



RESTITUTION CLAIMS FOR DIRECT REIMBURSEMENT AND OTHER EXPENSES

The purpose of this fact sheet is to outline the types of restitution possible for victims of sexual assault and other criminal acts under Minnesota Statute § 611A.04, subd. 1(a). However, it is important to remember that the only way to know if a victim has a restitution claim against the defendant is to contact the prosecutor to discuss the specific claim. Non-attorneys should always be cautious not to give legal advice.

What is restitution?	Restitution is court ordered payment by the defendant to the victim for out-of-pocket expenses resulting from the criminal act for which the defendant is being convicted.
What must a victim do to claim restitution?	<ul style="list-style-type: none"> • In a criminal court, a victim must be given the opportunity to claim restitution. • The victim must specify under oath by affidavit: <ul style="list-style-type: none"> ○ The lost items or harms resulting from the criminal offense. ○ The total dollar amount claimed. ○ The requested amount must be justified.
What is the procedure for receiving restitution?	<ul style="list-style-type: none"> • For a restitution claim to be considered at the sentencing or dispositional hearing, all information regarding restitution must be received by the court at least 3 days prior to sentencing or dispositional hearing. • The restitution claim may appear either through the victim’s affidavit or other competent evidence. • Copies of the restitution request will be provided to the prosecutor and defendant at least 24 hours before the hearing. • If the request and restitution information are not received in time, the issue of restitution may be continued. • At the sentencing or dispositional hearing, the defendant shall have an opportunity to respond to specific items of restitution and their dollar amounts according to a specified procedure.
What does a court examine when deciding whether to grant restitution?	<ul style="list-style-type: none"> • Whether the requesting party is a victim of the crime for which the defendant is being convicted. • Whether the economic loss or harm sustained is a result of that crime. • Whether the defendant’s income, resources, and obligations enable him to pay the requested amount.

<p>What are out-of-pocket expenses?</p>	<p>Out-of-pocket expenses are usually clearly direct expenses paid by the victim as a result of the crime. However, the court has great discretion to decide what an out-of-pocket expense is. Common out-of-pocket expenses include:</p> <ul style="list-style-type: none"> • Lost wages • Medical costs • Therapy • Services • And other expenses resulting from the defendant’s criminal act
<p>What cannot be claimed as restitution?</p>	<p>Economic losses or harms do not include:</p> <ul style="list-style-type: none"> • Damages for the victim’s pain and suffering • Damages for speculative future harms (EX: possible future medical costs)
<p>Can the court grant restitution for claims that are not clear, direct out-of-pocket expenses?</p>	<p>Yes. The court can grant restitution for an economic loss that is not clearly a direct “out-of-pocket” expense if (1) a factual connection is found between the loss claimed and the crime or (2) the expense was optional to the victim.</p> <p>Examples of restitution granted in Minnesota for claims that are not clearly “out-of-pocket” are:</p> <ul style="list-style-type: none"> • Lost wages • Flex/Comp time • Medical expenses not directly related to the crime but a result of the crime (EX: medical bills resulting from a sexual assault victim’s suicide attempt after the crime) <p>Examples of restitution granted in Minnesota for optional expenses:</p> <ul style="list-style-type: none"> • Expenses for a Hmong healing ceremony • Moving expenses • Monetary reward given for information leading to the perpetrator of a crime
<p>Does the requesting party have to be a direct victim of the crime?</p>	<p>No. The court has broad discretion in deciding who constitutes a victim. A victim may include:</p> <ul style="list-style-type: none"> • A natural person who incurs a loss or harm as a direct result of the defendant’s actions. • A corporation or government entity which suffers harm as a result of the crime. • A third party who incurred economic harm as a result of the defendant’s criminal act.

	<p>Examples of requesting parties held to be victims in Minnesota:</p> <ul style="list-style-type: none"> • Parents or legal guardians of a child victim who suffer an economic loss in order to enable the child to participate in the investigation and criminal proceeding.
What if the perpetrator cannot pay the requested restitution?	The court must investigate the income, resources, and obligations of the perpetrator to determine his ability to pay restitution. However, even indigent perpetrators are usually ordered to pay restitution, but are given latitude in the amount of time it takes to pay it.
What is the difference between restitution and reparations?	Unlike restitution, which is court-ordered, reparations is financial assistance from the government and is available for any victim of a violent crime, regardless of whether the case is charged or if the offender is found guilty (although cooperation with law enforcement is required and crime victims are required to report within 30 days, although the reparations program recognizes that sexual assault victims may need more time). For further information, visit www.ojp.state.mn.us/mccvs/financialhelp .

Our Thanks to Kelly McDermott, William Mitchell Law School, for contributions.

Sexual Violence Justice Institute
Minnesota Coalition Against Sexual Assault
161 St Anthony Ave Suite 1001
St Paul, MN 55103
651-209-9993 or 800-964-8847
www.mncasa.org

Updated May 2010