



Memorandum

Date: 1/10/2013
To: Juliana Roe
From: Laura Zanzig
Re: Restitution legislation in Washington, nationwide

Interim Work Plan: Currently, restitution is ordered when an offender is convicted of an offense which results in injury, damage or loss of property, or for the crime of rape, under certain circumstances, unless the court finds that extraordinary circumstances exists which make restitution inappropriate and the court sets forth the circumstances on the record. Restitution must also be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement. Staff will survey the statutory provisions of other states and federal laws to determine whether and to what extent crime victims are compensated.

Washington's central statute on restitution is RCW § 9.94A.753. This statute mandates that restitution be ordered in cases of personal injury or damage to or loss of property. RCW § 9.94A.753(5). However, the court may exercise discretion if it finds that extraordinary circumstances exist that make restitution inappropriate and indicates such circumstances in the record. *Id.*

In Washington, restitution compensates victims for easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment of personal injury, and lost wages resulting from such injury. *Id.* at (3). Intangible losses, such as mental anguish and pain and suffering, are not covered, with exceptions related to counseling costs. *Id.* The court may not reduce the total amount of restitution ordered based solely on the offender's inability to pay the full amount. *Id.* at (4). In cases of rape of a child in which the victim becomes pregnant, the statute also specifically indicates that restitution shall include medical expenses and child support. *Id.* at (6).

Pursuant to RCW § 9.94A.753(7), restitution is mandatory for any victim entitled to benefits under the Crime Victims' Compensation Act (CVCA), RCW Chapter 7.68. According to the CVCA, a victim is entitled to benefits if he or she is injured as a result of a criminal act. RCW § 7.68.070. More guidance is provided in RCW § 7.68.020, which defines victim, injury, and criminal act. For the

purposes of the CVCA, a victim is a person who suffers bodily injury or death as a proximate result of another's criminal act. RCW § 7.68.020(11). An injury is a sudden, tangible, and traumatic occurrence which produces a prompt result, and resulting physical circumstances. *Id.* at (9). Finally, a criminal act is the commission or attempt of 1) a Washington State felony or gross misdemeanor (or comparable federal offense); 2) an otherwise compensable act committed outside of Washington State against a Washington resident; or 3) various forms of human trafficking, including forced labor, sexual acts, involuntary servitude, and the harvesting or sale of organs. *Id.* at (5).

Restitution is also specifically mandated in statutes outlawing the following crimes: interfering with dog guide or service animal (RCW § 9.91.170); interfering with search and rescue dog (RCW § 9.91.175); and unlawful issuances of checks or drafts (RCW § 9A.56.060).

Furthermore, restitution may be ordered as a condition of a suspended sentence (RCW § 9.92.060), probation (RCW § 9.95.210), a deferred prosecution petition (RCW § 10.05.140), home detention (RCW § 9.94A.734), and as an alternative to a fine (RCW § 9A.20.030).

VICTIM LEGISLATION BY CATEGORY

| MANDATORY | DISCRETIONARY |
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| Alabama (E) | Arkansas *+ |
| Alaska | Delaware *+ |
| Arizona | D.C.* |
| California (E), (R)+ | Indiana* |
| Connecticut (I/P), (V) | Maine*+ |
| Colorado (E) | Maryland (I/P), (E) |
| Florida (R)+ | Massachusetts* |
| Georgia | Minnesota* |
| Hawaii (V) | Mississippi*+ |
| Idaho (E), (R)+ | Missouri* |
| Illinois (I/P) | Nebraska (I/P) |
| Iowa | New Hampshire*+ |
| Kansas (R)+ | New Jersey* |
| Kentucky | New York+ |
| Louisiana (E) | North Dakota*+ |
| Michigan | Ohio* |
| Montana (E) | Rhode Island* |
| Nevada | Tennessee* |
| New Mexico | Texas*+ |
| North Carolina (M) | Utah* |
| Oklahoma (I/P) | Vermont*+ |
| Oregon (E) | |
| Pennsylvania (I/P) | |
| South Carolina (E) | |
| South Dakota | |
| Virginia (I/P)* | |
| Washington (I/P), (R)+ | |
| West Virginia (R)+ | |
| Wisconsin (R)+ | |
| Wyoming (R) | |
| <p>Key: E Mandatory to provide restitution for economic loss R Mandatory unless court finds compelling reason not to I/P Mandatory to provide restitution for injury to person or property M Mandatory for most crimes V Mandatory when requested by victim</p> | <p>Key: * Some enumerated crimes mandatory + Court must indicate reason for not ordering restitution</p> |

STATES MANDATING RESTITUTION FOR HUMAN TRAFFICKING VIOLATIONS

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| California | Cal Pen Code §§ 1202.4(q), 236.1 |
| Delaware | 11 Del. C. § 787(c) |
| Hawaii | HRS § 707-785 |
| Idaho | Idaho Code § 18-8604 |
| Illinois | 720 ILCS 5/10-9(g) |
| Indiana | Burns Ind. Code Ann. § 35-42-3.5-2 |
| Missouri | § 566.218 R.S.Mo. |
| New Hampshire | RSA 633:10 |
| New Jersey | N.J. Stat. § 2C:13-8(e) |
| New Mexico | N.M. Stat. Ann. § 30-52-1(F) |
| North Dakota | N.D. Cent. Code, § 12.1-40-01(4) |
| Oklahoma | 21 Okl. St. § 748(C) |
| Pennsylvania | 18 Pa.C.S. § 3003 |
| Rhode Island | R.I. Gen. Laws § 11-67-4 |
| Tennessee | Tenn. Code Ann. § 39-13-308(b) |
| Texas | Texas Code Crim. Proc. art. 42.0372 |
| Vermont | 13 V.S.A. § 2657 |
| Washington | RCW §§ 9.94A.753(7), 7.68.020(5)(d), 9A.40.100 |

RESTITUTION LEGISLATION BY STATE

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| <p>Alabama Mandatory (where pecuniary loss present)</p> | <p>Code of Ala. § 15-18-67 (2012) When a defendant is convicted of a criminal activity or conduct which has resulted in pecuniary damages or loss to a victim, . . .the court shall order that the defendant make restitution or otherwise compensate such victim for any pecuniary damages.</p> |
| <p>Alaska Mandatory</p> | <p>Code of Criminal Procedure § 12.55.045 (2011) (a) The court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense.</p> |
| <p>Arizona Mandatory</p> | <p>A.R.S. § 13-603 (2012) C. If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court.</p> |
| <p>Arkansas Generally discretionary, but must indicate reason for not ordering restitution; mandatory for certain crimes</p> | <p>A.C.A. § 5-4-205 (2012) (a) (1) A defendant who is found guilty or who enters a plea of guilty or nolo contendere to an offense may be ordered to pay restitution. (2) If the court decides not to order restitution or orders restitution of only a portion of the loss suffered by the victim, the court shall state on the record in detail the reasons for not ordering restitution or for ordering restitution of only a portion of the loss.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Forgery and fraudulent practices (§ 5-37-403) • Violations against farm animal and research facilities (§ 5-62-204) |
| <p>California Mandatory (in cases of economic loss), unless compelling and extraordinary reasons found; must indicate reasons</p> | <p>Cal Pen Code § 1202.4 (2012) (f) [I]n every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court...The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.</p> |
| <p>Connecticut Mandatory (where there is injury or damage to/loss of property and the victim requests)</p> | <p>Conn. Gen. Stat. § 53a-28 (2012) [I]f a person is convicted of an offense that resulted in injury to another person or damage to or loss of property, the victim requests financial restitution, and the court finds that the victim has suffered injury or damage to or loss of property as a result of such offense, the court shall order the offender to make financial restitution under terms that it determines are appropriate.</p> |
| <p>Colorado Mandatory (unless no pecuniary loss)</p> | <p>C.R.S. § 18-1.3-603 (2011) (1) Every order of conviction of a felony, misdemeanor, petty, or traffic misdemeanor offense . . . shall include consideration of restitution. Each such order shall include one or more of the following: (a) An order of a specific amount of restitution be paid by the defendant; (b) An order that the defendant is obligated to pay restitution, but that the specific amount of restitution shall be determined within the ninety days immediately following the order of conviction, unless good cause is shown for extending the time period by which the restitution amount shall be determined; (c) An order, in addition to or in place of a specific amount of restitution, that the defendant pay restitution covering the actual costs of specific future treatment of any victim of the crime; or</p> |

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| <p>Colorado, cont.</p> | <p>(d) Contain a specific finding that no victim of the crime suffered a pecuniary loss and therefore no order for the payment of restitution is being entered.</p> |
| <p>Delaware Generally discretionary, but must indicate reason for not ordering restitution; mandatory for some crimes</p> | <p>11 Del. C. § 4106 (2012) (a) Any person convicted of stealing, taking, receiving, converting, defacing or destroying property, shall be liable to each victim of the offense for the value of the property or property rights lost to the victim and for the value of any property which has diminished in worth as a result of the actions of such convicted offender and shall be ordered by the court to make restitution. If the court does not require that restitution be paid to a victim, the court shall state its reason on the record.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • ID theft (§ 854) • Issuing bad check (§ 900A) • Offenses involving video lottery machines (§ 1472) • Human trafficking and involuntary servitude (§ 787) • Graffiti (§ 812) • Forgery (§ 861) |
| <p>D.C. Discretionary (except for insurance fraud)</p> | <p>D.C. Code § 16-711 (2012) (a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Insurance fraud (§ 22-3225.05) |
| <p>Florida Mandatory, unless court finds compelling reason not to order restitution; must indicate reason</p> | <p>Fla. Stat. § 775.089 (2012) (1) (a) In addition to any punishment, the court shall order the defendant to make restitution to the victim for: 1. Damage or loss caused directly or indirectly by the defendant's offense; and 2. Damage or loss related to the defendant's criminal episode, unless it finds clear and compelling reasons not to order such restitution. (b) 1. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in this section, it shall state on the record in detail the reasons therefor.</p> |
| <p>Georgia Mandatory</p> | <p>O.C.G.A § 17-14-3 (2011) (a) [A] judge of any court of competent jurisdiction shall, in sentencing an offender, make a finding as to the amount of restitution due any victim, and order an offender to make full restitution to such victim.</p> |
| <p>Hawaii Mandatory (when requested by the victim)</p> | <p>H.R.S. § 706-646 (2012) (2) The court shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victims as a result of the defendant's offense when requested by the victim.</p> |
| <p>Idaho Mandatory (where there is economic loss), unless court finds that restitution is inappropriate; must indicate reason</p> | <p>Idaho Code § 19-5304 (2012) (2) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim. . . Restitution shall be ordered for any economic loss which the victim actually suffers. (3) If the court determines that restitution is inappropriate or undesirable or if only partial or nominal restitution is ordered, it shall enter an order articulating the reasons therefor on the record.</p> |

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| <p>Illinois Mandatory (where there is injury or damage to/loss of property)</p> | <p>§ 730 ILCS 5/5-5-6 (2012) In all convictions for offenses in violation of the Criminal Code of 1961 or of Section 11-501 of the Illinois Vehicle Code in which the person received any injury to his or her person or damage to his or her real or personal property as a result of the criminal act of the defendant, the court shall order restitution as provided in this Section. In all other cases, except cases in which restitution is required under this Section, the court must at the sentence hearing determine whether restitution is an appropriate sentence to be imposed on each defendant convicted of an offense.</p> |
| <p>Indiana Generally discretionary; mandatory for some crimes</p> | <p>Burns Ind. Code Ann. § 35-50-5-3 (2012) (a)[I]n addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Human and sexual trafficking (§ 35-42-3.5-2) • Conversion/misappropriation of title insurance escrow funds (§ 35-43-9-9) • Criminal gang offenses (§ 35-45-9-6) • Marijuana or methamphetamine manufacture on another's property (§ 35-50-5-3) |
| <p>Iowa Mandatory</p> | <p>Iowa Code § 910.2 (2012) In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities.</p> |
| <p>Kansas Mandatory, unless compelling circumstances render plan unworkable; must indicate in detail why</p> | <p>K.S.A. § 21-6604 (2011) (b) (1) [T]he court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.</p> |
| <p>Kentucky Mandatory</p> | <p>K.R.S. § 532.032 (2012) (1) Restitution to a named victim, if there is a named victim, shall be ordered.</p> |
| <p>Louisiana Mandatory (where pecuniary loss present)</p> | <p>La. C.Cr.P. Art. 883.2 (2012) A. In all cases in which the court finds an actual pecuniary loss to a victim, or in any case where the court finds that costs have been incurred by the victim in connection with a criminal prosecution, the trial court shall order the defendant to provide restitution to the victim as a part of any sentence that the court shall impose.</p> |
| <p>Maine Generally discretionary, but must indicate reason for not ordering restitution; mandatory for some crimes</p> | <p>17-A M.R.S. § 1323 (2011) 1. INQUIRY AS TO VICTIM'S FINANCIAL LOSS. The court shall, whenever practicable, inquire of a prosecutor, law enforcement officer or victim with respect to the extent of the victim's financial loss, and shall order restitution when appropriate. The order for restitution shall designate the amount of restitution to be paid and the person or persons to whom the restitution will be paid. 2. REASONS FOR NOT IMPOSING RESTITUTION. In any case where the court determines that restitution should not be imposed in accordance with the criteria set forth in section 1325, the court shall state in open court or in writing the reasons for not imposing restitution.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Unlawful cutting of trees (§ 2510) • Failure to pay for trees harvested (§ 2512) |

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| <p>Maryland Discretionary (where there is injury to person or property or economic loss)</p> | <p>Md. Criminal Procedure Code Ann. § 11-603 (2012) (a) A court may enter a judgment of restitution that orders a defendant or child respondent to make restitution . . . if: (1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased; (2) as a direct result of the crime or delinquent act, the victim suffered: (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses; (ii) direct out-of-pocket loss; (iii) loss of earnings; or (iv) expenses incurred with rehabilitation; . . . [etc.]</p> |
| <p>Massachusetts Victims have right to restitution; mandatory for some crimes</p> | <p>A.L.M. G.L. ch. 258B, § 3 (2012) To provide victims a meaningful role in the criminal justice system, victims and witnesses of crime, or in the event the victim is deceased, the family members of the victim, shall be afforded the following basic and fundamental rights: (o) for victims, to request that restitution be an element of the final disposition of a case and to obtain assistance from the prosecutor in the documentation of the victim's losses.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Removal or concealment of a motor vehicle or trailer with intent of insurance fraud (ALM GL ch. 266, § 27A) • Motor vehicle theft (ALM GL ch. 266, § 29) • Identify fraud and false impersonation (ALM GL ch. 266, § 37E) • Concealing or selling leased or rented property (ALM GL ch. 266, § 870) • Malicious destruction of boundary monument, milestone (ALM GL ch. 266, § 94) • Defacement of library materials (ALM GL ch. 266, § 100) • Destruction of a vessel to defraud owner or insurance (ALM GL ch. 266, § 108) • Motor vehicle insurance fraud (ALM GL ch. 266, § 111B) |
| <p>Michigan Mandatory</p> | <p>M.C.L.S. § 780.766 (2012) (2) [W]hen sentencing a defendant convicted of a crime, the court shall order . . . that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate.</p> |
| <p>Minnesota Generally discretionary; mandatory for some crimes</p> | <p>Minn. Stat. § 611A.04 (2012) (a) A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent. . . . (c) The court shall grant or deny restitution or partial restitution and shall state on the record its reasons for its decision on restitution if information relating to restitution has been presented.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Harm to a service animal caused by dog (§ 609.226) • Identity theft (§ 609.527) • Residential mortgage fraud (§ 609.822) |

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| <p>Mississippi Generally discretionary, but must indicate reasons for not ordering restitution; mandatory for some crimes</p> | <p>Miss. Code Ann. § 99-37-3 (2011) (1) When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim. ... (4) If the court determines that restitution is inappropriate or undesirable, an order reciting such finding shall be entered, which should also state the underlying circumstances for such determination.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Theft of metal from scrap metal dealer § 97-17-71 • Arson (§ 97-17-1) • ID theft (§ 97-45-19) • Stealing/interfering with railroad communications equipment (§ 97-25-35) • Animal cruelty (§ 97-41-16) or livestock theft (§ 97-17-53) • Timber theft (§ 97-17-59) • Home repair fraud (§ 97-23-103) • Motor vehicle theft (§ 97-17-61) • Malicious mischief (§ 97-17-67) |
| <p>Missouri Mandatory for some crimes</p> | <p>No general statute found; requirement of restitution seems to be established on crime-to-crime basis</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Forced labor & human trafficking (§ 566.218 R.S.Mo.) • Removal of certain collars from dogs with intent to prevent or hinder locating the dog (§ 578.028 R.S.Mo.) • Theft or damage to animal research facility (§ 578.409 R.S.Mo.) |
| <p>Montana Mandatory (where pecuniary loss present)</p> | <p>Mont. Code Anno., § 46-18-201 (2011) (5) [I]f a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.</p> |
| <p>Nebraska Discretionary (where there is injury to person or property or economic loss)</p> | <p>R.R.S. Neb. § 29-2280 (2012) A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. With the consent of the parties, the court may order restitution for the actual physical injury or property damage or loss sustained by the victim of an uncharged offense or an offense dismissed pursuant to plea negotiations.</p> |
| <p>Nevada Mandatory (but no guidance given for when restitution is “appropriate”)</p> | <p>Nev. Rev. Stat. Ann. § 176.033 (2012) 1. If a sentence of imprisonment is required or permitted by statute, the court shall: (c) If restitution is appropriate, set an amount of restitution for each victim of the offense and for expenses related to extradition . . .</p> <p style="text-align: center;"><u>Explicitly mandatory for roughly 60 crimes:</u></p> <ul style="list-style-type: none"> • Several crimes committed by public officers (ex., falsely auditing or paying claim § 197.150; extortion § 197.170) • Several theft-related crimes (ex., participation in organized retail theft ring § 205.08345; fraudulent appropriation of property § 197.210) |

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| <p>Nevada, cont.</p> | <ul style="list-style-type: none"> • Several fraud-related crimes (ex., fraudulently selling real estate twice § 205.365; forgery § 205.090) • Abuse of older/vulnerable persons § 200.5099 • Acts of terrorism § 202.445 • Unlawful acts regarding computers § 205.4765 • Damage of property used in religion, transportation, etc. § § 206.125 |
| <p>New Hampshire Generally discretionary, but must indicate reason for not ordering restitution; mandatory for some crimes</p> | <p>RSA § 651:63 (2012) I. Any offender may be sentenced to make restitution in an amount determined by the court. In any case in which restitution is not ordered, the court shall state its reasons therefor on the record or in its sentencing order.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Human trafficking (RSA § 633:10) • Interference with cemetery or burial ground (RSA § 635:8)3 • Insurance fraud (RSA § 638:20) • Identity fraud (RSA § 638:26) |
| <p>New Jersey Generally discretionary; mandatory for some crimes and whenever state is victim</p> | <p>N.J. Stat. § 2C:43-3 (2012) A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both . . . In any case where the victim of the offense is any department or division of State government, the court shall order restitution to the victim.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Murder (§ 2C:11-3c) • Kidnapping (§ 2C:13-4) • Human trafficking (§ 2C:13-8) • Graffiti (§ 2C:17-3) • Burglary (§ 2C:18-6) • Theft of services (§ 2C:20-8) • Identity fraud (§ 2C:21-17.4) • Motor vehicle theft (§ 2C:43-2.1) |
| <p>New Mexico Mandatory</p> | <p>N.M. Stat. Ann. § 31-17-1 (2012) A. It is the policy of this state that restitution be made by each violator of the Criminal Code to the victims of his criminal activities to the extent that the defendant is reasonably able to do so.</p> |
| <p>New York Discretionary, but must indicate reason for not ordering restitution</p> | <p>NY CLS Penal § 60.27 (2012) 1. In addition to any of the dispositions authorized by this article, the court shall consider restitution or reparation to the victim of the crime and may require restitution or reparation as part of the sentence imposed upon a person convicted of an offense. In the event that restitution or reparation are not ordered, the court shall clearly state its reasons on the record.</p> |
| <p>North Carolina Mandatory to consider; mandatory for some crimes</p> | <p>N.C. Gen. Stat. § 15A-1340.34 (2012) (found in Article 81(C): Restitution) (a) When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question . . . (b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter**, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.</p> |

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| <p>North Carolina, cont.</p> | <p>** Article 46: Victims' Rights Act N.C. Gen. Stat. § 15A-834 (2012) A victim has the right to receive restitution as ordered by the court pursuant to Article 81C of Chapter 15A of the General Statutes. [This loops back to the original statute, which is found in Article 81(C). However, § 15A-830(7) defines a victim by enumerating several types of crimes; though it does not specifically link this to mandatory restitution, it looks as if it enumerates what crimes mandate restitution.]</p> |
| <p>North Dakota Generally discretionary, but must indicate reason for not ordering restitution; mandatory for human trafficking</p> | <p>N.D. Cent. Code, § 12.1-32-08 (2012) 1. Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages . . . shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Human trafficking (§ 12.1-40-01) |
| <p>Ohio Generally discretionary; mandatory for some crimes</p> | <p>ORC Ann. 2929.18 (2012) (A) [T]he court imposing a sentence upon an offender for a felony . . . may impose upon the offender a fine in accordance with that section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following: (1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Kidnapping (§ 2905.01) • Abduction (§ 2905.02) • Compelling/promoting prostitution (§ 2907.21-22) • Illegal use of minor in nudity-oriented material (§ 2907.323) • Medicaid eligibility fraud (§ 2913.401) • Endangering children (§ 2919.22) • Theft while in office (§ 2921.41) • Engaging in a pattern of corrupt activity (§ 2923.32) |
| <p>Oklahoma Mandatory (where there is injury to person or property or economic loss)</p> | <p>22 Okl. St. § 991f (2012) C. 1. Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the crime victim suffered injury, loss of income, or out-of-pocket loss, the individuals criminally responsible shall be sentenced to make restitution.</p> <p style="text-align: center;"><u>Also mandatory for:</u></p> <ul style="list-style-type: none"> • Mistreatment of service animals (§ 649.3) • Medical battery (§ 650.11) • Human trafficking (§ 748) • Several terrorism-related crimes (§ 1268) • Dumping of trash on public or private property (§ 1761.1) |

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| <p>Oregon Mandatory (where economic damages present)</p> | <p>ORS § 137.106 (2011) (1) When a person is convicted of a crime, or a violation as described in ORS 153.008, that has resulted in economic damages, the district attorney shall investigate and present to the court, prior to the time of sentencing, evidence of the nature and amount of the damages. If the court finds from the evidence presented that a victim suffered economic damages, in addition to any other sanction it may impose, the court shall include one of the following in the judgment: (a) A requirement that the defendant pay the victim restitution in a specific amount that equals the full amount of the victim's economic damages as determined by the court. (b) A requirement that the defendant pay the victim restitution, and that the specific amount of restitution will be established by a supplemental judgment based upon a determination made by the court within 90 days of entry of the judgment. (c)(A) A requirement that the defendant pay the victim restitution in a specific amount that is less than the full amount of the victim's economic damages, with the consent of the victim.</p> |
| <p>Pennsylvania Mandatory (where there is injury or loss of property)</p> | <p>18 Pa.C.S. § 1106 (2012) (a) <i>General rule.</i> --Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury [actual bodily harm, including pregnancy, directly resulting from the crime] directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.</p> |
| <p>Rhode Island Generally discretionary; mandatory for some crimes</p> | <p>R.I. Gen. Laws § 12-19-32 (2012) [A] judge at the time of sentencing may order restitution which may be in the form of monetary payment or some type of community restitution.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Sale of stolen articles (§ 12-19-32.1) • Assault on persons 60+ years old (§ 11-5-10.1) • Abuse of adults with severe impairments (§ 11-5-12) • Unlawful breaking and entering of dwelling or house (§ 11-8-2) • Desecration of grave (§ 11-20-2) • False report of crime (§ 11-32-2) • Removal of book or other property from library (§ 11-41-14.1) • Vandalism (§ 11-44-1) • Injury to public property (§ 11-44-12) • Human trafficking (§ 11-67-4) |
| <p>South Carolina Mandatory (for pecuniary damages)</p> | <p>S.C. Code Ann. § 17-25-322 (2011) (A) When a defendant is convicted of a crime which has resulted in pecuniary damages or loss to a victim, the court must hold a hearing to determine the amount of restitution due the victim or victims of the defendant's criminal acts. The restitution hearings must be held unless the defendant in open court agrees to the amount due, and in addition to any other sentence which it may impose, the court shall order the defendant make restitution or compensate the victim for any pecuniary damages.</p> |
| <p>South Dakota Mandatory</p> | <p>S.D. Codified Laws § 23A-28-1 (2012) It is the policy of this state that restitution shall be made by each violator of the criminal laws to the victims of the violator's criminal activities to the extent that the violator is reasonably able to do so.</p> |

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| <p>Tennessee Generally discretionary; mandatory for some crimes</p> | <p>Tenn. Code Ann. § 39-11-118 (2012) In addition to the punishment authorized by the specific statute prohibiting the conduct, it is a part of the punishment for any offense committed in this state that the person committing the offense may be sentenced by the court to pay restitution to the victim or victims of the offense in accordance with the provisions of §§ 40-35-104(c)(2) and 40-35-304.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Involuntary labor servitude (§ 39-13-307) • Trafficking persons for forced labor or services (§ 39-13-308) • Distribution or delivery of any substance as an act of terrorism or as a hoax (§ 39-13-808) • Identify theft (§ 39-14-150) • Removal of transmitting collars or microchip implants from dogs (§ 39-14-213) • Certain drug offenses (to government/victim whose property was destroyed or suffers damage as a result of the offense) (§ 39-17-417) • Stealing or feloniously taking or receiving property, or defrauding another of property (§ 40-20-116) |
| <p>Texas Generally discretionary, but must indicate reason for not ordering restitution; mandatory for some crimes</p> | <p>Tex. Code Crim. Proc. art. 42.037 (2012) (a) [T]he court that sentences a defendant convicted of an offense may order the defendant to make restitution to any victim of the offense or to the compensation to victims of crime fund...to the extent that fund has paid compensation to or on behalf of the victim. If the court does not order restitution or orders partial restitution under this subsection, the court shall state on the record the reasons for not making the order or for the limited order.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Kidnapping or abducting children (Art. 42.0371) • Human trafficking or prostitution of children (Art. 42.0372) |
| <p>Utah Generally discretionary; mandatory for some crimes</p> | <p>Utah Code Ann. § 77-38a-301 (2012) In a criminal action, the court may require a convicted defendant to make restitution.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Graffiti (§ 76-6-107) • Theft of utility or cable television services (§ 76-6-409.3) • Identity theft (§ 76-6-1102) [or must state reasons for not requiring] |
| <p>Vermont Generally discretionary, but must indicate reason for not ordering restitution; mandatory for some crimes</p> | <p>13 V.S.A. § 7043 (2012) (a) (1) Restitution shall be considered in every case in which a victim of a crime has suffered a material loss. ... (f) (1) When restitution is requested but not ordered, the court shall set forth on the record its reasons for not ordering restitution.</p> <p style="text-align: center;"><u>Mandatory for:</u></p> <ul style="list-style-type: none"> • Bad checks (§ 2022) • Human trafficking (§ 2657) |

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| <p>Virginia Mandatory (where there is property damage or loss); mandatory for some enumerated crimes</p> | <p>Va. Code Ann. § 19.2-305.1 (2012) B. [A]ny person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for any medical expenses or expenses directly related to funeral or burial incurred by the victim.</p> <p style="text-align: center;"><u>Also mandatory for:</u></p> <ul style="list-style-type: none"> • Child pornography/sexual violations (§ 18.2-374.1, 18.2-374.1:1, 18.2-374.3) • Removal of animal transmitting device (§ 18.2-97.1) • Identity theft (§ 18.2-186.3) |
| <p>Washington Mandatory (where there is injury or damage to/loss of property), unless compelling and extraordinary reasons found; must indicate reasons</p> | <p>R.C.W. § 9.94A.753 (2012) (5) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. ... (7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. <i>See also separate Washington information</i></p> |
| <p>West Virginia Mandatory (unless found to be impractical); if restitution not ordered, must indicate reason</p> | <p>W. Va. Code § 61-11A-4 (2012) (a) The court, when sentencing a defendant convicted of a felony or misdemeanor causing physical, psychological or economic injury or loss to a victim, shall order . . . that the defendant make restitution to any victim of the offense, unless the court finds restitution to be wholly or partially impractical as set forth in this article. If the court does not order restitution, or orders only partial restitution, under this section, the court shall state on the record the reasons therefor.</p> |
| <p>Wisconsin Mandatory (unless substantial reason or hardship found); if restitution not ordered, must indicate reason</p> | <p>Wis. Stat. § 973.20 (2012) (1r) When imposing sentence or ordering probation for any crime, other than a crime involving conduct that constitutes domestic abuse for which the defendant was convicted, the court . . . shall order the defendant to make full or partial restitution under this section to any victim, unless the court finds substantial reason not to do so and states the reason on the record. When imposing sentence or ordering probation for a crime involving conduct that constitutes domestic abuse under s. 813.12 (1) (am) or 968.075 (1) (a) for which the defendant was convicted or that was considered at sentencing, the court . . . shall order the defendant to make full or partial restitution under this section to any victim, unless the court finds that imposing full or partial restitution will create an undue hardship on the defendant or victim and describes the undue hardship on the record.</p> |
| <p>Wyoming Mandatory (unless defendant insolvent)</p> | <p>Wyo. Stat. § 7-9-102 (2012) [T]he court shall, upon conviction for any misdemeanor or felony, order a defendant to pay restitution to each victim as determined under W.S. 7-9-103 and 7-9-114 unless the court specifically finds that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay.</p> |