

Certain exceptions may apply, and law is subject to change. Contact White and Williams LLP for additional information.

■ ALABAMA

Discretionary. Court may award full, partial, or nominal payment of pecuniary damages to the victim or to its equivalent. Ala. Code. 1975 § 15-18-66(3). The court may consider, among other things, the financial resources and burden on both defendant and victim and the ability of the defendant to pay. Ala. Code. 1975 § 15-18-68(a). Person injured is not barred from recovering damages from the defendant in a civil action, but the court shall credit any restitution paid against any judgment in favor of the victim in the civil action. Id. at 68(c). Restitution order may be enforced in the same manner as a civil judgment. Ala.Code 1975 § 15-18-78. Insurance company may recover restitution. Hagler v. State, 625 So.2d 1190 (Ala.Cr.App. 1993).

■ ALASKA

Mandatory, unless the victim declines. A.S. 12.55.045. The court shall consider the financial burden on the victim and shall not consider the defendant's ability to pay. Id. A restitution order is enforceable as a civil judgment. Id. The court shall value property at market value at the time and place of the crime or, if the market value cannot reasonably be ascertained, the cost of replacement within a reasonable time after the crime. Id. Restitution reduces civil liability to the victim. Hagberg v. State, 606 P.2d 385 (Alaska 1980). Insurers may recover restitution. Lonis v. State, 998 P.2d 441 (Alaska App. 2000); Maillelle v. State, 276 P.3d 476 (Alaska App. 2012).

■ ARIZONA

Mandatory for full amount of the economic loss. A.R.S. § 13-603. Amount of restitution must equal the economic losses that flow directly from the defendant's criminal conduct, without the intervention of additional causative factors, State v. Wilkinson, 39 P.3d 1131 (Ariz. 2002), and shall not take into account the defendant's economic circumstances. A.R.S. § 13-804. The court shall order restitution for an insurer once the victim has been made whole. Id. A criminal restitution order may be recorded and enforced as any civil judgment. A.R.S. § 13-805. A civil award must be reduced by the amount of restitution paid. A.R.S. § 13-807. Amount of restitution should be reduced by any civil awards which compensate the victim for economic losses. State v. Iniguez, 821 P.2d 194 (Ariz. App. 1st Div. 1991).

■ ARKANSAS

Discretionary. The court shall make a determination of actual economic loss suffered. In determining the method of payment, the court shall take into account the defendant's ability to pay. The amount ordered is enforceable as a civil judgment. Amounts paid are to be credited against a judgment in a civil action. Ark. Code. § 5-4-205. Investigation costs are not actual economic loss. Tumlison v. State, 216 S.W.3d 620 (Ark. App. 2005). Amount of damage to which defendant pleads guilty does not control amount of restitution ordered. Nix v. State, 925 S.W. 2d 802 (Ark. 1996), overruled on other grounds by Spires v. State, 2013 Ark. 6. Insurance companies are considered victims eligible to recover restitution. Ark. Code § 5-4-205; Singleton v. State, 357 S.W. 3d 891 (Ark. 2009).

■ CALIFORNIA

Discretionary. Cal.Penal Code § 1202.4(f). Factors to be considered include the value of stolen or damaged property at replacement cost or cost of repair, when repair is possible, medical expenses, mental health counseling expenses, lost wages or profits, 10% interest per annum and attorney's fees. Id. However, the court should usually order full restitution. Id.; People v. Pierce, 184 Cal.Rptr.3d 607 (Cal. App. 3d Dist. 2015). A restitution order is enforceable as a civil judgment. Cal.Penal Code § 1202.4(a)(3)(B). Other judgments for the same crime are to be credited by the amount of restitution collected. Cal.Penal Code § 1202.4(j). Only direct victims, and not insurers, may receive restitution. People v. Runyan, 279 P.3d 1143 (Cal. 2012); People v. Birkett, 980 P.2d 912 (Cal. 1999).

■ COLORADO

Mandatory unless the court finds that the victim suffered no pecuniary loss. For a non-felony conviction, court may not order restitution for amounts compensable by defendant's liability insurer. Other than for victim's deductible, court may not order restitution for which victim is entitled to receive benefits from an insurance policy. Defendant also owes 12% interest from the date of the restitution order and reasonable attorney fees and costs incurred in collecting due to the defendant's nonpayment. Restitution order is recoverable

as a civil judgment by the victim. Amounts paid in restitution are to be set off against any amount recoverable as damages in a civil action. C.R.S. § 18-1.3-603. "Victim" is defined to include an insurer. C.R.S. § 18-1.3-602.

■ CONNECTICUT

Discretionary, depending on factors including the financial resources of the offender and the burden restitution will place on other obligations of the offender, the offender's ability to pay based on installments or other conditions and the rehabilitative effect on the offender of the payment of restitution and the method of payment. Statute does not address whether subrogated insurers may recover restitution. C.G.S. § 53a-28.

■ DELAWARE

Discretionary. Court is to order restitution for loss of property unless it states its reason on the record for not ordering restitution. Insurance companies may receive restitution but only after individuals are fully compensated. A civil verdict shall be reduced by the amount of restitution paid. 11 Del. C. § 4106.

■ DISTRICT OF COLUMBIA

Discretionary. The court may impose an order of reasonable restitution, taking into consideration the number of victims, the "actual damage" for each, the defendant's resources, the defendant's ability to earn, the defendant's support obligations, and any other pertinent matters. D.C. Code § 16-711. "Actual damage" includes known liquidated damages, such as medical expenses, lost wages, and other expenses that are readily measurable. Sloan v. United States, 527 A.2d 1277 (D.C. 1987). The issue of whether an insurer may seek restitution has not been addressed. As to juvenile defendants, a restitution order is discretionary. A juvenile may be ordered to pay restitution to a third-party payor including an insurer but payments to the victim have priority. D.C. Code § 16-2320.01.

■ FLORIDA

Discretionary. A "court shall order the defendant to make restitution to the victim . . . unless it finds clear and compelling reasons not to order such restitution." F.S.A. § 775.089. An order of restitution may be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action. While a restitution order does not preclude a civil remedy, a subsequent civil judgment is offset by the amount of the restitution award. Id.; Sebastiano v. Sclafani, 984 So.2d 673 (Fla. 4th Dist. Ct. App. 2008). Insurance companies are entitled to seek restitution via subrogation. L.S. v. State, 593 So. 2d 296 (Fla. 1992). A defendant's ability to pay should be considered when a restitution order is being enforced, not when restitution is being imposed. Del Valle v. State, 80 So.3d 999 (Fla. 2011). However, a juvenile's ability to pay is considered when restitution is imposed. F.S.A. § 985.437; L.W. v. State, 163 So.3d 598 (Fla. 3d Dist. Ct. App. 2015).

■ GEORGIA

Mandatory. O.C.G.A. § 17-14-3. Factors to be considered in an order of restitution include the defendant's financial resources. O.C.G.A. § 17-14-10. A restitution order shall be enforceable as if a civil judgment. O.C.G.A. § 17-14-13. Restitution payments may be set off against civil judgments. O.C.G.A. § 17-14-11. With regard to insurers, when the victim has been fully compensated by a third party, the defendant may be ordered to pay restitution to that third party. Wright v. State, 690 S.E.2d 259 (Ga. Ct. App. 2010). Restitution is not proper if victim has already recovered damages in civil suit. Turner v. State, 720 S.E.2d 264 (Ga. Ct. App. 2011).

■ HAWAII

Mandatory, when requested. The court shall order restitution when requested to do so by the "direct victim" of a crime. The defendant's ability to pay shall not be considered other than for purposes of establishing the time and manner of payment. Restitution shall be a dollar amount sufficient to fully reimburse the victim for losses, including the full value of damaged property as determined by replacement costs or, if repair is possible, the repair costs, and medical expenses. H.R.S. § 706-646. A restitution order shall be enforceable in the same manner as a civil judgment. H.R.S. § 706-647. Amount of restitution is not to be reduced by amount victim received from its insurer. However, in a civil action, the victim may not receive double recovery. State v. Tuialii, 214 P.3d 1125 (Haw. App. 2009). An insurer is not considered a "direct victim." Id.

■ IDAHO

Discretionary. A court shall order restitution unless it "determines that an order of restitution would be inappropriate or undesirable." I.C. § 19-5304. The court has discretion to order partial or nominal

restitution. Factors considered by the court include the amount of economic loss, the defendant's earning capacity, assets and financial needs, and any other factors deemed relevant. An insurance company that has made payments to an insured-victim is included in the definition of "victim" for purposes of the restitution statute. Id. The victim may execute on a restitution order as provided by law for civil judgments. I.C. § 19-5305.

■ ILLINOIS

Mandatory for offenses under the Criminal Code or for driving while intoxicated when personal injury or property damage result. Discretionary otherwise. In calculating amount, court is to assess victim's actual damages. Defendant's ability to pay is to be considered only in setting payment schedule. Restitution order may be satisfied as a civil judgment by the victim. 730 ILCS 5/5-5-6. Insurance companies may receive restitution payments. Id.; People v. Rednour, 665 N.E.2d 888 (Ill.App. 2d Dist. 1996). Amounts paid in restitution may be credited against a civil judgment. See, e.g., Spircoff v. Stranski, 703 N.E.2d 431 (Ill.App. 1st Dist. 1998).

■ INDIANA

Discretionary. I.C. § 35-50-5-3. To determine the amount, the court shall consider medical costs incurred, including necessary testing costs, the victim's lost earnings, funeral costs in the case of homicide, and whether the victim sustained property damage, based upon cost to repair (or replacement cost if repair is inapplicable). Id. A restitution order is enforced in the same manner as a civil judgment lien. Id. Civil judgments must be reduced by amounts of restitution paid. Myers v. State, 848 N.E.2d 1108 (Ind. App. 2006). Similarly, if a defendant has already paid all or part of a civil judgment, the amount of restitution must be offset by the amount already recovered. Kimbrough v. State, 911 N.E.2d 621 (Ind. App. 2009). An insurer may recover restitution. Little v. State, 839 N.E.2d 807 (Ind. App. 2005).

■ IOWA

Mandatory. The sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities for the victim's pecuniary damages. I.C. §§ 910.2, 910.1; State v. Tutor, 538 N.W.2d 894 (Iowa App. 1995). The court is to consider the defendant's ability to pay. I.C. § 910.2. Pecuniary damages do not include amounts received from an insurer. I.C. § 910.1. A victim may enforce the restitution order as a civil judgment. I.C. § 910.7A. Restitution payments are to be set off against civil judgments. I.C. § 910.8. An insurer is not a victim and does not have a right of subrogation. I.C. § 910.1.

■ KANSAS

Mandatory, unless the court finds compelling circumstances to render restitution unworkable. K.S. 21-6607. An item's fair market value is the usual standard for calculating restitution. State v. Hall, 247 P.3d 1050 (Kan. App. 2011). Damaged retail inventory is to be valued at wholesale cost. Id. A judgment of restitution is to be enforced through same procedures as for a civil judgment. K.S. 60-4301. The amount of any restitution paid shall be set off against any subsequent civil recovery. K.S. 60-4304. Insurance companies typically are entitled to restitution payments. State v. Hand, 257 P.3d 780 (Kan. App. 2011), rev'd on other grounds, 304 P.3d 1234 (Kan. 2013).

■ KENTUCKY

Mandatory. K.R.S. § 532.032. Amount of restitution must be based on reliable facts, Wiley v. Com., 348 S.W.3d 570 (Ky. 2010), and should consider defendant's ability to pay. Wallace v. Com., 2015 WL 603395 (Ky. App. 2015). If restitution is a condition of probation or conditional discharge, the amount of restitution may be capped at the greater of \$100,000 or twice the amount of gain from the crime. K.R.S. § 533.030. However, restitution may be ordered in cases of probation or incarceration. Com. v. O'Bryan, 97 S.W.3d 454 (Ky. App. 2003). An insurer may not seek restitution. Clayborn v. Com., 701 S.W.2d 413 (Ky. App. 1985). If restitution is a condition of probation or conditional discharge, a civil award must be reduced by the amount of restitution paid. K.R.S. § 533.030.

■ LOUISIANA

Mandatory. LSA-Cr.P. Art. 883.2. Defendant's ability to pay should be considered in setting a payment schedule. Id.; LSA-Cr.P. Art. 895.1. Restitution pursuant to a probation sentence shall be in a reasonable sum not exceeding the victim's actual pecuniary loss. LSA-Cr.P. Art. 895.1; State v. Reynolds, 772 So.2d 128 (La. Ct. App. 3d Cir. 2000). Judgment may be entered for amount of restitution, enforceable in civil or criminal court. LSA-Cr.P. Art. 886. Restitution ordered by the court as a condition of probation shall be deemed a civil money judgment. LSA-Cr.P. Art. 895.1. The amount of such restitution paid shall be credited against the amount of any subsequent civil judgment against the defendant

and in favor of the victim. Id.; Lagrone v. Neely, 2011 WL 766689 (La. Ct. App. 1st Cir. 2011). Insurance companies may not seek restitution for reimbursement of victims' losses because they are not "victims" within the meaning of Louisiana statute. State v. Perez, 966 So.2d 813 (La. Ct. App. 3d Cir. 2007).

■ MAINE

Discretionary. M.R.S. 17-A §§ 1321, 1323 (court "shall order . . . when appropriate"). Restitution is for economic loss, which includes, *inter alia*, environmental clean-up expense, property loss, allowable expense, work loss and replacement services loss. M.R.S. 17-A §§ 1325, 1321. When determining the amount, the court is to consider the victim's contributory misconduct, whether the victim reported the crime within 72 hours, and the defendant's ability to pay. M.R.S. 17-A § 1325. Restitution paid shall be deducted from the amount of any judgment awarded in a civil action. M.R.S. 17-A § 1327. Unpaid amounts may be collected as an unpaid civil judgment. M.R.S. 17-A § 1329. An insurance company may receive restitution as a "person providing recovery." M.R.S. 17-A § 1324. Victim himself may not recover restitution for losses compensated by a collateral source. M.R.S. 17-A § 1325.

■ MARYLAND

Discretionary. The court may enter a restitution order unless it finds that the defendant is unable to pay or that extenuating circumstances make restitution inappropriate. Md. Code. Crim. Proc. §§ 11-603, 11-605. Insurance companies may seek restitution. Payment of restitution to the victim has priority over payment of restitution to any other person. If the victim has been fully compensated by a third-party payor, then court may order payment to be made to third-party payor directly. Md. Code. Ann. Crim. Proc. § 11-606. A civil verdict shall be reduced by the amount paid under the criminal judgment of restitution. Id., § 11-603.

■ MASSACHUSETTS

Discretionary, Com. v. Cromwell, 778 N.E.2d 936 (Mass. App.Ct. 2002), at the victim's request. M.G.L. 258B § 3. The payment of restitution is limited to the economic losses caused by the conduct of the defendant and documented by the victim and might include, *inter alia*, medical expenses, court-related travel expenses, property loss and damage, lost pay, or even paid vacation days lost to attend court proceedings. Commonwealth v. Rotonda, 747 N.E. 2d 1199 (Mass. 2001). Insurers may recover restitution in the case of stolen autos. M.G.L. 266 § 29. However, the definition of "victim" in M.G.L. 258B § 1, which governs the restitution statute, is limited to natural persons and their family members.

■ MICHIGAN

Mandatory. Defendant is to pay fair market value, or replacement cost if fair market value can't be determined. Civil judgment is to be reduced by amount of restitution paid. M.C.L. 780.766. An insurer has a subrogation right against party who causes crime-related loss of its policyholder. People v. Norman, 454 N.W.2d 393 (Mich. App. 1989). An insurer may recover its investigation costs. People v. Fawaz, 829 N.W.2d 259 (Mich.App. 2012).

■ MINNESOTA

Discretionary. Criteria to be considered in determining whether to order restitution include the amount of economic loss and the income, resources and obligations of the defendant. An order of restitution shall be docketed as a civil judgment. M.S.A. §§ 611A.04 – 611A.046. Statute does not address whether subrogated insurers may recover restitution. However, "victim" is defined to include a corporation that incurs loss or harm as a result of a crime. M.S.A. § 611A.01. Also, a court may order restitution to an insurance company outside the mechanism of Chapter 611A. State v. Jola, 409 N.W.2d 17 (Minn. App. 1987).

■ MISSISSIPPI

Discretionary, with some exceptions. The court may order restitution for pecuniary damages – i.e. special damages, such as the money equivalent of property destroyed or harmed, and losses such as medical expenses. When determining whether to order restitution, the court considers: 1) the defendant's financial resources; 2) the ability of the defendant to pay in installments; and 3) the rehabilitative effect on the defendant. Miss. Code §§ 99-37-1, 99-37-3. A court will credit any restitution paid by the defendant to a victim against any civil judgment in favor of the victim. Miss. Code § 99-37-17. Insurers paying a primary victim's claim should be considered a "victim" and be made part of the restitution proceeding. See In Interest of B.D., 720 So.2d 476 (Miss. 1998).

The restitution limit for the justice court is the sum of \$5,000. Miss. Code § 99-37-3(1). Where juvenile delinquents are involved, consult

Miss. Code § 99-37-23 (limiting restitution) and Miss. Code § 43-21-619 (parents may be ordered to pay restitution).

Mississippi has separate statutes addressing restitution for victims of home repair fraud, Miss. Code § 97-23-103(6), stolen metal property, Miss. Code § 97-17-71 (restitution “shall” be ordered), vehicle chop shops, Miss. Code § 63-25-5(5), and malicious mischief. Miss. Code § 97-17-67 (restitution “shall” be ordered”).

■ **MISSOURI**

Discretionary. A court may order a defendant to pay restitution to a crime victim as a condition of probation. Mo. Rev. Stat. § 559.021(2)(1). Thought not set forth in the statute, a judge may order restitution be paid to an insurance company that has issued payments to an insured victim, if her or she deems it just and appropriate to do so. State v. Gladden, 294 S.W.3d 73 (Mo. Ct. App. 2009).

■ **MONTANA**

Mandatory, unless the offender is unable to pay. M.C. § 46-18-241. The definition of victim includes an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss. M.C. § 46-18-243. The victim and government have priority over an insurer. M.C. § 46-18-251. Restitution may be collected as a civil judgment by the victim. Amounts paid must be set off against a judgment in a civil action. M.C. § 46-18-249.

■ **NEBRASKA**

Discretionary. N.R.S. § 29-2280. Amount of restitution is based on actual damages sustained and is to account for the defendant's ability to pay. N.R.S. § 29-2281. In cases of property damage, the court may require the return of property, payment of reasonable repair costs, or payment of replacement costs, if repair is impractical or impossible. N.R.S. § 29-2282. Restitution order may be enforced in the same manner as a judgment in a civil action. N.R.S. § 29-2286. Any restitution paid by the defendant to the victim shall be set off against any judgment in favor of the victim in a civil action. N.R.S. § 29-2287. The court shall not impose restitution for a loss for which the victim has received compensation, except that the court may order payment by the defendant to any person who has compensated the victim. N.R.S. § 29-2283. “Person” includes an insurance company. State v. Holecek, 621 N.W.2d 100 (Neb. 2000).

■ **NEVADA**

Discretionary. If restitution is appropriate, the court shall set an amount of restitution for each victim of the offense. N.R.S. § 176.033. There is no requirement that the court consider a defendant's ability to pay when determining the amount. Martinez v. State, 974 P.2d 133 (Nev. 1999). An insurance company is not a victim entitled to restitution. Id.; N.R.S. § 176.015.

■ **NEW HAMPSHIRE**

Discretionary, but if the court does not order restitution, the court must state the reasons why on the record. R.S. § 651:63. A court may order restitution if restitution 1) will rehabilitate the offender; 2) will compensate the victim; and 3) no other compensation is available. State v. Fleming, 480 A.2d 107 (N.H. 1984). Amount of restitution must equal the amount of liquidated damages which are causally connected and bear a significant relationship to the offense. State v. Gibson, 999 A.2d 240 (N.H. 2010); Fleming. Amount is not contingent upon offender's ability to pay. R.S. §§ 651:61-a; 651:63. An insurer may seek restitution. R.S. § 651:62. A civil award must be reduced by the amount of restitution paid. R.S. § 651:65.

■ **NEW JERSEY**

Mandatory, if the defendant is able to pay. N.J.S.A. § 2C:44-2. Amount shall not exceed the victim's loss. N.J.S.A. § 2C:43-3. Mandatory without consideration of ability to pay in cases of vehicle theft. N.J.S.A. § 2C:43-2.1; State v. Jones, 789 A.2d 131 (N.J. Super. App. Div. 2002). Insurers may receive restitution. State v. Hill, 714 A.2d 311 (N.J. 1998); State v. Jones. Any civil recovery is reduced by the amount of restitution ordered. N.J.S.A. § 2C:44-2. If restitution is not paid, court shall recall the defendant or issue an arrest warrant to have him appear and explain the default. Penalties for unpaid restitution include suspension of driver's license and/or imprisonment. Restitution order may be enforced as a civil judgment. N.J.S.A. § 2C:46-2. Parties to civil action cannot reduce amount of restitutionary obligation as condition of settlement. State v. DeAngelis, 747 A.2d 289 (N.J. Super. App. Div. 2000).

■ **NEW MEXICO**

Mandatory, to the extent that the defendant is reasonably able to make restitution. Amount ordered is to consider, *inter alia*, the physical and mental health of the defendant, the defendant's age, education, employment circumstances, the victim's actual damages and such other factors as shall be appropriate. Restitution order

may be enforced in the same manner as a civil judgment. N.M.S. § 31-17-1. An insurance company may recover restitution. State v. Brooks, 862 P.2d 57 (N.M. App. 1993).

■ **NEW YORK**

Discretionary, depending upon recommendation of district attorney and/or request of victim. Civil damages may be recovered in excess of restitution paid. N.Y. Penal Law § 60.27. Insurer has right of restitution against defendant who caused property loss. People v. Chery, 511 N.Y.S.2d 88 (2d Dept. A.D. 1987). Juveniles are subject to payment of restitution up to \$1500. Family Court Act § 353.6. When insured signs loan receipt with subrogated insurer, court may order juvenile to pay insured, who will then remit proceeds to insurer. Juvenile may not be liable directly to insurance company. Matter of Sean P.K., 896 N.Y.S.2d 543 (4th Dept. A.D. 2010).

■ **NORTH CAROLINA**

Mandatory for certain felonies and misdemeanors, including arson. Discretionary for other crimes. Amount of restitution depends upon the defendant's ability to pay. Property lost is to be determined by value on date of loss or value on date of sentencing less the value of any part of the property that is returned. A civil judgment must be reduced by the amount of restitution paid. N.C.G.S. §§ 15A-1340.34 – 1340.37. Insurance companies may not receive restitution. N.C.G.S. § 15A-1340.37(d); State v. Stanley, 339 S.E.2d 668 (N.C. App. 1986).

■ **NORTH DAKOTA**

Discretionary, but if the court does not order restitution, the court must state the reasons on the record. N.D.C.C. § 12.1-32-08. When considering restitution, the court shall take into account: 1) the amount of the damages; 2) the ability of the defendant to pay; and 3) whether restitution will rehabilitate the defendant. Id. Court may award replacement cost and is not bound by the measure of damages applicable to civil cases. State v. Tupa, 691 N.W.2d 579 (N.D. 2005). A restitution order may be enforced in the same manner as a civil judgment. N.D.C.C. § 12.1-32-08. The amount of restitution is limited to damages that are a direct result of the defendant's criminal action but may not exceed an amount the defendant will be able to pay. Id. An insurer may seek restitution. State v. Vick, 587 N.W.2d 567 (N.D. 1998). A civil award must be reduced by the amount of restitution paid. N.D.C.C. § 12.1-32-08.

■ **OHIO**

Discretionary. R.C. §§ 2929.18, 2929.28. Amount is to be no greater than the victim's actual economic loss and may be determined through, *inter alia*, estimates or receipts indicating the cost of repairing or replacing property and the victim's recommendation. Id. Restitution awards may be enforced as civil judgments. Id. Any civil award predicated upon economic loss shall be reduced by the amount of restitution paid. Id. Insurance companies may not seek restitution. State v. Colon, 925 N.E.2d 212 (Ohio Ct. App. 2d Dist. 2010).

■ **OKLAHOMA**

Mandatory for property damage and loss of income, irrespective of the financial resources of the offender. Restitution order may be enforceable as a civil judgment. 22 O.S. § 991f. Credits for restitution paid may be applied to civil actions under some circumstances, but insured need not give his insurer credit for restitution amounts received by insured. Gentry v. American Motorist Ins. Co., 867 P.2d 468 (Okla. 1994).

■ **OREGON**

Mandatory when victim suffers economic damages. Amounts paid in restitution are to be credited against any civil judgment in favor of the victim. “Victim” eligible for restitution is defined to include an insurance carrier. O.R.S. §§ 137.103 – 137.109. Restitution is discretionary for infractions of the Vehicle Code which cause property damage. O.R.S. § 811.706.

■ **PENNSYLVANIA**

Mandatory. The court shall order full restitution regardless of the defendant's current financial resources. When setting the amount of restitution, the court shall consider the extent of the injury, the victim's request for restitution and such other matters deemed appropriate. The restitution award shall not be reduced by amounts paid by an insurance company. Amounts paid by an insurer shall be ordered to be paid to the insurer. The victim shall be made whole before payments are ordered to the insurer. Civil awards shall be reduced by the amount paid in restitution. 18 Pa. C.S. § 1106.

Pennsylvania has a separate statute addressing victims of certain computer offenses; see 18 Pa. C.S. § 7603, trademark counterfeiting, see 18 Pa. C.S. § 4119, and victims of someone convicted of trafficking in persons. See 18 Pa. C.S. § 3003.

■ RHODE ISLAND

Discretionary. A court may order restitution. R.I. Gen. Laws. § 12-19-32. Courts may utilize any rational method to calculate the restitution judgment, as long as it is, “reasonably calculated to make the victim whole” and is consistent with the goals of rehabilitation. In re James C., 871 A.2d 940 (R.I. 2005). However, the courts have been silent as to whether an insurance company may seek restitution.

■ SOUTH CAROLINA

Mandatory. For victims of a crime resulting in pecuniary damages or loss, the court must hold a hearing and order the defendant to make restitution for pecuniary damages. In determining the manner, method or amount of restitution, the court will consider: 1) the financial resources of the defendant and victim and the burden that the manner and method of restitution will impose on each; 2) the ability of the defendant to pay in installments; 3) the anticipated rehabilitative effect on the defendant; 4) any burden or hardship on the victim as a direct or indirect result of the crime; and 5) the mental, physical, and financial well-being of the victim. S.C. Code § 17-25-322. Insurers may receive restitution as determined by the court but only after the primary victim receives his or her portion of a restitution order. S.C. Code § 17-25-324.

South Carolina has a separate statute addressing victims whose aquaculture products or facilities have been damaged, see S.C. Code § 50-18-285, and victims whose personal property, money or goods have been stolen. See S.C. Code § 17-25-120. It also has a separate statute addressing restitution by juvenile delinquents. See S.C. Code § 63-19-1410(3).

■ SOUTH DAKOTA

Discretionary. A court shall order restitution to the extent a defendant is able to pay and may be enforced as a civil judgment. S.D. Codified Laws § 23A-28-1. However, a court has broad discretion in determining whether restitution will be imposed. State v. Thayer, 713 N.W.2d 608 (S.D. 2006). Prior to ordering restitution a court shall consider the defendant’s health, age, education, employment or potential for employment, and finances, the number of victims and their respective damages, and any other relevant factors. S.D. Codified Laws § 23A-28-5. While a restitution order does not preclude a civil remedy, a subsequent civil judgment is offset by the amount of the restitution order. S.D. Codified Laws § 23A-28-9. An insurance company that has made payments to an insured victim is eligible for restitution, but is subjugated to the claim of a victim with pecuniary damages. S.D. Codified Laws § 23A-28-2.

■ TENNESSEE

Discretionary. The court is to calculate the amount by determining the victim’s special damages and out-of-pocket expenses, as well as the defendant’s ability to pay. At the end of the court-ordered payment schedule, if unpaid amounts remain, victim may convert the unpaid balance into a civil judgment. T.C. § 40-35-304. Insurance companies are not victims entitled to restitution under the statute. State v. Alford, 970 S.W.2d 944 (Tenn. 1998). However, insurance companies may receive restitution in the case of a fraudulent claim by an insured. State v. Cross, 93 S.W.3d 891 (Tenn. Crim. App. 2002).

■ TEXAS

Discretionary. Tex. Code. Crim. Proc. Art. 42.037. If property damage results, the court may order the offender to return the property, or if return is impractical or impossible, require payment of an amount equal to the value of the property at the time of the offense, or the value at the time of sentencing, whichever is greater. Id. An order of restitution may be enforced in the same manner as a judgment in a civil action. Id. Any amount recovered by a victim in a civil proceeding is reduced by any amount of restitution paid. Id. The court may not order restitution for a loss for which the victim has received or will receive compensation, if the compensation is not from the state crime victims fund. However, a court may order restitution to any person who compensated the victim for the loss. Id. Insurance companies may recover under the statute. In re M.S., 985 S.W.2d 278 (Tex.App. – Corpus Christi 1999).

■ UTAH

Mandatory. U.C. § 76-3-201. In determining the amount, the court should consider, *inter alia*, the cost of the damage and the defendant’s ability to pay. U.C. § 77-38a-302. The order shall be considered a legal judgment, enforceable under the Utah Rules of Civil Procedure. U.C. § 77-38a-401. Restitution payments are to be credited against civil judgments. U.C. § 77-38a-403. An insurance company is a “victim” entitled to restitution. State v. Dominguez, 992 P.2d 995 (Utah App.1999); U.C. § 76-3-201.

■ VERMONT

Discretionary. 13 V.S. § 7043. Court is to determine the total amount of victim’s material loss. The court’s restitution unit may bring a civil action to recover payment. Id. When an insurance company is directly damaged by a crime, as in fraud, it may receive restitution as the victim of the crime. State v. Mason, 2011 WL 4975164 (Vt. 2011); State v. Bonfanti, 603 A.2d 365 (Vt. 1991).

■ VIRGINIA

Generally discretionary, but may be imposed only in conjunction with probation or parole. Va. Code Ann. § 19.2-305; Baker v. Com., 335 S.E.2d 276 (Va.1985); Com v. Washington, 55 Va. Cir. 358 (Rockingham Co. 2001). In cases of property damage, restitution and/or community service is mandatory as a condition of probation or a suspended sentence. Va. Code Ann. § 19.2-305.1 In property damage cases, a court may require the offender to return the property, or if return is impractical, pay an amount equal to the value of the property at the time of the offense, or the value at the time of sentencing, whichever is greater. Va. Code Ann. § 19.2-305.2. An order of restitution may be enforced as a civil judgment. Id. An insurance company may seek restitution. Alger v. Com, 450 S.E.2d 765 (Va. Ct. App. 1994).

■ ■ WASHINGTON

Mandatory, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment. In setting the amount, the court should base the order on, *inter alia*, easily ascertainable damages and lost wages, and should take into account the offender's ability to pay. The restitution order may be enforced in the same manner as a judgment in a civil action. R.C.W. § 9.94A.753. The court may order the offender to pay restitution to an insurer without regard to whether the company could pursue a subrogation claim. State v. Ewing, 7 P.3d 835 (Wash. App. Div. 1 2000).

■ ■ WEST VIRGINIA

Mandatory unless the court finds restitution to be impractical due to the amount of the damages and the defendant's ability to pay. W. Va. Code §§ 61-11A-4, 61-11A-5; State v. Lucas, 496 S.E.2d 221 (W.Va. 1997). Amount of restitution shall be equal to the greater of the fair market value of the property on the date of sentencing or the fair market value of the property on the date of the damage less the value of any part of the property that is returned. State v. Kristopher G., 500 S.E.2d 519 (W. Va. 1997). The court may grant restitution to an insurer to the extent the insurer compensated the victim. W. Va. Code § 61-11A-4. Restitution shall be reduced by the amount of any civil award. Restitution order may be enforced in the same manner as a judgment in a civil action. Id. A court may reduce a civil award by the amount of restitution, but is not required to do so. Moran v. Reed, 338 S.E.2d 175 (W.Va. 1985).

■ ■ WISCONSIN

Discretionary. W.S. § 973.20. If the property cannot be returned, court may award the greater of its value at the time it was damaged or its value at the time of sentencing less the value of any part returned to the victim, as well as any special damages and lost income. Id. A restitution order is enforceable in the same manner as a judgment in a civil action. Id. Restitution amounts paid will reduce the amount of recovery in a civil action. Id. Insurers may seek restitution. Id.

■ ■ WYOMING

Mandatory, unless the court finds that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay. W.S.1977 § 7-9-102. The court shall fix a reasonable amount as restitution owed to each victim for actual pecuniary damage resulting from the defendant's criminal activity. The court shall issue execution in the same manner as in a civil action. The defendant shall be given credit against his restitution obligation for payments made to the victim by the defendant's insurer for injuries arising out of the same facts or event. W.S.1977 § 7-9-103. Any restitution payment by the defendant to a victim shall be set off against any judgment in favor of the victim in a civil action arising out of the same facts or event. W.S.1977 § 7-9-110. An insurer which paid any part of a victim's pecuniary damages shall be regarded as the victim only if the insurer has no right of subrogation and the insured has no duty to pay the proceeds of restitution to the insurer. W.S.1977 § 7-9-101; Meerscheidt v. State, 931 P.2d 220, 227 (Wyo. 1997)

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