

Restitution Policy and Survivors

Economic Security of Survivors Overview

- Shelters reported that 74% of victims **stayed with an abuser longer** due to financial issues.¹
- Survivors of sexual violence or stalking at school are more likely to **drop out**.²
- Survivors **lose 8 million days** of paid work annually.³
- **25%** of survivors were asked to resign or were fired from their jobs due to stalking.⁴
- **82%** of single mother households live in economic insecurity.⁵

Restitution and Economic Security for Survivors

The cost of crime to a victim of domestic abuse, sexual violence or stalking is staggering. For example, the lifetime cost of a rape can exceed **\$145,000**, including medical and mental health care, lost wages and property, and court fees that hinder her ability to recover and work.⁶ If unable to meet these costs, she may forego needed trauma support, go into debt or become homeless. Nationally, the cost of intimate partner violence in 2003 surpassed \$8.3 billion.⁷

Economic security also plays a decisive role in a survivor's decision to leave an abusive relationship. Faced with the prospect of supporting her family with one income for the first time, a survivor likely **cannot pay for basic needs, health care or relocation**. The choices are harder if she is unemployed or has poor credit and few savings following years of economic abuse. As a result, she is vulnerable to further abuse and violence. Importantly, a survivor can recover much of the highest and most damaging costs from restitution, which can make a huge difference in her ability to build economic security and ensure long term safety.

What is Restitution?

Restitution is a **court-ordered payment** from the offender to the victim for the harm caused by the offender's wrongful acts.⁸ Orders most frequently cover medical and counseling costs, lost wages, lost or damaged property, funeral expenses and other direct out-of-pocket expenses. The cost of emotional distress or suffering cannot be covered.⁹

Restitution differs from civil damages and crime victim compensation (CVC) in that it is not a civil action or government assistance. Judges will more often point survivors to CVC instead of ordering restitution, but most CVC provisions fail to restore many of the losses suffered by domestic or sexual violence victims due to scope and administrative barriers.¹⁰ Because there is a severe lack of data, it is unknown how often restitution is requested, ordered or enforced in sexual or domestic violence and stalking cases.

For federal cases of interstate stalking, domestic violence or protection orders, the Violence Against Women Act mandates ordering full restitution.¹¹ While every court has the power to order restitution, state policy varies greatly.^{12,13}

- 18 states include restitution in their **crime victims' rights constitutional amendments**.
- 1/3 of states **require judges to order restitution** beyond extraordinary circumstances.
- 25 states have specific directives for victims of **domestic violence and/or sexual assault**.
- 1/4 of states **require courts to put on record** their reason for not ordering or only partially ordering restitution.

Ordering Restitution

Despite the clear legal availability of this important relief, survivors' access to restitution begins in reality with judges actually ordering to benefit survivors.¹⁴ Courts typically consider the following: state and local policy, the financial burden placed on the victim(s) and those serving her, and the financial resources of

Restitution Should Be an Option For: ^{17,18}

- Moving costs
- Credit card fees
- Correcting a victim's credit history
- Victim's attorney fee
- Expenses related to criminal justice system participation (travel costs, child care, etc.)
- Home security
- Parents' lost wages while caring for an injured child
- Family attending victim's funeral
- Crime scene clean up
- Open for future mental health care
- Insurance deductibles
- Even if the victim dies
- Even after the defendant dies
- Even if the victim has insurance
- Even if there is a civil suit under way
- Even if CVC paid for part of the costs

the defendant. Many states are moving away from basing the restitution amount on the defendant's ability to pay, though they often still take it into account to set the payment schedule.¹⁵ Some states even **mandate that restitution always be ordered** and given priority of payment unless extenuating circumstances exist.

"The fact that a victim does not request restitution does not change the court's obligation to order it"

State v. Steffy, 173 Ariz. Ct. App. 1992

An abuser can be ordered to pay restitution at multiple points in the criminal justice system: with pretrial diversion, after conviction, at entry of a guilty plea, during suspended sentence or along with a prison term. It can also be a condition of probation or parole.¹⁶ Unfortunately, it is most often not ordered at all.

Besides options for timing, there is a wide range of options for what damages abusers can be responsible for paying (see side bar). For example, since many survivors avoid legal action against their abuser for fear of increasing their debt with court costs while losing his income, regularly ordering coverage of **attorney and court fees** will keep survivors safer. In addition, it would drastically help rape survivors to order restitution **open for future mental health needs** since it has been shown that the most significant costs occur over time.

Enforcing Restitution

Policies that truly enforce the collection of restitution are essential to improving the economic security of survivors. Due to the complex relationship between survivors and abusers, many victims do not want to send the offender to jail because they fear losing their only financial support. With wide-ranging and creative enforcement policies, survivors will be able to stay more economically stable, independent and safe.

Monitoring the offender's compliance is the key to effective collection. The agency responsible for monitoring, collecting and allocating varies by state and may be the Department of Justice, the Victims of Crime Compensation Board, or the Department of Corrections and probation or parole officers.¹⁹ Regardless, there must be a clear and efficient way to **share information between agencies** on restitution compliance. Creating a single system for all court-related debts is one innovative way to simplify the problem, provided that payments to the victim come first.²⁰ Federal law requires paying child support first, and then the states decide whether court fines, supervision fees, other state costs or restitution takes priority.

Many in the judicial system overlook restitution if the offender is low-income, unemployed or heading to jail. However, policy can and should ensure that a victim still receives economic justice regardless of the abuser or survivor's situation. Some states have acquired funds using the following unique strategies: prison work program wages, inmate accounts or state payments to defendants, bond payments for the defendant, federal tax returns, lottery winnings, gambling earnings or inheritances.^{21,22} Vermont even pays the restitution directly to the victim from a government account and then pursues the offender for repayment.²³

If an offender willfully fails to pay restitution, most states say to **revoke probation or parole**. If restitution remains unpaid at the end of supervision, some states permit extending probation and parole for a set amount of time or until paid. Laws dictate whether restitution orders can be converted to civil judgments, especially if unpaid following probation or parole, and if the burden is on the court or the victim. Lastly, states can turn defaulted restitution over to private collection agencies or the state taxation authority.²⁴ It is unclear if states really use these tactics.

Repayment is “a tangible demonstration that the state—and the offender—recognize the harm the victim suffered and the offender’s obligation to make amends. Failure to collect the ordered restitution creates another, even more insidious, harm: when court orders are regularly disregarded with no apparent consequence, it causes crime victims and the public to **lose faith in the criminal justice system.**”
(NCVC, *Making Restitution Real*)

How much restitution goes uncollected?³¹

Pennsylvania faces **\$638 million** in outstanding restitution.

Maryland collected **only 12%** of the restitution ordered in fiscal year 2007 by December 2008.

In Texas, over **90%** of those discharged from parole between 2003 and 2008 still owed restitution.

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Survivor Barriers to Restitution

Unlike victim compensation, restitution can only be ordered after the offender is tried and found guilty, either in conviction, a plea agreement or in pre-trial diversion. Combined with survivors’ reluctance to report or interact with the criminal justice system, survivors face major barriers to restitution. According to the Department of Justice and the FBI, only 49% of all rapes and sexual assaults were reported and only **40% of reported rapes were cleared** by the police in 2010.²⁵ For nonfatal victimization at the hands of an intimate partner, survivors’ reporting rates have increased to 62% over the past decade.²⁶

Policies that overly burden survivors, who are unaware of their options and dealing with the immense financial costs of the crimes, are problematic.²⁷ To better serve and inform victims of their rights, states can require **early and frequent notification**

so victims can gather necessary evidence, place the burden of requesting on the prosecutor, as in Wisconsin, or remove the issue by always making restitution mandatory.²⁸ Converting restitution to civil judgment helps recover outstanding debt, but when the *victim* is required to pay the court costs to enter the judgment like in Kansas, the victim is burdened and **less likely to seek relief** than if it is automatic or if the fees are covered.

Many states have conflicting statutes that obscure what to expect for survivors and what to do for prosecutors and judges. Minnesota, for example, even has contradictions within a single restitution statute.²⁹ Other policy barriers include not allowing restitution to be kept open for future damages, like in Indiana, and prioritizing other court payments before restitution, such as in Alaska, Colorado, Connecticut and Georgia.³⁰

Recommendations

- Conduct research and collect data on the use of restitution in domestic violence, sexual assault and stalking cases to determine impact and set benchmarking targets.
- Shift policy to provide restitution orders based on the loss to the victim and not on the offender’s ability to pay at the time of sentencing.
- Modify laws to keep restitution orders open to allow for future damages like physical or mental health care and attorney’s fees.
- Expand state policies to cover the maximum range of losses (see side bar on page 2).
- Allow for the conversion to a civil judgment, withholding of income tax returns and garnishing of wages from those who can afford to but have not paid restitution fees.
- Convene a task-force to evaluate state restitution policy and enforcement with the power to effect the necessary changes. Identify and clarify conflicting provisions.
- Consolidate court ordered restitution, child support and fines/fees/surcharges into one debt owed by offenders to improve collection rates.
- Change state policy to prioritize restitution over other non-child support debts so that the victim, who is most vulnerable, receives payment first before the court.
- Designate a single agency to centrally manage debt and to keep victims, offenders and criminal justice agencies informed about the status of its collection.
- Conduct regular reviews of the offender to monitor payment and adjust payment plan as needed. Use the offender’s assets, income and budget to verify payment amount.
- Include restitution in training for law enforcement, prosecutors and court staff.

Making Progress

No policy system is perfect and policy implementation can be problematic. However, it is important to recognize where successes and improvements are happening. While these are not the only states that implement strong, victim-supportive restitution policies, the four states highlighted here exhibit the majority of our policy recommendations in a cohesive manner.

Arizona, California, Michigan and Washington have all gone above the minimum standard of the law to define allowable costs in a far more expansive manner. For example, all four states specify lost wages as permissible restitution. Additionally, they have all taken unique steps to improve enforcement and offender accountability.

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Innovative State Policies

Arizona: (ARIZ. CONST. art. II, § 2.1; ARIZ. REV. STAT. § 13-804, § 13-603(c))

- State crime victims' rights constitutional amendment specifies right to restitution.
- Restitution is mandatory in every criminal case.
- Cover future damages, attorney fees, and a family's funeral expenses in homicides.
- The court cannot determine restitution *amounts* based on the offender's economic circumstances, but take it into account in determining the *manner of payment*.
- Probation can be extended for up to 3 years for a felony and 1 year for a misdemeanor so the offender can satisfy the restitution order.
- Maricopa County created a Restitution Enforcement Court to target willfully delinquent payments through civil contempt. The court clerk notifies the prosecutor and judge of defaults monthly. It collected over \$200,000 in 18 months.
- County Collections Unit can file liens, garnish wages and refer to private collectors.

California: (CAL. CONST. art. I, § 28; CAL. PENAL CODE § 1202.4, 155.5, 1463.009, 3000.05)

- State crime victims' rights constitutional amendment specifies right to restitution.
- Specific restitution provisions for domestic violence and sexual assault.
- Includes restitution in all sentences regardless of a plea agreement.
- Allows victims to recover attorney fees and see an offender's mandatory disclosures of assets, income and other financial information.
- It is a separate crime to sell or hide property to avoid payments.
- Imposes an interest rate of 10% a year on restitution orders.
- Courts automatically include payment from prison wages unless ineligible to work.
- Mandates wage garnishment and turns debts over to state taxation authorities for collection if the abuser defaults.

Michigan: (MICH. CONST. art. I, § 24; MICH. STAT. ANN. § 27.3178(598.30))

- State crime victims' rights constitutional amendment specifies right to restitution.
- Allows restitution for victim service agencies and for victims' family members.
- Convened a Collections Advisory Committee to promote data collection, improve court staff training and implement cost-effective collections practices.
- Courts are required submit annual collections reports to evaluate trends and rates.
- Money collected goes first to victim restitution before state costs, fines or fees.
- Prioritizes enabling or persuasive strategies over coercive collection strategies.
- Probation or parole officers must review every case with restitution twice a year and before the end of supervision. If the offender is not paying restitution, the officer must file a report with the court.

Washington: (Rev. Code Wash. 9.94A.760, 9.94A.120, 9.94A.030, 9.94A.140)

- Combines restitution, court costs, crime victim compensation fees and victim's attorney fees into one debt.
- Debt collected goes to restitution first instead of court fees and surcharges.
- An integrated judicial information system contains data on offender income and employment, debt payment and wage garnishment.
- Department of Corrections implemented an automated billing system that mails offender a monthly bill with a return envelope.
- Gives the criminal justice system jurisdiction in the case if restitution outstanding.
- Provides victims the authority to pursue the financial collection in civil court.
- In serial rape or stalking cases, allows restitution for victims of crimes which did not go before the court because of a plea agreement.

For case law and state statutes, see [Aequitas: The Prosecutors' Resource on Violence Against Women](#) and www.victimlaw.com

For recommendations on integrating economic security into the work of the criminal justice system, see WOW's [Economic Security and Safety Guide for the STOP Grant Program](#).

For additional restitution resources, use the [Making Restitution Real Toolkit](#).

This project was supported by Grant No. 2010-ET-S6-K014 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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