

CRIMINAL RESTITUTION FOR HT SURVIVORS

Overview

Restitution in a human trafficking criminal case may not be limited to the common remedies, such as payment from property damage, medical expenses, and psychological expenses. Because human trafficking victims are forced to work for free, many jurisdictions allow for restitution for unpaid wages from the time the victim was trafficked, and in many of those jurisdictions, such restitution is mandatory.

Federal court judges must award restitution to victims of human trafficking. The Trafficking Victims Protection Act of 2000 contains a statute mandating this restitution in 18 U.S.C. section 1593. This statute requires the convicted traffickers to pay the actual losses they caused the victim and also the greater of either the defendant's ill-gotten gains or the value of the victims' labor. Many states have incorporated similar statutory provisions in state court, which are listed below.

Despite these mandatory restitution provisions, many survivors go uncompensated because restitution is never requested from the prosecution or ordered by the judge. If you are an advocate for a survivor or a prosecutor, follow these steps to provide the best opportunity for full restitution for the survivor:

Step-by-Step

Step One: Consult With the Survivor and Preserve Receipts

1. Have the survivor create a declaration that details:

- When he or she was trafficked
- The nature of the services or labor
- The cost of the service or labor for the buyer

Congress did not specify that restitution will only be distributed for legal services and labor. Mandatory restitution shall be awarded even when the conduct is illegal. In those circumstances, the profit the trafficker made off the survivor should be calculated - or estimated - for restitution.

- The total days and hours spent doing the service or labor
- What, if anything, did the trafficker pay the victim

2. Have the survivor collect any receipts or create a declaration with the survivor's best estimate as to the costs of the following:

- Property damage by trafficker
- Medical expenses
- Psychological expenses



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- Expenses from relocation
- Costs of necessary transportation
- Cost of investigation, attorney's fees, and court-related costs (such as victim advocate fees)

Step Two: Determine Jurisdiction

1. If federal, there is a mandatory restitution to compensate victims following the conviction of the trafficker.
2. If in a state court, refer to either the general restitution statute in your state or the specific human-trafficking restitution statutes listed below.

Step Three: Inform the Prosecutor and the Judge of the Mandatory Restitution Statutes

Research has shown that even though there are mandatory restitution statutes, restitution is seldom sought out by prosecutors. As an advocate for the survivor, inform the survivor of his or her statutory rights and recommend reaching out the prosecutorial agency about restitution. Even then, judges may be hesitant to order restitution, despite the statutory provision. As a prosecutor or counsel for the survivor, inform the judge of the statutory law and develop a record for appeal.

Step Four: Determine Alternative Means of Restitution

If restitution is ordered, the convicted trafficker may not make payments. The trafficker is in violation of a court order, and the court needs to be notified of the violation. There may also be state-funded victim assistance available for survivors, some of which have been included in the statutes listed below.

State-Specific Restitution Statutes

No Human Trafficking-Specific Restitution Statutes; Refer to General Criminal Restitution Statutes

Alaska	Maryland	Utah
Arkansas	Massachusetts	Virginia
Connecticut	Minnesota	Washington
Delaware	Montana	Wisconsin
District of Columbia	Nebraska	
Georgia	New York	
Kentucky	Oregon	
Maine	South Dakota	



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Mandatory Restitution

Colorado: Colo. Rev. Stat. Ann. § 18-1.3-603(9) (2019),
Mississippi: Miss. Code Ann. § 97-3-54.6 (2013).
Missouri: Mo. Rev. Stat. § 566.218 (2017).
New Hampshire: N.H. Rev. Stat. Ann. § 633:10 (2010).
Oklahoma: Okla. Stat. 21, § 748 (2008).
South Carolina: S.C. Code Ann. § 16-3-2040 (2015).
Texas: Tex. Penal Code Ann. § 42.0372 (2011) (limited to minors).
West Virginia: W. Va. Code § 61-14-7 (2017).
Wyoming: Wyo. Stat. Ann. § 6-2-710 (2013).

Mandatory Restitution and the Greater of Either

- (1) the gross income or value to the defendant of the victim's labor services or
- (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act of 1938

Arizona: Ariz. Rev. Stat. Ann. § 13-1309 (2017).
California: Cal. Penal Code § 1202.4(q) (2019).
Hawaii: Haw. Rev. Stat. § 707-785 (2011).
Idaho: Idaho Code § 18-8604 (2006).
Illinois: 720 Ill. Comp. Stat. 5/10-9 (effective 2015-2019).
Indiana: Ind. Code § 35-42-3.5-2 (2018).
Iowa: Iowa Code § 710A.4 (2006).
Kansas: Kan. Stat. Ann. § 22-3424 (2019) (multiplies available restitution by three).
Louisiana: La. Stat. Ann. § 15:539.3 (2014).
New Jersey: N.J. Stat. Ann. § 2C:13-8 (2013).
New Mexico: N.M. Stat. Ann. § 30-52-1 (2008).
North Carolina: N.C. Gen. Stat. § 14-43.20 (2018).
North Dakota: N.D. Cent. Code § 12.1-41-09 (2015).
Ohio: Ohio Rev. Code Ann. § 2929.18 (2019).
Rhode Island: 11 R.I. Gen. laws § 11-67.1-10 (2017).
Tennessee: Tenn. Code Ann. §§ 39-13-307 (2012), 39-13-308 (2008).

Permissible Restitution, at the Court's Discretion

Alabama: Ala. Code § 13A-6-155 (2019).
Michigan: Mich. Comp. Laws § 750.462f (2017).
Nevada: Nev. Rev. Stat. § 200.469 (2015).
Pennsylvania: 18 Pa. Cons. Stat. § 3020 (2014).
Vermont: Vt. Stat. Ann. tit. 13, § 7043 (2019).



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Assistance Funds for Victims of Human Trafficking

Florida: Fla. Stat. § 960.196 (2019).
Hawaii: Haw. Rev. Stat. § 706-650.5 (2016).
Kansas: Kan. Stat. Ann. § 75-758 (2013).
Louisiana: La. Stat. Ann. § 46:2161 (2014).
Minnesota: Minn. Stat. § 299A.795 (2006).
Mississippi: Miss. Code. Ann. § 97-3-54.8 (2019).
Nebraska: Neb. Rev. Stat. § 81-1429.02 (2015).
New Mexico: N.M. Stat. Ann. § 30-52-2 (2013).
New York: N.Y. Soc. Serv. Law § 483-bb (2018).
North Carolina: N.C. Gen. Stat. § 14-43.20 (2018).

Resources

To learn about how judges are reviewing restitution claims in federal court, check out this guide:

Judges' Resource Guide

https://www.traffickinginstitute.org/wp-content/uploads/2019/02/Restitution-Article_Updated-2019-05-WEB.pdf

To learn about case law where restitution was not ordered when it should have been, check out this resource:

Ensuring Full Restitution for Trafficking Victims: Case Studies Compel a Call to Action
<https://law.lclark.edu/live/files/16052-ncvlivlrestitution-for-trafficking-victims---call>

To find out about policy concerns with prosecutors not asking for and judges not ordering restitution, please see the following resources:

United States Federal Courts' Continuing Failure to Order Mandatory Criminal Restitution for Human Trafficking Victims

<http://www.htlegalcenter.org/wp-content/uploads/2018-Mandatory-Restitution-Report.pdf>

Human Trafficking Legal Center Publishes 2018 Restitution Report

<https://www.traffickingmatters.com/human-trafficking-legal-center-publishes-2018-restitution-report/>

This fact sheet provides legal information, not advice.

