

Enforcing Criminal or Juvenile Court Restitution Orders as Civil Judgments



Mendocino County District Attorney's Office
Victim Witness Assistance
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CIVIL COLLECTION

Collection of restitution is often limited by the offender's financial circumstances. As a result, many victims wait years before they receive any restitution, and they may never receive the full amount of restitution ordered.

Collection also depends on enforcement of the court's order of restitution, either by the criminal justice system or the victim. There are many laws and procedures used to make sure the offender pays as ordered.

If you do not gain full restitution through the criminal courts, you can seek the assistance of a collection service or attorney. You may also choose to pursue collections personally. As a victim, you have access to all resources available under the law to enforce the criminal restitution order as a civil judgment.

A criminal or juvenile Order for Restitution is enforceable as a civil judgment (Penal Code § 1214). The law establishes procedures for the enforcement of civil judgments. More detail is available along with statutory obligations in the California Code of Civil Procedure §§ 680.010 through 724.260. There is no waiting period to begin collection once the order is made. Criminal Restitution is a permanent order that does not expire and is not dischargeable through bankruptcy. (Penal Code § 1214). Restitution is also inheritable (California Code of Civil Procedure section 686.010 and *People v. Runyan* (2012) 54 C4th 849) and allows the deceased judgment creditor's "executor or administrator or successor-in-interest" to enforce the judgment.

Note: The District Attorney's Office cannot act as your attorney or assist in the civil collection of restitution beyond what is offered here.

ENFORCEMENT OF JUDGMENTS

COLLECTION OPTIONS

The first step in enforcing a criminal restitution order as a civil judgment is to obtain an Order for Restitution and Abstract of Judgment (Form CR-110/111 JV-790/791) from the District Attorney's Office in the location that ordered the offender to pay restitution.

Liens - Order for Restitution and Abstract of Judgment (CR-110/111 & JV-790/791)

This document is the actual restitution order of the court, signed by a judge. It identifies you as the victim and identifies the offender as the person who owes you a specific amount of money. You can record it with the County Recorder's Office to put a lien on the defendant's real property. This means that if the debtor sells, refinances, or buys real property in the county that you recorded it, your judgment should be paid from the debtor's funds.

Call the DA's Office at (707) 463-4211 to request the CR111/JV791 abstract be generated. If the document has already been completed subsequent CR-111/JV-791 can be obtained from the records division of the Superior Court location that made the order. To record, it must not be a copy. It must be an original with the stamps and signatures being original.

Business Liens

For liens against a defendant's business assets, it may be possible to file a statewide lien on personal property. To do so, contact the California Secretary of State at (916) 653-3516 and inquire about filing a Judgment Lien (Form JL-1). The form is also available on the Secretary of State's website at www.ss.ca.gov (see California Business Portal/Uniform Commercial Code section.)

Wage Garnishment Earnings Withholding Order, Form 982.5(2)

A wage garnishment is a method to collect a portion of the defendant's wages directly from his employer. A maximum of 25% of the defendant's earnings above \$700.00 per month may be attached. (See Wage Garnishment Law, California Code of Civil Procedure § 706.010). Forms and instructions are available at the California Judicial Council website: www.courts.ca.gov/forms.htm

Writs of Execution (Form EJ-130)

A Writ of Execution allows the victim to attach the defendant's income or personal assets. To obtain a Writ of Execution you must do the following:

1. Obtain the Writ of Execution Form (Form EJ-130) from the Judicial Council website: www.courts.ca.gov/forms.htm
2. Complete the form.
3. Pay the fee and file the form with the Clerk's Office of the Superior Court.

Once you have obtained the Writ of Execution, it must be delivered to the Levying Officer (County Sheriff or Marshal) with instructions identifying which property to levy. A fee is required. A levy will allow you to obtain property or cash that belongs to the defendant to satisfy your restitution order. The Writ of Execution will allow you to use the collection options listed below.

- Levy on bank accounts and/or safe deposit boxes
- Levy against business receipts
- Levy on real or personal property



ASSET DISCOVERY

If the defendant is unwilling to pay restitution, as ordered by the court, you will need to know what his/her assets are to proceed with the civil collection process. A statement of assets from the defendant will assist you in determining what types of collection options to pursue.

Defendant's Statement of Assets (Form CR-115)

A victim is entitled to a copy of the CR-115 which lists the defendant's personal information, employment, assets, income and liabilities. Obtain this form from the Judicial Council website at: www.courts.ca.gov/forms.htm. If the defendant has failed to file the CR-115, you are entitled to a copy of the defendant's financial affidavit that was filed in seeking the appointment of counsel. In the event that a defendant has any unpaid balance remaining on a restitution order 120 days prior to the expiration of probation or parole, the defendant must complete a new CR-115 and file it with the clerk of the sentencing court no later than 90-days prior to release. (Penal Code § 1202.4 (f)(5)-(11)).

Form Interrogatories Crime Victim Restitution (Form CR-200)

An interrogatory is a written question that must be answered by the defendant. Under California Code of Civil Procedure § 2033.5(e), a victim with an unpaid restitution order may annually send the CR-200 to the offender to determine his/her assets, income, and liabilities. These forms are available on the California Judicial Council website at: www.courts.ca.gov/forms.htm.

Court Records

If the defendant was previously involved in a lawsuit, has gone through a divorce proceeding or was a party to a child support action, the court file could contain information about the defendant's assets. Court files are public record and you may request to review the file from the records division of the Civil or Family Court.

County Recorder/Tax Assessor: To determine if the defendant owns property, a review of the public record may be conducted at the County Recorder's Office or the County Tax Assessor's Office. The Recorder maintains a list of all deeds recorded in the county. This will indicate if the defendant owns the property free and clear or if any liens have been recorded on the property. Note: Most county offices require that you perform the search in person.

Internet Search: The Internet offers an effective method for debtor asset discovery. Many counties have links that allow for a public record search online. Online services are available providing professional investigative services specializing in the discovery of assets and finding people throughout the United States. (Internet search: "**Asset Discovery**")



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