

Pennsylvania Restitution Laws

Restitution, an act of restoring to the proper owner something taken away, lost or surrendered; or an act of repaying or compensating for loss, damage or injury, holds offenders partially or fully accountable for the financial losses suffered by the victims of their crimes. The concept of restitution, which is at least 4,000 years old, is mentioned in several passages in the Bible. Although restitution was required in much of colonial America, its use died out in the nineteenth century. Restitution had a resurgence of interest in the United States in the 1930's with the establishment of penal laws permitting suspended sentences and probation. As the victims' rights movement gained momentum, restitution has become recognized as a critical tool for victims recovering from the financial and psychological impact of crime. From 1978 to 1995, the controlling statute in Pennsylvania gave courts the power, but did not require them to order restitution. According to the statute, courts were to consider the extent of the victim's injuries and could also consider any other matters, including the offender's ability to pay. In 1995, as part of a comprehensive change in criminal statutes, Pennsylvania implemented a statutory change making restitution mandatory.

Restitution has an important impact on both parties of a crime. For the victim, restitution repays some or all of the financial losses suffered as a result of the crime. For the offender, restitution serves as part of the punishment and as part of the rehabilitation process.

A review of the restitution process requires an understanding of some of the more salient issues from the sentencing of an offender to paying restitution and to the restitution collection process outlined in the statute. Listed below are excerpts from the statutes relating to the ordering of restitution. Excerpts related to the collections process are outlined later in this document.

Restitution for injuries to person or property (18 Pa. C.S. § 1106)

18 Pa. C.S. § 1106(A). General Rule: 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 directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.

18 Pa. C.S. § 1106(B). Condition of Probation or Parole: Whenever restitution has been ordered pursuant to subsection (A) and the offender has been placed on probation or parole, his compliance with such order may be made a condition of such probation or parole.

18 Pa. C.S. § 1106(C)(1)(i): The court shall order full restitution regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss.

18 Pa. C.S. § 1106(C)(1)(ii): If restitution to more than one person is set at the same time, the court shall set priorities of payment. However, when establishing priorities, the court shall order payment in the following order: (a) the victim, (b) the Crime Victim's Compensation Board; (c) any other government agency, which has

provided reimbursement to the victim as a result of the offender's criminal conduct; (d) any insurance company, which has provided reimbursement to the victim as a result of the defendant's criminal conduct.

18 Pa. C.S. § 1106(C)(2)(iii): The courts shall not order incarceration of a defendant for failure to pay restitution if the failure results from the offender's inability to pay.

18 Pa. C.S. § 1106(C)(3) and 18 Pa. C.S. § 1106(C)(4)(iii). Amending Restitution Orders: The court may alter or amend any order of restitution at any time or upon the recommendation of the District Attorney.

18 Pa. C.S. § 1106(D). Limitations of District Justices: Restitution ordered by a magisterial district judge shall be limited to the return of the actual property or its undisputed dollar amount or, where the claim for restitution does not exceed the civil jurisdictional limit specified in 42 Pa.C.S. § 1515(a)(3) and is disputed as to amount, the magisterial district judge shall determine and order the dollar amount of restitution to be made.

42 Pa. C.S. § 9728(c). Period of Time: The period of time during which these orders take effect may exceed the maximum term of imprisonment to which the offender could have been sentenced for the crimes of which he was convicted or the maximum term of confinement to which the offender was committed.

The Collection Process for restitution, reparation, fees, costs, fines and penalties.

The most recent amendments to the statutes relating to the collection of restitution, reparation, fees, costs, fines and penalties occurred in 1998 with the passage of PA Act 84. These amendments clarified the roles of each of the agencies within the criminal justice system and added authority to several agencies to enhance their role in the collections process. The overall process of restitution starts with the responsibility of the county district attorney to solicit restitution information from the victim and ends with the lifting of a civil judgment by the Prothonotary when the offender has completed payment of the economic sanctions imposed upon them.

Two of the most significant changes included in these 1998 amendments were the authorization of state and county jails to make monetary deductions from inmate accounts for the purpose of collecting restitution or other court-ordered obligations and the inclusion of restitution to crime victims, costs, fines or bail judgments pursuant to a criminal court order as an allowable item for garnishment of wages.

The success of these amendments can be seen in the work of the Pennsylvania Department of Corrections (DOC). Since 1998 the DOC has been deducting 20% of each deposit to an inmates account. In state fiscal year 2009/10, the DOC collected \$4.4M from the inmate accounts.

Listed below are the specific roles and responsibilities of the various agencies within the criminal justice system as it relates to the imposition and collection of restitution, reparation, fees, costs, fines and penalties.

18 Pa. C.S. § 1106(C)(3) and 18 Pa. C.S.A. § 1106(C)(4)(i) & (ii): *District Attorneys* are responsible for soliciting restitution information from the victim and making a recommendation to the court.

18 Pa. C.S. § 1106(C)(2): The *Court* shall specify the amount and method of restitution by (i) considering the extent of injury suffered by the victim; (ii) in a lump sum, by monthly installments or according to a just schedule; (iii) shall not order incarceration for failure to pay restitution if the offender is unable to pay; (iv) shall consider any other preexisting orders imposed upon the defendant.

42 Pa. C.S. 9728(b)(3): The *Clerk of Courts* are responsible for transmitting this information from the sentencing court to the probation department *and* to the county or state correctional institution to which the offender has been sentenced, a copy of all orders for restitution or amendments or alterations thereto, reparation, fees, costs, fines and penalties.

42 Pa. C.S. 9728(b)(1) and (b)(2): The *Clerk of Courts* must also send any judgments that exceed \$1,000 to the *Prothonotary* for filing as a judgment against the defendant, and may do the same for judgments that do not exceed \$1,000.

18 Pa. C.S. §1106(e): When ordered by a judge, the *County Probation Department* is the agency to collect restitution unless another agent is designated by the county commissioners with the approval of the president judge of the county or when ordered by a magisterial district judge, shall be made to the magisterial district judge.

42 Pa C.S. § 9728(b)(5): *DOC/County Correctional Facilities* are authorized to make monetary deductions from an inmates account for the purpose of collecting restitution or other court ordered financial obligations. The DOC/County Correctional Facility is responsible for transmitting to the county probation department the amount of money collected.

Administrative Office of Pennsylvania Courts (AOPC)

In 2003, the Supreme Court of Pennsylvania created the Uniform Disbursement Schedule or UDS, which prescribes the manner in which collected economic sanctions in criminal cases are disbursed. The UDS is a part of the larger AOPC Common Pleas Court Case Management System (CPCMS), which is a statewide system designed to track all Common Pleas Court cases in the Commonwealth. The UDS has been unfolding in counties over the last three years. AOPC completed the installation of the CPCMS in all 67 Pennsylvania counties in September of 2006.

The UDS is multifaceted providing the overall tracking of all money paid by the convicted offender while at the same time applying those payments in an manner outlined in the Supreme Court Order of March 2005 detailing the priority for payment of all fines, fees, costs, reparations, restitution, penalties and other remittances imposed and collected by the Criminal Division of the Courts of Common Pleas, Philadelphia Municipal Court, and any other entity on behalf of the Court using the CPCMS. These regulations, enumerated below, are effective from April 1, 2005.

I. Schedule for Standard Distribution of Funds Collected by the Criminal Division of the Courts of Common Pleas, Philadelphia Municipal Court, and any other entity on behalf of the Court Using the Common Pleas Criminal Court Case Management System (CPCMS).

A. All fines, fees, costs, reparations, restitution, penalties and other remittances imposed and collected by the Criminal Division of the Courts of Common Pleas, Philadelphia Municipal Court and any other entity on behalf of the Court using the CPCMS shall be distributed in the following prioritized order:

1. The collection agency fee provided for in 42 Pa.C.S. Section 9730.1 shall be paid first, but only in cases wherein the private collection agency has secured the funds from the defendant or a third party and the payment is made to the court. No more than 25% of each payment secured from the defendant by the private collection agency may be applied towards this fee.
2. The Crime Victim Compensation Fund and Victim Witness Services Fund shall be paid first, but only in cases in which the defendant has been sentenced to incarceration, probation or is admitted into an accelerated rehabilitative disposition program (see 18 P.S. § 11.1101). Otherwise, these costs shall be distributed in accordance with subsection (A)(5) of these regulations.
3. At least 50% of any additional payment shall go to restitution until it is paid in full (see 42 Pa.C.S. § 9728(g.1)). When restitution is ordered to more than one recipient at the same time, the court shall set the priority of payment as follows, in accordance with 18 Pa.C.S. § 1106(c)(1)(ii)(A)-(D):
 - i. The victim;
 - ii. The Crime Victim's Compensation Board;
 - iii. Any other governmental agency which has provided reimbursement to the victim as a result of the defendant's criminal conduct;
 - iv. Any insurance company which has provided reimbursement to the victim as a result of the defendant's criminal conduct.
4. Judicial Computer Project/Access To Justice (JCS/ATJ) Fee (see 42Pa.C.S. § 3733(a.1)).
5. Electronic monitoring fees, offender supervision fees (as set forth in 18 P.S. § 11.1102(c)), alcohol highway safety school fees (see 75 Pa.C.S. § 1548(b)),

service fees (such as sheriff's fees set forth in 42 P.S. § 21101 et. seq., and constable's fees set forth in 42 Pa.C.S. § 2950), transcript fees (see Pa.R.J.A. No. 5000.7), witness fees (as provided for in 42 Pa.C.S. § 5903), and other similar fees shall be paid based upon a pro-rated formula, unless the fees are prioritized by court order or the judicial district. The Administrative Office of Pennsylvania Courts may preclude a fee from being classified as an "other similar fee". The amount of the payment allocated to each outstanding item shall be determined by dividing the outstanding balance for the individual item by the combined total of the outstanding balances for all items. The resulting number is then multiplied by the amount of the payment to determine how much of the payment shall be allocated to the outstanding balance of the individual item involved.

6. All other fines, fees, costs, reparations, penalties and other remittances except for judgment or satisfaction fees shall be distributed based upon a pro-rated formula. Specifically, the amount of the payment allocated to each outstanding item shall be determined by dividing the outstanding balance for the individual item by the combined total of the outstanding balances for all items. The resulting number is then multiplied by the amount of the payment to determine how much of the payment shall be allocated to the outstanding balance of the individual item involved.
7. Fees charged by the clerk of courts, prothonotary, other entity in the county responsible for the distribution and disbursement of all fines, fees, costs, reparations, restitution, penalties, or other remittances, or the Clerk of Philadelphia Municipal Court for the entry or satisfaction of a civil judgment related to a criminal proceeding, as set forth in 42 Pa.C.S. § 1725, 42 P.S. §§ 21010, 21042, and 21071 shall be paid last. The amount of the payment allocated to each fee shall be determined by dividing the outstanding balance for the individual fee by the combined total of the outstanding balances for both fees. The resulting number is then multiplied by the amount of the payment to determine how much of the payment shall be allocated to the outstanding balance of the individual fee involved.

B. Each payment shall be applied to a single case, unless otherwise ordered by the court.

II. The county probation department or other agent designated to collect all fines, fees, costs, reparations, restitution, penalties and other remittances pursuant to 42 Pa.C.S. § 9728 shall use the Common Pleas Criminal Court Case Management System when performing collection related activities.

III. Nothing in these regulations shall be applicable to the collection and/or distribution of any filing fee which is authorized by law. Filing fees shall include but not be limited to the clerk of courts automation fee set forth in 42 Pa.C.S. Section 1725.4(b).