

INTRODUCTION

At sentencing or disposition, courts must order “full restitution” to any victim of the defendant’s course of conduct giving rise to a conviction or adjudication (or to the victim’s estate). Mich Const 1963, Art I, Sec 24 (1); MCL 780.766(2). Restitution must be a condition of probation or parole, and probation officers must review files twice a year regarding payments. MCL 780.766 (11), (18).

Still, not all restitution orders are paid in full during the defendant’s term of probation. What can you do?

If your restitution order is not yet paid in full, you must be proactive to collect it. An order of restitution *is* a civil judgment and is recordable as a lien against the defendant’s property. You do not have to file a separate civil lawsuit unless you have damages or losses that are not covered by the restitution order (e.g., “pain & suffering”). MCL 780.766 (13). **A criminal case order of restitution never expires until it is satisfied in full.** MCL 780.766 (13). It is not dischargeable in bankruptcy. 11 USC 523(a)(6), (9) & 1328(a)(3).

This brochure will help you start collecting the remainder of restitution owed to you, and guide you to the forms used. You may contact a private attorney for

assistance in collecting the remaining restitution, or you can complete the forms yourself. Prosecuting Attorneys may also assist victims in collections.

Due to space limitations, this brochure is not a complete instruction for every question that may arise. **Please consult with a private attorney if you have further questions.**

DISCOVERY OF ASSETS

Before you can begin self-help collection, you have to find out what assets the defendant has.

Serve an **Affidavit of Judgment Debtor** [SCAO Form DC 87], or file a **Subpoena** [SCAO Form MC 11] for a Judgment Debtor’s Examination to find out what assets, income sources, debts, etc. the defendant has. Fill both sides of the Subpoena out completely; include a list of documents the defendant must bring to the meeting (e.g., vehicle titles, property deeds, bank records, pay stubs, tax returns, credit card records). Your criminal case’s judge must sign the subpoena. You are responsible to serve the defendant. At the scheduled hearing, the defendant must give you information about assets, income, etc. These become leads for your collection efforts.

RECORD THE LEIN

Record “certified copies” of the Judgment of Sentence and any Restitution Order at a county Register of Deeds where the defendant owns property. (You will need addresses and legal descriptions of the real property owned by the defendant.) The Judgment of Sentence acts as a lien against the defendant’s real property, “clouds the title” of the property, and can be paid from the value of any of the real property when it is sold or transferred.

There may be a small fee to obtain a certified copy of the Judgment of Sentence from the original criminal case’s court clerk’s office, **and** may also be a small fee **to record the document(s) at the Register of Deeds.**

GARNISH THE DEFENDANT’S WAGES or OTHER INCOME

The defendant’s wages (or other income paid to the defendant on a regular, periodic basis, like rent, land contract payments, etc.) can be garnished for unpaid restitution. To collect this type of income, file the **Request and Writ for Garnishment (Periodic)** [SCAO Form MC 12] in the court that issued the original Judgment of Sentence. Use the original criminal case’s “case number”. The criminal

case judge must sign the form. Then serve it on the defendant’s employer (the garnishee). Serve the defendant, who has up to 14 days to file objections to the writ with the court. “Periodic” garnishment orders last for up to 91 days. If your restitution is still not fully paid, repeat the process by filing a new MC 12 form. **There is no fee for filing the request and Writ for Garnishment.** The Crime Victim’s Rights Act provides that the court shall not impose a fee on a victim or victim’s estate for enforcing an order of restitution. MCL 780.766 (20).

Some forms of income are exempt from garnishment, including the first \$500 in savings accounts; IRAs; Social Security; SSI; AFDC; General Assistance benefits; unemployment compensation benefits; and workers’ compensation benefits.



Forms & Self-Help Info

are available on the “Downloads” page at **www.prosecutingattorney.info**

or at

courts.michigan.gov/scao/courtforms/

GARNISH THE DEFENDANT'S CHECKING, SAVINGS, or OTHER ACCOUNTS

The defendant's checking, savings, or other asset accounts can be garnished for unpaid restitution. To collect these types of assets, file the **Request and Writ for Garnishment (Non-Periodic)** [SCAO Form MC 13] in the court that issued the Judgment of Sentence. Use the original criminal case's "case number". The criminal case judge must sign the form. You will need the defendant's account number(s), social security number, etc. Then serve it on banking institutions (the garnishees) where the accounts are located. Use separate Form MC 13s for each banking institution. Serve the defendant, who has up to 14 days to file objections to the writ with the court. A "banking account" garnishment order is used once. If your restitution is still not fully paid, repeat the process by filing a new MC 13 form when you know or have good reason to believe that the bank account has been replenished.

There is **no fee** for the filing of the **Request and Writ For Garnishment** in the court. The Crime Victim's Rights Act provides that the court shall not impose a fee on a victim or victim's estate for enforcing an order of restitution. MCL 780.766(20).

GARNISH THE DEFENDANT'S MICHIGAN INCOME TAX REFUND or CREDIT

The defendant's Michigan income tax refund or credit can be garnished for unpaid restitution. To collect this type of income, file the **Request and Writ for Garnishment (Income Tax /Credit)** [SCAO Form MC 52] in the court that issued the Judgment of Sentence. Use the original criminal case's "case number". The criminal case judge must sign the form. You will need the defendant's social security number. Then serve it on Michigan Department of Treasury (the garnishee) with a \$6 fee. Serve the defendant, who has up to 14 days to file objections to the writ with the court. An income tax garnishment order is used once. If your restitution is still not fully paid, repeat the process. File a new MC 52 form for the next year's income tax refund.

You may not garnish the defendant's federal or local income tax refunds or credits.

There is **no fee** for the filing of the **Request and Writ For Garnishment** in the court. The Crime Victim's Rights Act provides that the court shall not impose a fee on a victim or victim's estate for enforcing and order of restitution. MCL 780.766(20).

SEIZE & SELL THE DEFENDANT'S ASSETS

To collect and sell physical assets, file a **Request and Order to Seize Property** form [SCAO Form MC19]. The criminal case judge reviews and signs the order. Serve it on the defendant. THEN serve it on a court-appointed officer (e.g., sheriff's civil division). The court officer (*not the victim*) can seize the defendant's property and sell it at auction. The proceeds are given to the victim(s). Excess proceeds are returned to the defendant.

ESTATE PROCEEDINGS

Since a restitution order is in effect until it is fully satisfied, it can be collected from the assets of the defendant when he/she is alive, as well as from the estate of the defendant. To do so, file a Statement and Proof of Claim [SCAO Form PC 579] in the Probate Court of the county in which the defendant.



COLLECTING YOUR RESTITUTION



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