

ENFORCEMENT OF JUDGMENTS

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.

DEFINITIONS

Garnishments:

When a person's salary is intercepted by a levying officer and is given to the judgment creditor to satisfy a judgment

Judgment:

A judgment, order or decree entered in court

Judgment Creditor:

The person in whose favor a judgment is ordered

Judgment Debtor:

The person that the judgment is ordered against

Levy:

A process to obtain property or cash from the judgment debtor to satisfy a court judgment

Levying Officer:

The sheriff or marshal who is responsible for making levies under a Writ of Execution

Lien:

A claim on property for payment for a debt

Money Judgment:

Part of a judgment that requires the payment of money

Writ of Execution:

A legal document issued by the court that permits a levy on the judgment debtor's property

Sister State Judgment:

A legal document that allows a judgment issued in one state to be collected in another state under the laws established for conversion in that state.

ENFORCING YOUR ORDER

The first step in enforcing a criminal restitution order is to obtain an Order for Restitution and Abstract of Judgment (Form CR-110/JV-790) from the criminal or juvenile court ordering an offender to pay restitution.

Order for Restitution and Abstract of Judgment (CR-110/JV-790)

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 file it with the County Recorder or request the assistance of an attorney, collection agent or other representative to file it for you and avoid filling in the personal information required by the County Recorder. The CR-110/JV-790 can be obtained from the records division of the criminal/juvenile court that made the order. There is a possibility that you will have to prepare this document yourself if it has not already been completed. The clerk will be able to provide the blank form or you can obtain it directly from The California Judicial Council website:

<http://www.courtinfo.ca.gov>



CIVIL COLLECTION

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.

WHAT IS RESTITUTION?

Restitution is the recovery from an economic loss suffered as the result of the commission of a crime. Some examples of losses include:

- Medical Expenses
- Counseling Expenses
- Property Damage or Loss
- Loss of Wages



WHAT ARE YOUR LEGAL RIGHTS?

The California Constitution provides that restitution shall be ordered in every case where a person is convicted of a crime involving a victim who suffered a loss. "It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime." (Penal Code § 1202.4)

If the offender is a juvenile, the parent or guardian is presumed to be jointly and severally liable for the restitution owed. (Welfare & Institutions Code § 730.7) This presumption of liability is rebuttable and is subject to the limitations outlined in Civil Code §§ 1714.1 and 1714.3.

Criminal Restitution is a permanent order that does not expire and is not dischargeable through bankruptcy. (Penal Code § 1214)

Enforcing Criminal or Juvenile Court Restitution Orders as Civil Judgments



HOW DO I COLLECT?

If a criminal or juvenile offender is ordered to pay restitution and is granted probation the courts usually pursue collection through local authorities. The offender typically makes a monthly payment in an amount set by the court that will be sent to you. The sentencing court, the County Office of Revenue & Recovery, or the probation officer will be able explain the collection process if you have questions.

If the offender is sent to the California Youth Authority (CYA) or is sentenced to the California Department of Corrections (CDC) you must fill out and submit a Victim Services and Restitution Collection Request Form to CDC (CDC Form 1707). Collection of your order will begin after this form is processed by CDC. Payments will be made to you from the offender's prison wages and trust account at the rate of 20-50%. To obtain CDC Form 1707, you may contact the probation officer, district attorney, CDC's Office of Victim's Services and Restitution at 1-877-256-6877 or download it from CDC's website at:

www.cdcr.ca.gov



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. Request this form from the Criminal Court Records Division. 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.courtinfo.ca.gov/cgi-bin/forms.cgi.

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 records 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**")

COLLECTION OPTIONS

Liens

A lien is a legal claim against a defendant's property. Recording the Order for Restitution/Abstract of Judgment (form # CR-110/JV-790) with a County Recorder establishes an automatic lien against a defendant's current or future real estate. It gives your judgment priority and allows you to get paid the amount of the restitution before the defendant can sell, refinance, or transfer the property. The CR-110/JV-790 should be recorded in any county where the defendant may own real estate.

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:

<http://www.courtinfo.ca.gov>

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 from the Court Records Division or from the Judicial Council website at:
<http://www.courtinfo.ca.gov>
2. Complete the form
3. Pay the fee and file the form with the Records Division of the Sentencing 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

