



**AVENUES OF FINANCIAL RECOVERY FOR CRIME VICTIMS:
A BRIEF COMPARISON OF ADMINISTRATIVE COMPENSATION,
CRIMINAL RESTITUTION, AND CIVIL DAMAGES**

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	STATE ADMINISTRATIVE VICTIM COMPENSATION	CRIMINAL RESTITUTION	CIVIL DAMAGES
What is this?	<ul style="list-style-type: none"> Administrative compensation is a form of financial assistance provided by the state to aid crime victims, their families and other eligible claimants. A claimant may seek reimbursement for covered losses caused by a crime; and the state pays the claimant out of a victims' compensation fund, which consists of moneys collected from various sources such as fines/assessments paid by convicted criminal offenders, portions of punitive damages collected from civil defendants, and federal funding. 	<ul style="list-style-type: none"> Restitution is a court-ordered award that directs a convicted offender to pay his/her victims for the the economic losses that they suffered as a result of the crime. A restitution award becomes part of the criminal judgment and payment of restitution may be ordered as an independent component of a sentence, as a condition of probation, and/or as a condition of parole. 	<ul style="list-style-type: none"> A monetary award for civil damages is made after the offender or other responsible party is found to be liable to the plaintiff-victim in a civil lawsuit. Civil damages may include compensatory damages and punitive damages.
What is the source of the right?	<ul style="list-style-type: none"> The right to administrative victim compensation is established by state law. 	<ul style="list-style-type: none"> The right to restitution from the offender is established by state constitutions and state/federal statutes. 	<ul style="list-style-type: none"> The right to seek civil damages for personal injuries is established by federal and state constitutions and statutes.
Are all victims of a criminal offense eligible?	<ul style="list-style-type: none"> No. The definition of eligible claimants varies, but many programs limit eligibility to certain crime victims, <i>e.g.</i>, only victims of certain criminal offenses such as violent 	<ul style="list-style-type: none"> No. The definition of a crime "victim" for purposes of general victims' rights and the right to restitution vary; some states restrict restitution to victims of 	<ul style="list-style-type: none"> Yes.

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	crimes or person (not property) crimes; only victims who have cooperated with law enforcement; only victims who did not commit a crime at the time of the offense or contribute to the injuries.	certain criminal offenses.	
Are family members of a direct victim eligible?	<ul style="list-style-type: none"> • Generally yes if the family members suffered an injury as a result of the crime and the state’s eligibility requirements include those members. • Child-witnesses of violent crimes and other third parties who suffered a loss as a result of a crime may also be eligible. 	<ul style="list-style-type: none"> • Generally yes if the family members satisfy (i) the legal definition of “victim” for purposes of victims’ rights and/or restitution, or (ii) any other provision in the restitution laws that may allow third parties to recover in restitution. 	<ul style="list-style-type: none"> • Yes, for certain torts.
Does the victim have to report the crime to the police?	<ul style="list-style-type: none"> • Generally yes. There may be exceptions for certain victims. • Almost all states have timing requirements —<i>e.g.</i>, must report within 72 hours of the crime or discovery of the injury—with exceptions for certain victims or good cause. 	<ul style="list-style-type: none"> • While there is no explicit requirement that the victim report the crime, someone has to report the crime to initiate the criminal cases. 	<ul style="list-style-type: none"> • No.
Is the victim required to wait for criminal prosecution and/or conviction before submitting a claim?	<ul style="list-style-type: none"> • No. 	<ul style="list-style-type: none"> • Yes, a formal request for restitution is typically submitted to the court only upon or after a conviction. 	<ul style="list-style-type: none"> • No. • The victim should consult with a civil lawyer to discuss the pros/cons of filing a civil action before, during or after the criminal prosecution.
How does the victim submit a claim?	<ul style="list-style-type: none"> • Each state’s victim compensation program has its own application form and procedures. The form may be downloadable online; or available by request via telephone/mail or in-person from the police, prosecutor and local victim services staff. • Visit your state’s victim compensation program website for more information. The website link may be accessible via NCVLI’s website, www.ncvli.org: go to the Victim 	<ul style="list-style-type: none"> • Generally no formal “application forms” but some courts or district/county attorney’s offices may have a restitution request form. • The request for restitution is usually submitted to the court via the prosecutor; the writer of the presentence report; and the victim impact statement. • When the victim is represented by his/her own personal attorney, the request may 	<ul style="list-style-type: none"> • The victim must commence a civil action by filing either a complaint or counterclaim that alleges claims for relief. • Rules and procedures for civil lawsuits vary depending on the state and local court rules. • The plaintiff-victim is

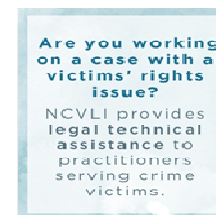
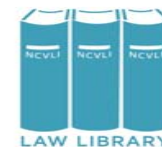
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	<p>Law Library and click “Victim Resources Map.</p> <ul style="list-style-type: none"> • Help with the application form may be available via online resources, the local victim services program staff, or a private attorney. 	<p>also be submitted via an independent restitution memorandum filed with the court before sentencing.</p>	<p>typically represented by a civil attorney. The plaintiff-victim may also represent him/herself but being represented by an attorney trained in dealing with legal complications generally offers a better chance for a successful lawsuit.</p>
<p>Is there a deadline for submitting/filing a claim?</p>	<ul style="list-style-type: none"> • Generally yes. • Almost all states have timing requirements—<i>e.g.</i>, must file claim application within six months or two years—with exceptions for certain victims or good cause. • Many states require claimants to have first sought insurance or other sources of reimbursement. • Many states allow supplemental applications. 	<ul style="list-style-type: none"> • Yes, usually before sentencing. • State statutes may provide for additional time—<i>e.g.</i>, 90 days after sentencing—to submit final calculation of losses, provided that certain requirements are met. • If the victim misses a submission deadline due to a violation of his/her rights or other matters beyond his/her control—<i>e.g.</i>, a failure to receive notice of sentencing—courts have power to allow the late request. • Some statutes allow the victim to submit supplemental requests for restitution if the victim discovers additional losses after the original restitution order. 	<ul style="list-style-type: none"> • Yes. All states have filing deadlines (a.k.a. statutes of limitations); the limitations periods vary depending on the tort claim at issue, typically ranging from one to four years after the misconduct or discovery of the injury. • The statutes of limitation periods are usually longer for certain crime victims such as adult and child sexual assault victims.
<p>What types of losses are recoverable?</p>	<ul style="list-style-type: none"> • Economic losses caused by the crime. • Each state’s coverage varies. Covered losses may include, <i>inter alia</i>, lost wages/income, attorney’s fees, and expenses for medical and mental health treatment; rehabilitation/occupational therapy; funeral/burial services; child-care services; crime scene clean-up; moving/relocation; travel/transportation; and replacement of essential property (<i>e.g.</i>, eyeglasses, hearing 	<ul style="list-style-type: none"> • Economic losses caused by the crime. • Economic losses may include, <i>inter alia</i>, lost wages/income, attorney’s fees, and expenses for medical and mental health treatment; rehabilitation/occupational therapy; funeral/burial services; child-care services; crime scene clean-up; moving/relocation; education; travel/transportation; and replacement of lost or damaged property. 	<ul style="list-style-type: none"> • All losses caused by the crime, including pain and suffering. • While not a “loss,” the victim may also recover punitive damages.

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	<p>aids and wheelchairs).</p> <ul style="list-style-type: none"> • Coverage only if the loss is not covered by another source, <i>e.g.</i>, insurance or other government programs such as worker’s compensation. • With few exceptions, expenses for damaged or lost property are generally not covered; and no recovery for pain and suffering. • Reimbursable losses are generally capped by category (<i>e.g.</i>, up to \$3000 for mental health counseling costs and up to \$1000 for funeral/burial expenses) and by crime (<i>e.g.</i>, a maximum benefit ranging from \$10,000 to \$70,000) even if actual losses exceed those limits. 	<ul style="list-style-type: none"> • Noneconomic losses such as pain and suffering are generally not recoverable but an exception may exist. <i>See, e.g.</i>, Cal. Penal Code § 1202.4 (allowing non-economic damages for child-victims of sexual abuse). 	
Are emergency funds available as an advance?	<ul style="list-style-type: none"> • Yes, in many states. 	<ul style="list-style-type: none"> • No. 	<ul style="list-style-type: none"> • No.
When should a victim start documenting losses (i.e., gather receipts, invoices, and estimates)?	<ul style="list-style-type: none"> • ASAP. • Generally need to describe/identify expenses and submit receipts with the claim application. 	<ul style="list-style-type: none"> • ASAP. • Be prepared for sudden end to the case due to plea bargaining; conferring with the prosecutor and having supporting documentation early can help ensure that full restitution will be awarded even if plea agreement drops certain offenses. • May need expert to help project future losses. 	<ul style="list-style-type: none"> • ASAP. • May need expert to help project future losses.
What is the burden of proof?	<ul style="list-style-type: none"> • Generally not specified in the law for the initial administrative review. Many state statutes and regulations identify “preponderance of the evidence” as the standard of proof if a hearing is required. 	<ul style="list-style-type: none"> • Preponderance of the evidence. 	<ul style="list-style-type: none"> • Preponderance of the evidence.
How soon after submission of a claim	<ul style="list-style-type: none"> • The initial review and determination period varies; many programs provide a time frame for guidance, <i>e.g.</i>, within 90 days of receipt 	<ul style="list-style-type: none"> • The length of time varies. Many restitution laws require courts to determine a restitution award within a 	<ul style="list-style-type: none"> • The length of time varies depending on the court docket and complexity of

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will a decision be made?	of a complete application.	certain time after initial sentencing—e.g., 90 days—but courts have power to extend the timeframe for good cause.	the case. Many lawsuits take several years to reach a final resolution.
Is there an appeals process to challenge the claim/award determination?	<ul style="list-style-type: none"> • Yes. State statutes and regulations set forth the administrative appeals rules and procedures. • After exhausting the administrative appeals process, claimants may file an appeal in the state courts. 	<ul style="list-style-type: none"> • Yes. Statutes may set forth the rules and procedures for a victim seeking appellate review of a violation of his/her right to restitution. • If state law does not have special procedures applicable to crime victims, the victim may seek appellate review by way of an appropriate writ. 	<ul style="list-style-type: none"> • Yes. The plaintiff-victim may appeal via the traditional appellate process.

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- ❖ Publications and other resources on victims' rights in the *Victim Law Library*
- ❖ Additional tools in the *Rights Enforcement Toolkit*
- ❖ Online technical assistance request forms for attorneys, victim advocates, and crime victims



Could you benefit from sample pleadings or a searchable database of cases?

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