

CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

Top portion of form to be completed by the MCLE Provider

Provider Name: Ventura County District Attorney's Office

Provider Number: 1130

Title of Activity: Restitution

Date(s) of Activity: October 6, 2016

Time of Activity: 2:00 - 3:30 pm

Location of Activity (City, State): HOJ: Room 308 Ventura, CA

Total California MCLE Credit Hours for the above activity are 1.50, including the following sub-field credits:

- Legal Ethics _____
- Elimination of Bias in the Legal Profession _____
- Prevention, Detection and Treatment of Substance Abuse/Mental Illness that Impairs Professional Competence _____

Bottom portion of form to be completed by the Attorney after participation in the above-referenced activity

By signing below, I certify that I participated in all, or some*, of the activity described above and am therefore entitled to the following MCLE credit hours -

Total California MCLE Credit Hours 1.50, including the following sub-field credits

Legal Ethics _____

Elimination of Bias in the Legal Profession _____

Prevention, Detection and Treatment of Substance Abuse / Mental Illness that Impairs Professional Competence _____

(You may not claim credit for sub-fields unless the Provider is granting credit in those areas and you participated in those portions of the activity)

Print Your Name _____

Your California State Bar Number _____

Signature _____

* partial participation hours must be pro-rated

ACTIVITY EVALUATION FORM FOR CALIFORNIA MCLE

Please complete and return to Provider (Please Print)

Provider Name: Ventura County District Attorney's Office Provider Number: 1130

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Date(s) of Activity: October 6, 2016

Time of Activity: 2:00 - 3:30 pm

Location of Activity: HOJ: Room 308 Ventura, CA

Please indicate your evaluation of this course by completing the table below

Question	Yes	No	Comments
Did this program meet your educational objectives?	<input type="checkbox"/>	<input type="checkbox"/>	
Were you provided with substantive written materials?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the course update or keep you informed of your legal responsibilities?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the activity contain significant professional content?	<input type="checkbox"/>	<input type="checkbox"/>	
Was the environment suitable for learning (e.g., temperature, noise, lighting, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	

Please rate the instructor(s) of the course below

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
Danali Ibarra-Cortez, Paralegal	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

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Adult Restitution Fines – Quick Reference Sheet



RESTITUTION FINES

Restitution fines are a major source of funding for the State Restitution Fund (Fund) and the Victim Compensation and Government Claims Board (VCGCB). The VCGCB uses the Fund to assist victims and their families with economic losses suffered as a direct result of a qualifying crime.

Minimum and Maximum Fines by Year

Minimum fines are determined by the date of the crime, effective January 1st of each year

YEAR	2011 OR PRIOR	2012	2013	2014
Misdemeanor	\$100 – \$1,000	\$120 – \$1,000	\$140 – \$1,000	\$150 – \$1,000
Felony	\$200 – \$10,000	\$240 – \$10,000	\$280 – \$10,000	\$300 – \$10,000

(Penal Code, § 1202.4(b)(1))

- The fine cannot be stayed.
- The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. (Penal Code, § 1202.4(c).)
- Inability to pay is not a compelling and extraordinary reason for waiving the fine. (Penal Code, § 1202.4(c).)
- A separate hearing for the fine is not required. (Penal Code, § 1202.4(d).)

DETERMINING A FINE ABOVE THE MINIMUM

To set a misdemeanor or felony fine above the minimum, the court shall consider any relevant factors including, but not limited to (Penal Code, § 1202.4 (d).):

- Number of victims
- Seriousness and gravity of the offense
- Circumstances of its commission
- Economic gain derived by the defendant as a result of the crime
- Extent to which any other person suffered losses
- Pecuniary losses to the victim or his/her dependents
- Psychological harm to the victim or his/her dependents
- Defendant's inability to pay
- Defendant's future earning capacity

Defendant is presumed to be able to pay above the minimum restitution fine and the statute expressly places the burden on a defendant to prove lack of ability. (People v. Romero (1996) 43 Cal.App.4th 440, 449.)

A felony fine above the minimum MAY be determined by using the following formula: minimum fine x years sentenced x felony counts (of which the defendant is convicted, \$10,000 maximum). (Penal Code, § 1202.4(b)(2))

CIVIL JUDGMENT

Restitution fines and orders are enforceable as if they were civil judgments. (Penal Code, § 1214(a) & (b).)

DEFENDANT'S STATEMENT OF ASSETS

The defendant must file a statement of assets (Form CR 115) with the clerk no later than the defendant's sentencing date, unless otherwise directed by the court. (Penal Code, § 1202.4(f)(5)-(10).)

The defendant must file an updated financial statement with the clerk if there is an unpaid balance on a restitution order or fine 120 days prior to release from probation. (Penal Code, § 1202.4(f)(11).)

PROBATION REVOCATION FINE

A trial court shall impose a probation revocation restitution fine equal to the restitution fine whenever a sentence includes a period of probation. The probation revocation restitution fine shall be suspended unless probation is revoked. (Penal Code, § 1202.44.)

PAROLE, POST-RELEASE COMMUNITY SUPERVISION & MANDATORY SUPERVISION REVOCATION FINES

In every case where the sentence includes a period of parole, post-release community supervision, or mandatory supervision, a trial court shall impose a fine equal to the restitution fine. The parole revocation, post-release community supervision revocation, or mandatory supervision revocation fine shall be suspended unless revocation occurs. (Penal Code, § 1202.45.)

INCOME DEDUCTION ORDER

Restitution orders to victims require an order (Form CR-119) for income deduction on determination of defendant's ability to pay. The defendant bears the burden to show inability to pay. (Penal Code, § 1202.42.)

MANDATORY DIVERSION FEE/DEFERRED ENTRY OF JUDGMENT

\$100 - \$1,000 (Penal Code, § 1001.90(b) and (i).)

Diversion also means deferred entry of judgment pursuant to Chapter 2.5 (commencing with section 1000) of the Penal Code. Exception: Persons whose cases are diverted pursuant to Chapter 2.8 (commencing with section 1001.20) of the Penal Code.

CHILD ABUSE/MOLEST FINE

Additional restitution fines specifically for child abuse/molest crimes. Fine not to exceed \$1,000 for misdemeanor conviction and \$5,000 for felony conviction. Court must consider the defendant's ability to pay. The funds from this fine are deposited in the Restitution Fund and transferred to the county children's trust fund for the purposes of child abuse prevention. (Penal Code, § 294.)



Adult Restitution Orders – Quick Reference Sheet



RESTITUTION ORDERS

The court must order full restitution. A defendant's inability to pay shall not be considered by the court. (*Penal Code, § 1202.4(f) and (g).*)

Victim restitution is mandated by both the California Constitution and Penal Code, section 1202.4.

A sentence is invalid if the court fails to address restitution.
(*People v. Rowland (1997) 51 Cal.App.4th 1745, 1751.*)

WHO CAN RECEIVE RESTITUTION

- The victim – (*People v. Birkett (1999) 21 Cal.4th 226, 232.*)
- Victim's family, derivative victim, business entities and government
(*Penal Code, § 1202.4(k).*)
- Restitution Fund/Victim Compensation and Government Claims Board
(*Penal Code, § 1202.4(f)(4)(A).*)
- Insurance companies – as direct victims only *People v. Birkett, supra.*

Restitution includes, but is not limited to:

Value of stolen or damaged property, medical expenses, mental health expenses, lost wages or profits interest, relocation expenses, security expenses, non-economic losses for felony violations of *Penal Code, § 288*, retrofit expenses for a residence or vehicle, reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim, funeral/burial expenses, dental expenses, rehabilitation expenses, and support loss. (*Penal Code, § 1202.4(f).*)

The court has broad discretion to order restitution as a condition of probation consistent with the ends of fostering rehabilitation and protecting public safety.
(*Penal Code, § 1203.1(j).*)

BURDEN OF PROOF

The defendant has the burden of proof to show that the restitution recommendations in the probation report or the victim's estimates are inaccurate. The standard of proof for determining the amount of restitution is "preponderance of the evidence."
(*People v. Gemelli (2008) 161 Cal.App.4th 1539, 1542-1543.*)

JOINT AND SEVERAL LIABILITY

The court has the authority to order direct victim restitution paid by all defendants jointly and severally. (*People v. Blackburn (1999) 72 Cal.App.4th 1520, 1535.*)

TO BE DETERMINED

If the amount of losses is unknown at the time of sentencing, the amount shall be determined at the direction of the court. (*Penal Code, § 1202.4(f).*)

DUE PROCESS RIGHTS AND CONFRONTATION RIGHTS

A defendant's due process rights at a restitution hearing are very limited. Due process rights are satisfied when the defendant receives notice of the amount of restitution claimed, and the defendant has an opportunity to challenge the amount. A defendant does not have the right at a restitution hearing to cross-examine witnesses.
(*People v. Cain (2000) 82 Cal.App.4th 81.*)

PAYMENT BY INSURANCE COMPANIES & THIRD PARTIES

A victim is entitled to receive restitution regardless of whether the victim has been reimbursed in part or in full by insurance. (*People v. Birkett (1999) 21 Cal.4th 226.*)

The only time a defendant is entitled to an offset is when the defendant's insurance company has made a payment to the victim. (*People v. Bernal (2002) 101 Cal.App.4th 155.*)

Third-party indemnification or subrogation rights do not affect the amount of restitution that is to be ordered. (*Penal Code, § 1202.4(f)(2).*)

Checklist

- ☐ Defendant has filed a statement of assets
(Judicial Council Form CR-115) (*Penal Code, § 1202.4(f)(5)-(11).*)

Restitution Fines

- ☐ Misdemeanor or felony restitution fine (*Penal Code, § 1202.4(b)(1).*)
(Alternate fine formula: minimum fine x years sentenced x felony counts)
- ☐ Probation revocation restitution fine (same amount as restitution fine) (*PC § 1202.44*)
- ☐ Parole, post-release community supervision, and mandatory supervision revocation restitution fines (same amount as restitution fine) (*PC § 1202.45*)
- ☐ Diversion fee \$100 – \$1,000

Restitution Orders

- ☐ Amount ordered to victim(s)
- ☐ Identify each victim and restitution amount
- ☐ Amount ordered to the Victim Compensation & Government Claims Board
- ☐ Amount "To Be Determined" (If amount cannot be determined, set review date)
- ☐ Income deduction (Ability to Pay) (*Penal Code, § 1202.42.*)
- ☐ Notify victim to file a CDC Form 1707, if the defendant is sentenced to prison
- ☐ Prepare a CR-110 form for each victim and the VCGCB
- ☐ Send a copy of the completed CR-110 form or Minute Order to the VCGCB, if the restitution is in favor of the VCGCB

(Rev 07/13)



Juvenile Restitution Fines – Quick Reference Sheet

RESTITUTION FINES *Welfare and Institutions Code § 730.6(b)(1) and (2)* For minors found to be a person described in Welfare and Institutions Code § 602

Restitution fines are a major source of funding for the State Restitution Fund (Fund) and the Victim Compensation and Government Claims Board (VCGCB). The VCGCB uses the Fund to assist victims and their families with economic losses suffered as a direct result of a qualifying crime.

- **Misdemeanors - Not to exceed \$100**
- **Felonies - \$100 - \$1,000**
- The restitution fine shall be proportionate with the seriousness of the offense. (Welf. & Inst. Code, § 730.6(b).)
- The court may waive the felony fine only for compelling and extraordinary reasons. (Welf. & Inst. Code, § 730.6(g).)
- A separate hearing for the fine is not required. (Welf. & Inst. Code, § 730.6.)

SETTING THE FINE AMOUNT

The restitution fine shall be in addition to any other disposition or fine imposed and shall be imposed regardless of the minor's inability to pay. (Welf. & Inst. Code, § 730.6(c).)

Under Welfare and Institutions Code section 730.6(d)(1), the court shall consider any relevant factors including, but not limited to:

- Seriousness of the offense
- Extent to which any other person suffered losses
- Pecuniary losses to the victim or his/her dependents
- Psychological harm to the victim or his/her dependents
- Minor's economic gain
- Minor's ability to pay
- Minor's future earning capacity (Welf. & Inst. Code, § 730.6(d)(2).)
- The minor bears the burden of showing inability to pay. (Welf. & Inst. Code, § 730.6(d)(2).)

CONDITION OF PROBATION

The court shall require as a condition of probation the payment of restitution fines and orders imposed. (Welf. & Inst. Code, § 730.6(l).)

PRESUMPTION OF JOINT LIABILITY FOR FINES AND ORDERS

Pursuant to Welfare and Institutions Code section 730.7(a), a parent or guardian who has joint or sole legal and physical custody of the minor is rebuttably presumed to be jointly and severally liable with the minor for restitution orders, fines, and penalty assessments, up to the limits of Civil Code sections 1714.1 and 1714.3.

Under Welfare and Institutions Code section 730.7(a):

- Parent's or guardian's inability to pay is considered
- The parent or guardian has the burden of showing an inability to pay
- The court may consider parent's or guardian's present income and future earning capacity
- This section does not apply to foster parents

Under Welfare and Institutions Code section 729.5(b), prior to the hearing, the parent or guardian must be given notice that they may be held liable.

JUVENILE RESTITUTION STATUTES

- Welf. & Inst. Code § 729 Restitution for Victim of Battery on School Property
- Welf. & Inst. Code § 729.1 Restitution for Crime on Public Transit
- Welf. & Inst. Code § 729.5 Notice to Parents or Guardians
- Welf. & Inst. Code § 729.7 Performance of Service Contract Between Victim and Minor
- Welf. & Inst. Code § 730.6 Restitution Fines, Orders, Hearings, and Condition of Probation
- Welf. & Inst. Code § 730.7 Joint and Several Liability of Parents



Juvenile Restitution Orders – Quick Reference Sheet *Juvenile*

RESTITUTION ORDERS

It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Welfare and Institutions Code section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor. (Welf. & Inst. Code, § 730.6(a)(1).) The court SHALL order full restitution unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. (Welf. & Inst. Code, § 730.6(h).)

INVALIDITY OF SENTENCE

A sentence is invalid if the court fails to address restitution. (People v. Rowland (1997) 51 Cal.App.4th 1745, 1751.)

WHO CAN RECEIVE RESTITUTION

- The victim - (People v. Birkett (1999) 21 Cal.4th 226.)
- Immediate surviving family of the actual victim (Welf. & Inst. Code, § 730.6(j).)
- Restitution Fund/Victim Compensation and Government Claims Board (Welf. & Inst. Code, § 730.6(i).)
- Insurance companies – only if they are the direct victims
- People v. Birkett, supra.
- Corporations, partnerships, government, legal or commercial entities that are direct victims (Welf. & Inst. Code, § 730.6(k).)

Restitution shall be ordered in an amount to fully reimburse the victim(s) for all determined economic losses including all of the following:

Full or partial payment for the value of stolen or damaged property; medical expenses; wage or profits lost due to injury, caring for a minor victim, time spent as a witness or in assisting the police or prosecution by the victim, or if the victim is a minor, the minor's parents or guardians. (Welf. & Inst. Code, § 730.6(h)(1)-(4).)

The term "economic losses" is entitled to an expansive interpretation and a victim's right to restitution is to be broadly and liberally construed. (In re Johnny M. (2000) 100 Cal.App.4th 1128, 1132.)

CIVIL JUDGMENT

A restitution order is enforceable in the same manner as a civil judgment. (Welf. & Inst. Code § 730.6(i).)

SETTING THE AMOUNT

The court may use any rational method of fixing the amount of restitution, provided it is reasonably calculated to make the victim whole, and provided it is consistent with the purpose of rehabilitation. (In re Brittany L. (2002) 99 Cal. App.4th 1381.)

AMOUNT IS DETERMINED BY THE COURT

The amount of restitution is for the court to decide. The trial court may delegate to the probation officer the task of identifying losses and specifying the amount of restitution due. (In re Karen A. (2004) 115 Cal.App.4th 504.)

BURDEN OF PROOF

The defendant has the burden of proof to show that the restitution recommendations in the probation report or the victim's estimates are inaccurate. The standard of proof for determining the amount of restitution to be ordered is "preponderance of the evidence." (People v. Gemelli (2008) 161 Cal.App.4th 1539, 1542-1543.)

REIMBURSEMENT FROM INSURANCE OR THIRD PARTIES

The court is not to consider whether the victim has been, or will be, reimbursed from third parties or insurance, in ordering restitution, since the statute provides that the victim is entitled to be "fully reimbursed" for the amount of the loss. (In re Brittany L. (2002) 99 Cal.App.4th 1381.)

JOINT LIABILITY OF CO-OFFENDERS

When feasible, the court shall identify on the court order any co-offenders who are jointly and severally liable for victim restitution. (Welf. & Inst. Code, § 730.6(h)(4).)

The juvenile court is vested with discretion to apportion restitution in a manner that will effectuate the legislative objectives of making the victim whole and rehabilitating the minor. (In re S.S. (1995) 37 Cal.App.4th 543.)

AMOUNT UNKNOWN AT THE TIME OF SENTENCING

If the amount of loss cannot be ascertained at the time of sentencing, the amount shall be determined during the term of the commitment or probation. (Welf. & Inst. Code, § 730.6(h).)

CHECKLIST

Restitution Fines

- ☐ Misdemeanor not to exceed \$100
- ☐ Felony \$100 - \$1,000

Restitution Orders

- ☐ Identify each victim and the amount of restitution ordered for each victim
- ☐ Amount ordered to the Victim Compensation and Government Claims Board
- ☐ Amount each co-offender is to pay
- ☐ Amount "To Be Determined" (If amount cannot be determined, set review date)
- ☐ For a minor not committed to Division of Juvenile Justice (formerly CYA) set date for annual review of restitution (Welf. & Inst. Code, § 730.8.)
- ☐ Prepare a CR-110 for each victim and the VCGCB.

(Rev 02/09)