

Title 13 : Crimes and Criminal Procedure

Chapter 221 : Judgment, Sentence, and Execution

Subchapter 002 : Sentence and Commitment

(Cite as: 13 V.S.A. § 7043)

- **§ 7043. Restitution**

(a)(1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title, has suffered a material loss.

(2) For purposes of this section, “material loss” means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.

(3) In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, “material loss” shall also mean:

(A) attorney’s fees and costs; and

(B) the greater of either:

(i) the gross income or value of the labor performed for the offender by the victim; or

(ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. § 385.

(b)(1) When ordered, restitution may include:

(A) return of property wrongfully taken from the victim;

(B) cash, credit card, or installment payments paid to the Restitution Unit; or

(C) payments in kind, if acceptable to the victim.

(2) In the event of a victim’s crime-related death, the court may, at the request of the Restitution Unit, direct the Unit to pay up to \$10,000.00 from the Restitution Fund to the victim’s estate to cover future uninsured material losses caused by the death.

(c) Restitution hearing.

(1) Unless the amount of restitution is agreed to by the parties at the time of sentencing, the court shall set the matter for a restitution hearing.

(2) Prior to the date of the hearing, the prosecuting attorney shall provide the defendant with a statement of the amount of restitution claimed together with copies of bills that support the claim for restitution. If any amount of the restitution claim has been paid by the Victims Compensation Fund, the prosecuting attorney shall provide the defendant with copies of bills submitted by the Victims Compensation Board pursuant to section 5358a of this title.

(3) Absent consent of the victim, medical and mental health records submitted to the Victims Compensation Board shall not be discoverable for the purposes of restitution except by order of the court. If the defendant files a motion to view copies of such records, the prosecuting attorney shall file the records with the court under seal. The court shall conduct an in camera review of the records to determine what records, if any, are relevant to the parties' dispute with respect to restitution. If the court orders disclosure of the documents, the court shall issue a protective order defining the extent of dissemination of the documents to any person other than the defendant, the defendant's attorney, and the prosecuting attorney.

(d) In awarding restitution, the court shall make findings with respect to:

(1) The total amount of the material loss incurred by the victim. If sufficient documentation of the material loss is not available at the time of sentencing, the court shall set a hearing on the issue, and notice thereof shall be provided to the offender.

(2) The offender's current ability to pay restitution, based on all financial information available to the court, including information provided by the offender.

(e)(1) An order of restitution shall establish the amount of the material loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection (l) of this section. Notwithstanding 12 V.S.A. chapter 113 or

any other provision of law, interest shall not accrue on a restitution judgment.

(2)(A) Every order of restitution shall:

(i) include the offender's name, address, telephone number, and Social Security number, provided that the Social Security number is redacted pursuant to the Vermont Rules for Public Access to Court Records;

(ii) include the name, address, and telephone number of the offender's employer; and

(iii) require the offender, until his or her restitution obligation is satisfied, to notify the Restitution Unit within 30 days if the offender's address, telephone number, or employment changes, including providing the name, address, and telephone number of each new employer.

(B) [Repealed.]

(3) An order of restitution may require the offender to pay restitution for an offense for which the offender was not convicted if the offender knowingly and voluntarily executes a plea agreement that provides that the offender pay restitution for that offense. A copy of the plea agreement shall be attached to the restitution order.

(f)(1) If not paid at the time of sentencing, restitution may be ordered as a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole if the convicted person is sentenced to preapproved furlough, probation, or supervised community sentence, or is sentenced to imprisonment and later placed on parole. A person shall not be placed on probation solely for purposes of paying restitution. An offender may not be charged with a violation of probation, furlough, or parole for nonpayment of a restitution obligation incurred after July 1, 2004.

(2) The Department of Corrections shall work collaboratively with the Restitution Unit to assist with the collection of restitution. The Department shall provide the Restitution Unit with information about the location and employment status of the offender.

(g)(1) When restitution is requested but not ordered, the court shall set forth on the record its reasons for not ordering restitution.

(2)(A) If restitution was not requested at the time of sentencing as the result of an error by the State, or if expenses arose after the entry of a restitution order, the victim may request restitution payable from the Restitution Fund. Restitution paid under this subdivision shall be payable from the Restitution Fund and shall not be payable by the offender. If the restitution is for expenses that arose after the entry of a restitution order, the restitution shall be capped at \$1,000.00.

(B) A request under this subdivision shall be filed with the Restitution Unit within one year after the imposition of sentence or the entry of the restitution order.

(h) Restitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.

(i)(1) The court shall transmit a copy of a restitution order and the plea agreement, if any, to the Restitution Unit, which shall make payment to the victim in accordance with section 5363 of this title.

(2) To the extent that the Victims Compensation Board has made payment to or on behalf of the victim in accordance with chapter 167 of this title, restitution, if imposed, shall be paid to the Restitution Unit, which shall make payment to the Victims Compensation Fund.

(j) The Restitution Unit may bring an action, including a small claims procedure, on a form approved by the Court Administrator, to enforce a restitution judgment order entered by the Criminal Division of the Superior Court. The action shall be brought against the offender in the Civil Division of the Superior Court of the unit where the offender resides or in the unit where the order was issued. In an action under this subsection, a restitution order issued by the Criminal Division of the Superior Court shall be enforceable in the Civil Division of the Superior Court or in a small claims procedure in the same manner as a civil judgment. Superior and Small Claims Court filing fees shall be waived for an action brought under this subsection.

(k) All restitution payments shall be made to the Restitution Unit, with the exception of restitution relating to a conviction for welfare fraud ordered under this section and recouped by the Economic Services Division. The Economic Services Division shall provide the Restitution Unit with a monthly report of all restitution collected through recoupment. This subsection shall have no effect upon the collection or recoupment of restitution ordered under Title 33.

(l) The sentencing court may modify the payment schedule of a restitution order if, upon motion by the Restitution Unit or the offender, the court finds that modification is warranted by a substantial change in circumstances.

(m)(1) After an enforcement action is filed pursuant to subsection (j) of this section, any further proceedings related to the action shall be heard in the court where it was filed. The court shall set the matter for hearing and shall provide notice to the Restitution Unit, the victim, and the offender. Upon filing of a motion for financial disclosure, the court may order the offender to appear at the hearing and disclose assets and liabilities and produce any documents the court deems relevant.

(2) If the court determines the offender has failed to comply with the restitution order, the court may take any action the court deems necessary to ensure the offender will make the required restitution payment, including:

(A) amending the payment schedule of the restitution order;

(B) ordering, in compliance with the procedures required in Rule 4.1 of the Vermont Rules of Civil Procedure, the disclosure, attachment, and sale of assets and accounts owned by the offender;

(C) ordering trustee process against the offender's wages; or

(D) ordering the suspension of any recreational licenses owned by the offender.

(3) If the court finds that the offender has an ability to pay and willfully refuses to do so, the offender may be subject to civil contempt proceedings under 12 V.S.A. chapter 5.

(n)(1) Any monies owed by the State to an offender who is under a restitution order, including Vermont Lottery winnings, unclaimed property, and tax refunds, shall be used to discharge the restitution order to the full extent of the unpaid total financial losses, regardless of the payment schedule established by the courts.

(2) The Office of the Treasurer shall, prior to delivery or payment of unclaimed property valued at \$50.00 or more to a claimant pursuant to 27 V.S.A. § 1255, determine whether the claimant has an outstanding restitution order.

(A) The Restitution Unit shall inform the Treasurer of persons with outstanding restitution orders. Each person subject to such an order shall be identified by name and Social Security or federal identification number.

(B) If any such claimant owes restitution, the Restitution Unit, after notice to the owner, may request and the Treasurer shall transfer unclaimed property of such owner valued at \$50.00 or more to the Restitution Unit to be applied to the amount of restitution owed. The notice shall advise the owner of the action being taken and, if he or she is not the person liable under the Restitution Judgment Order, the right to appeal the setoff; or advise the owner if the underlying conviction was vacated or is under appeal.

(3) When an offender is entitled to a tax refund, any restitution owed by the offender shall be withheld from the refund pursuant to 32 V.S.A. chapter 151, subchapter 12.

(4)(A) For all Vermont Lottery games, the Commissioner of Liquor and Lottery shall, before issuing prize money of \$500.00 or more to a winner, determine whether the winner has an outstanding restitution order. If the winner owes restitution, the Commissioner of Liquor and Lottery shall withhold the entire amount of restitution owed and pay it to the Restitution Unit. The remainder of the winnings, if any, shall be sent to the winner. The winner shall be notified by the Restitution Unit of the offset prior to payment to the victim and given a period not to exceed 20 days to contest the accuracy of the information.

(B) The Restitution Unit shall inform the Commissioner of Liquor and Lottery of persons with outstanding restitution orders upon request. Each person subject to such an order shall be identified by name, address, and Social Security number.

(C) If a Vermont Lottery winner has an outstanding restitution order and an outstanding child support order, the Lottery winnings shall be offset first pursuant to 15 V.S.A. § 792 by the amount of child support owed, and second pursuant to this subsection by the amount of restitution owed. The remainder of the winnings, if any, shall be sent to the winner.

(5) Unless otherwise provided, monies paid under this subsection shall be paid directly to the Restitution Unit.

(o) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the Court Administrator. The disclosure of an offender aged 18 or older shall include copies of the offender's most recent State and federal tax returns. The court shall provide copies of the form and the tax returns to the Restitution Unit.

(p) An obligation to pay restitution is part of a criminal sentence and is:

(1) nondischargeable in the U.S. Bankruptcy Court to the maximum extent provided under 11 U.S.C. §§ 523 and 1328;

(2) not subject to any statute of limitations; and

(3) not subject to the renewal of judgment requirements of 12 V.S.A. § 506.

(q) A transfer of property made with the intent to avoid a restitution obligation shall be deemed a fraudulent conveyance for purposes of 9 V.S.A. chapter 57, and the Restitution Unit shall be entitled to the remedies of creditors provided under 9 V.S.A. § 2291. (Added 1983, No. 229 (Adj. Sess.), § 3; amended 1989, No. 291 (Adj. Sess.), § 3; 1993, No. 169 (Adj. Sess.), § 2, eff. June 3, 1993; 1997, No. 148 (Adj. Sess.), § 63, eff. April 29, 1998; 2001, No. 134 (Adj. Sess.), § 3; 2003, No. 57, § 6, eff. July 1, 2004; 2003, No. 92 (Adj. Sess.), § 5; 2005, No. 51, § 5; 2005, No. 162 (Adj. Sess.), § 3, eff. Jan. 1, 2007; 2007, No. 40, § 6; 2009, No. 154 (Adj. Sess.), § 114; 2011, No. 55, §§ 7, 14, 15; 2011, No. 145 (Adj. Sess.), § 5; 2011, No. 145 (Adj. Sess.), § 7, eff. May 15, 2012; 2013, No. 34, § 9; 2013, No. 126 (Adj. Sess.), § 3; 2015, No. 96 (Adj. Sess.), § 1; 2019, No. 73, § 23.)