) for all determined economic losses including all of the following:

Full or partial payment for the value of stolen or damaged property, medical expenses, wages or profits lost due to injury, caring for a minor victim, time spent as a witness or in assisting the police or prosecution by the victim. Also, if the victim is a minor or the minor's parents or guardians. (Welf. & Inst. Code, § 730.6(h)(1)(A)-(D))

The term "economic losses" is entitled to an expansive interpretation and a victim's right to restitution is to be broadly and liberally construed. (In re Johnny M. (2000) 100 Cal.App4th 1128,1132.)

CIVIL JUDGMENT

A restitution order is enforceable in the same manner as a civil judgment. (Welf. & Inst. Code § 730.6(i))

SETTING THE AMOUNT

The court may use any rational method of fixing the amount of restitution, provided it is reasonably calculated to make the victim whole, and provided it is consistent with the purpose of rehabilitation. (In re Brittany L. (2002) 99 Cal. App.4th 1381)

AMOUNT DETERMINED BY THE COURT

The amount of restitution is for the court to decide. The trial court may delegate to the probation officer the task of identifying losses and specifying the amount of restitution due. (In re Karen A. (2004) 115 Cal.App.4th 504)

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. Gemelli (2008) 161 Cal.App.4th 1539, 1542-1543)

REIMBURSEMENT FROM INSURANCE OR THIRD PARTIES

The court is not to consider whether the victim has been, or will be, reimbursed from third parties or insurance, in ordering restitution, since the statute provides that the victim is entitled to be "fully reimbursed" for the amount of the loss. (In re Brittany L. (2002) 99 Cal.App.4th 1381)

JOINT LIABILITY OF CO-OFFENDERS

When feasible, the court shall identify on the court order any co-offenders who are jointly and severally liable for victim restitution. (Welf. & Inst. Code, § 730.6(h)(4))

The juvenile court is vested with discretion to apportion restitution in a manner that will effectuate the legislative objectives of making the victim whole and rehabilitating the minor. (In re S.S. (1995) 37 Cal.App.4th 543)

AMOUNT UNKNOWN AT THE TIME OF SENTENCING

If the amount of loss cannot be ascertained at the time of sentencing, the amount shall be determined during the term of the commitment or probation. (Welf. & Inst. Code, § 730.6(h))

CHECKLIST

RESTITUTION FINES

- Misdemeanor not to exceed \$100
- Felony \$100 - \$1,000

RESTITUTION ORDERS

- Identify each victim and the amount of restitution ordered
- Amount ordered to CalVCB
- Amount each co-offender is to pay
- Amount "To Be Determined" (If amount cannot be determined, set review date)
- For a minor not committed to California Department of Corrections and Rehabilitation's Division of Juvenile Justice (formerly CYA) set date for annual review of restitution (Welf. & Inst. Code, § 730.8)
- Prepare a CR-110 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

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