

# New York State Office of Victim Services

## *Crime Victim's Compensation and the Issue of Restitution*



*Presented by the Office of Victim Services*

*Legal Unit*

# WHO WE ARE



# Office of Victim Services

- Independent Office of the Executive
- Approximately 100 employees in Albany, Brooklyn and Buffalo
- Provides compensation to innocent victims of crime and funds direct services to victims through a network of community-based programs funded by federal fines, fees and forfeitures and state court surcharges

# WHAT WE PAY...

- Essential personal property \$500 (\$100 cash max)
- Medical Expenses not covered by other insurance
- Counseling services
- Occupational rehabilitation expenses
- Lost earnings or support up to \$600 per week - maximum of \$30,000
- Burial expenses up to \$6,000
- Cost of services of domestic violence shelter
- Transportation expenses for necessary court appearances
- Crime scene cleanup to \$2,500
- Moving Expenses to \$2,500
- Attorney fees for representation before the OVS (max \$1,000)

# Eligibility

*Innocent victim of a crime physically injured as a result of the crime*

- Contributory Conduct
- Cooperation with law enforcement
- Personal physical injury (exceptions)
- File w/in one year of crime

# Payer of Last Resort

- Awards reduced by the amount of any other kinds of insurance including workers compensation and public funds
- OVS is payer of last resort

# Liens, Subrogation and Restitution

- Acceptance of award subrogates OVS to any right of action to recover losses resulting from crime
- Creates a lien in favor of OVS on proceeds of any recovery against a party liable for the injury giving rise to the award

# *Son of Sam Law*

Requires notice to OVS of profits or funds of a convicted person-OVS required to Notice victims

- Victims may sue inmate
- Commenced within 3 yrs of victim's receipt of notice
- Injunction to freeze funds on behalf of the victim

# *What is Restitution ?*

Penal Law 60.27:

- The fruits of the perpetrator's offense
- Actual, out-of-pocket loss of victim

# IDENTITY THEFT

- For a victim of identity theft, restitution can include losses or costs incurred by a victim or anyone who suffered a financial loss
- Effective Jan. 2009: the restitution can include an amount equal to time spent to remediate harm incurred by victim and financial losses from any adverse action caused to the victim

Penal Law 60.27(4)(b); 60.27 (1); Ch. 279 Laws of 2008

# *Criminal Justice Evolution*

- Relationship between government and the offender
- *The Theory of Restorative Justice*  
A movement to expand the circle of stakeholders to include the VICTIM and the community

# *Restitution is a key element*

- Actual loss
- Recognition of offender's criminal responsibility
- The absence of blame or fault on the part of the victim
- Validation

# *Who Qualifies?*

- Any victim of an offense
- Office of Victim Services (when it pays victim's expenses)

# Compensable losses

- Replacement of Stolen items
- Repair costs of damaged items
- Medical expenses including professional **counseling** expenses and medical transportation
- Sick leave costs, lost wages

# Penal Law §60.27

- Authorizes restitution in addition to any other disposition
- Definitions: PL 60.27
  - Offense - part of criminal transaction or included in complaint/indictment - even if disposed of by plea
  - Victim - expanded beyond the individual - covers corporations, municipalities, insurance companies etc.

# Example of Part of Criminal Transaction

- Defendant charged with Assault and Resisting Arrest
- Each of the victims of above crimes may recover through restitution even if defendant pleads to Assault in satisfaction of all charges

# Responsibilities of the District Attorney

- **The District Attorney shall advise the court at or before sentencing of:**
  - **Extent of victim's injury**
  - **Amount of victim's economic loss**
  - **Amount of any damages**

# Responsibilities of the Court

- **The Court SHALL consider restitution to the victim**
- **The Court SHALL require the defendant make restitution if requested**
- **Judge must state on the record, reasons for **not** ordering restitution PL§60.27(1)**

# Court's Responsibilities cont'd

- **The Court MUST be able to make a finding of a specific dollar amount**
- **MAY direct that the entire amount be paid at sentencing, or**
- **A later date, or that it be paid at specified intervals at specified amounts CPL 420.10**

- Court may not delegate its duty to determine amount of restitution

People v. Fuller, 57 NY2d 152 (1982)

- Each defendant is jointly and severally liable

People v. Kim, 91 NY2d 407 (1988)

## Limits on the Amount of Restitution

PL 60.27(5)(a)

<b>Felony</b>	<b>\$15,000</b>
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<b>Non-felony</b>	<b>\$10,000</b>
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<b>Juvenile</b>	<b>\$1,500</b>
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<b>PINS</b>	<b>\$1,000</b>
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**THE COURT MAY NOT GO BEYOND THESE LIMITS unless,**

- 1. Defendant consents, or**
- 2. Restitution is made a Condition of Conditional Discharge or Probation, or**
- 3. Amount represents return of victim's property (including money or "equivalent") or actual medical expenses**

# Restitution Limits cont'd

- \$1,500 limit in a juvenile proceeding may not be juvenile's total restitution liability

In the Matter of Joel M., 240 A.D.2d 747  
(App. Div. 2<sup>nd</sup> Dep't 1997)

- An order of restitution does not effect any possible civil action for amounts in excess of the order

PL 60.27(6)

- An order of restitution to a person survives the death of that person and the remaining payments go to the victim's estate

Penal Law 65.10(g)

- Imprisonment authorized until the defendant pays restitution for:

CPL 420.10(3,4)

- felony - up to one year
- misdemeanor – up to 1/3 maximum
- petty offense – up to 15 days

- Even if defendant is imprisoned for failure to pay or served the period of imprisonment imposed, the order, as a civil judgment, may be collected by the victim

CPL 420.10(6)(a)

- Courts can use possibility of imprisonment as an incentive for defendants to make restitution

People v. Amorosi, 96 NY2d 180(2001)

- Remedy if the defendant is unable to pay – RESENTENCING the Court may:

CPL 420.10 (5)

- adjust the amount of restitution
- adjust the period by which the defendant must pay restitution
- revoke that part of the sentence pertaining to restitution
- sentence defendant to any originally authorized sentence (can't increase the amount of restitution)

- Incarceration alone is not enough to determine that the defendant is unable to pay CPL 420.10(5)
- Failure to pay-Court may issue a warrant  
CPL 420.10(3)
- Cash bail to be used to pay restitution  
CPL 420.10(1)(e)
- Court SHALL direct the DA to file the order with county clerk to be entered in the same manner as a civil judgment  
CPL 420.10(6)

# Victims Still Shoulder the Burden of Loss

- National Institute of Justice estimated cost of crime to victims (medical expenses, earnings VAP costs), about \$105 billion/yr.
- State compensation programs pay out approximately \$453 million/yr to victims
- Most of the costs of crime still absorbed by victim

# More

- More than 25 million Americans become victims of crime each year
- Survey of victims entitled to restitution (Nat'l Center for Victims of Crime) found that less than half actually awarded restitution

# WHY?

- Victims don't know they're entitled to it
- District Attorneys do not always request it
- Judges reluctant to order in addition to incarceration or in view of defendant's apparent inability to pay

# Mandatory Nature of PL 60.27

- The Court **shall** consider restitution to the victim and may **require** restitution as part of a sentence imposed...
- The DA **shall**, where appropriate, advise the Court that the victim seeks restitution...
- The court **shall** hear the DA and receive the Victim Impact Statement and **shall** consider the information
- The court **shall** order Restitution unless

# Discretionary Nature of PL 60.27

- The Court shall **consider** restitution to the victim and **may** require restitution as part of a sentence imposed...
- The DA shall, **where appropriate**, advise the Court that the victim seeks restitution...
- The court shall hear the DA and receive the Victim Impact Statement and shall **consider** the information
- The court shall order Restitution **unless**

# Myth #1

Victims simply fail to request Restitution  
most of the time

- Not notified of their right to restitution
- Notified too late in the process to gather sufficient evidence
- Court has obligation to inquire whether restitution has been considered and authority to order even in the absence of specific request

## Myth #2

### No Dollar Amount- No Order

- DA required to request information from the victim, Courts have the authority to order a ***pre-sentence investigation*** (PSI) and report in every case
- If inconclusive, Court may adjourn, set hearing & order a pre-sentence report
- Even if PSI waived, if Court determines relevant, Victim Impact Statement must be provided CPL 390.20(4)(b)

## Myth #3

Restitution inappropriate in light of incarceration

- PL 60.27 effective September 1, **1980**:  
“In addition to any other disposition authorized” [by law] the Court shall consider and may require restitution as a part of the sentence imposed

# Myth # 4

Defendant is indigent therefore restitution is inappropriate

- Present inability to pay bears only upon manner of payment and not the amount
- OVS pays victims up front and agrees to collect nominal restitution amounts
- Current and future financial resources overlooked-prison wages, deposits to inmate discretionary accounts, judgments and settlements, inheritance, lottery, fraudulently transferred assets, cash bail

# Civil Judgment

- CPL 420.10 requires that Restitution Orders be filed as civil judgments - not all DA's are complying-this mandate must be outlined in the order
- When Criminal Justice System fails to collect, adequately compensate, or loses jurisdiction, the victim may still pursue his civil remedy
- OVS may pursue judgment enforcement proceedings civilly on behalf of victim under subrogation authority

# Civil Judgment cont'd

- When restitution order becomes a civil judgment it becomes a first lien upon real property over most other liens.

CPL 420.10(6)(a) and (b)

- Exceptions:
  - Liens on behalf of a governmental entity
  - Purchase money interest in the property

# Restitution and Bankruptcy

- Restitution obligations are not dischargeable in bankruptcy in any type of bankruptcy, Chapter 7, Chapter 11 or Chapter 13
  - Chapter 7, Kelly v. Robinson, 479 U.S. 36 (1986)
  - Chapter 11, 11 U.S.C. 1129(a)(8)(B)
  - Chapter 13, 11 U.S.C. 1328(a)(3)

# Looking Forward - Possible Solutions

- Coordinated agency approach that includes the OVS, Probation, DA and the Courts
- Improving communication and inter-agency data exchange through single system that tracks Restitution orders and payment from PSI to paid
- Educational Outreach

# Food for thought

- PA allows DA's to procure restraining orders to preserve Defendant's assets specifically for restitution
- CA-separate felony offense to dispose of property to avoid paying restitution
- Montana inmates forfeit amount in excess of \$200 accumulated in an inmate account to pay outstanding restitution
- California/Arizona require offenders to file financial reports/affidavits to probation as to their expenses and ability to pay

# Conclusion

- Hold offenders financially responsible for harm caused-Court has authority to order restitution in every case
- Criminal justice system should promote victim's recovery by acknowledging their role in the process, validating their victim status and assigning accountability through restitution orders

# Additional information, resources, contacts

- [ovs.ny.gov](http://ovs.ny.gov)
- [dpca.state.ny.us](http://dpca.state.ny.us)
- [criminaljustice.state.ny.us](http://criminaljustice.state.ny.us)
- [parole.state.ny.us](http://parole.state.ny.us)
- [docs.state.ny.us](http://docs.state.ny.us)
- [opdv.state.ny.us](http://opdv.state.ny.us)
- [navaa.org](http://navaa.org)
- [nacvcb.org](http://nacvcb.org)

# Discussion Questions:



## OFFICE OF VICTIM SERVICES

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518-457-8066  
[ovs.ny.gov](http://ovs.ny.gov)