

# AK Sample Restitution Motion

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*Attorney for Crime Victim*

IN THE [DISTRICT/SUPERIOR COURT] FOR THE STATE OF ALASKA  
AT [FILL IN]

STATE OF ALASKA,	)	Case No. [FILL IN]
Plaintiff	)	
	)	<b>CRIME VICTIM'S MOTION FOR</b>
vs.	)	<b>RESTITUTION</b>
[NAME OF DEFENDANT],	)	
Defendant	)	
	)	Hon. [FILL IN]
[NAME/PSEUDONYM],	)	
Crime Victim.	)	
	)	

COMES NOW the crime victim, [Name/Pseudonym],<sup>1</sup> by and through undersigned counsel, and respectfully asserts [his/her/their] constitutional and statutory rights to restitution

<sup>1</sup> [Practitioner's Note: If using pseudonyms for crime victims in pleadings for the first time, add a footnote. For example: All references herein to the crime victim shall refer to [Doe 1 or alternative pseudonym] to protect [his/her/their] privacy in accordance with [his/her/their] federal and state constitutional rights. See, e.g., *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977) (recognizing that the United States Constitution provides a right to personal privacy, which includes an "individual interest in avoiding disclosure of personal matters"); *Roe v. Wade*, 410 U.S. 113, 152-53 (1973) (providing that "a right of personal privacy . . . does exist under the Constitution"); see also Alaska Const. art. I, § 22 (providing that "[t]he right of the people to privacy is recognized and shall not be infringed"); *James v. State*, 84 P.3d 404, 404 n.1 (Alaska 2004) (using pseudonyms instead of the names of the child-victim and child-witnesses "to protect their privacy"); cf. *Kiva O. v. State Dep't of Health & Soc. Servs.*, 408 P.3d 1181, 1183 n.2 (Alaska 2018) (observing in litigation regarding the medication of a child in the custody of the Office of Children's Services, over the objection of the child's mother, that "[w]e use pseudonyms to protect the parties' privacy").]

from the defendant convicted of the offense against [him/her/them]. [Name/Pseudonym] was injured by the offense and suffered [damages/loss(es)] as a result of the crime, totaling [XXXX.XX]. As such, [Name/Pseudonym] moves this Court for a criminal restitution order, directing [Name of Defendant] to pay restitution to [Name/Pseudonym] in the amount of [XXXX.XX]. This request is supported by the attached Memorandum of Points and Authorities, all pleadings and evidence filed with the court, and any evidence presented at the time restitution is considered.<sup>2</sup>

Respectfully submitted [date]

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[Attorney], Esq. Alaska Bar # [number]  
[Address]  
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*Attorney for Crime Victim*

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<sup>2</sup> [Practitioner's Note]: While this sample is styled as one to be filed by a crime victim, it can be adapted to one filed by the state on behalf of the victim. See Alaska Stat. Ann. § 12.61.010(a)(1)(A), (8)-(9), (b) (providing that “prosecutors . . . shall make every reasonable effort to ensure that victims of crimes have the rights set out in” Alaska Stat. Ann. § 12.61.010(a), including the rights to be present at a sentencing hearing, to include a statement in a presentence report and to appear personally and provide a statement, presentation or testimony at a sentencing hearing); see also Alaska Const. art. I, § 24 (guaranteeing crime victims, *inter alia*, the constitutional rights “to be treated with dignity, respect[] and fairness during all phases of the criminal . . . justice process”; to “be heard, upon request, at sentencing”; and “to restitution from the accused”).]

## MEMORANDUM OF POINTS AND AUTHORITIES

### STATEMENT OF FACTS

*[Insert relevant facts, including an itemization of the damages/loss incurred as a result of the criminal conduct. If you choose to attach documentation detailing damages/loss or to submit documentation in connection with a restitution proceeding (e.g., receipts, estimates or affidavits), consider redacting information to safeguard the crime victim’s rights to privacy and/or protection.]*<sup>3</sup>

### ARGUMENT

#### **I. THE CRIME VICTIM HAS STANDING TO ASSERT AND SEEK ENFORCEMENT OF [HIS/HER/THEIR] RIGHTS TO BE HEARD AND TO RESTITUTION.**

Victims of crime are guaranteed myriad constitutional and statutory rights, including the right to restitution and the right to be heard in connection with sentencing proceedings. *See, e.g.*, Alaska Const. art. I, § 24 (guaranteeing crime victims constitutional rights, *inter alia*, to restitution and to be heard at sentencing); Alaska Stat. Ann. § 12.55.045(a)(1)-(2) (mandating that courts take into account public policy in favor of requiring “criminals to compensate for damages and injury” and to consider the “financial burden” placed on victims as a result of criminal conduct when ordering “a defendant convicted of an offense to make restitution” — unless the victim “expressly declines restitution”); Alaska Stat. Ann. § 12.55.100(a)(2)(B)

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<sup>3</sup> [Practitioner’s Note: Under Alaska law, defendants may be ordered to pay restitution for injury caused by “all of the participants” who jointly engage in an assault. *See, e.g., Sitigata v. State*, 280 P.3d 595, 596-98 (Alaska Ct. App. 2012) (emphasis in original) (affirming restitution for expenses attributable to the victim’s broken jaw and teeth—specific injuries that defendant argued were directly inflicted by a co-defendant—where defendant was not charged as an accomplice and holding that because “the injuries to [the victim’s] teeth and jaw are the result of [defendant’s] offense, regardless of whether [defendant] personally delivered the punches or kicks that caused these injuries”, the “court could properly order [defendant] to pay restitution for these injuries”).]

(authorizing courts to include restitution as a condition of probation);<sup>4</sup> Alaska Stat. Ann. § 12.55.023 (addressing victims’ right to be heard at sentencing);<sup>5</sup> Alaska Stat. Ann. § 12.61.010(a)(1)(A),(8)-(9) (guaranteeing crime victims the rights, *inter alia*, to be present at sentencing proceedings, to provide a statement for use in preparing a presentence report and to be heard, in person, at sentencing hearings); Alaska R. Crim. P. 32.2(a) (mandating that “[i]f a victim as defined in [Alaska Statutes, section] 12.55.185 prepares and submits a written statement, gives sworn testimony or makes an unsworn oral presentation under [Alaska Statutes, section] 12.55.023, the court shall take the content of the statement, testimony[] or presentation into consideration . . . when considering the need for restitution under [Alaska Statutes, section] 12.55.045”).

Victims of crime have standing to assert their constitutional and statutory rights, including the rights to be heard and to restitution. Alaska courts “interpret the concept of standing broadly, ‘favoring increased accessibility to judicial forums.’” *Larson v. State Dep’t of Corr.*, 284 P.3d 1, 11 (Alaska 2012); *accord Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987) (reiterating the broad nature of standing under Alaska law; observing that under

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<sup>4</sup> [Practitioner’s Note: Restitution can be ordered as a condition of defendant’s sentence; as a condition of defendant’s probation; or as a condition of both sentence and probation, so long as this is done at the original sentencing hearing. *See, e.g., Welsh v. State*, 314 P.3d 566, 567 (Alaska Ct. App. 2013) (observing that “[t]wo statutes [Alaska Statutes, sections 12.55.045 and 12.55.100] govern awards of restitution in criminal cases, because these awards can be imposed in two different ways: as a direct provision of the defendant’s sentence, or as a condition of the defendant’s probation”); *Kelly v. State*, 842 P.2d 612, 614 n.1 (Alaska Ct. App. 1992) (emphasis added) (explaining “[w]e see no reason why a court cannot order restitution both as a condition of probation and as an independent provision of the sentence as long as the court does this at the *original sentencing hearing*”). Consider including a request for how restitution will be ordered in the body of the motion and in the conclusion of the memorandum of points and authorities.]

<sup>5</sup> [Practitioner’s Note: The law requires the prosecuting attorney, upon request, to provide a victim with portions of the presentencing report. *See* Alaska Stat. Ann. § 12.55.023(a) (explaining that “[i]f a victim requests, the prosecuting attorney shall provide the victim, before the sentencing hearing, with a copy of the following portions of the presentence report: (1) the summary of the offense prepared by the Department of Corrections; (2) the defendant’s version of the offense; (3) all statements and summaries of statements of the victim; (4) the sentence recommendation of the Department of Corrections; and (5) letters of support submitted to the court for consideration”).]

the “interest-injury” standing analysis, “a plaintiff must have an interest adversely affected by the conduct complained of”; and explaining that the interest at stake, which “need not be great”—and may, in fact, constitute “a trifle”—can be economic or intangible in nature).

Standing in Alaska is not a constitutional doctrine; instead, it “is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions.” *Trustees for Alaska*, 736 P.2d at 327. Courts have found the requisite degree of injury where redress for an alleged violation of a constitutional right is directly at stake in the litigation. *See, e.g., Larson*, 284 P.3d at 12 (finding alleged violation of an inmate’s state constitutional right to rehabilitation to be an injury sufficient to confer standing); *Friends of Willow Lake, Inc. v. State Dep’t of Transp. & Pub. Facilities*, 280 P.3d 542, 547 (Alaska 2012) (finding that “[a]lleged infringement of constitutional rights is a significant injury to a proper interest” and is sufficient to confer standing); *Trask v. Ketchikan Gateway Borough*, 253 P.3d 616, 620 (Alaska 2011) (finding standing where the plaintiff alleged that an enforcement action directed at her violated her constitutional right to free speech).<sup>6</sup>

[Name/Pseudonym] is a crime victim, as defined by law. *See* Alaska Stat. Ann. § 12.55.185(19)([insert applicable subsection]) (defining “victim” to include [insert applicable description]). [Insert explanation of how the victim in this case meets the definition of “victim.” Hopefully the following statement can be made: “It is undisputed that [Name/Pseudonym] meets this definition.”]

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<sup>6</sup> [Practitioner’s Note: Victims of crime have appeared in Alaska courts seeking enforcement of their rights, and Alaska courts have heard and ruled on the issues, without addressing the issue of victim standing. *See, e.g., N.G. v. Superior Court*, 291 P.3d 328 (Alaska Ct. App. 2012) (resolving issues relating to the victim’s constitutional rights to privacy and to be treated with dignity, respect and fairness, as well as privilege protections for psychotherapy records).]

[Name/Pseudonym] properly appears before this court to assert [his/her/their] constitutional and statutory rights to restitution and to be heard and is entitled to seek meaningful enforcement of these rights.

**II. THE CRIME VICTIM HAS THE RIGHT TO RESTITUTION FOR THE EXPENSES ARISING FROM THE OFFENSE AND CAUSED BY DEFENDANT’S CRIMINAL CONDUCT, INCLUDING COSTS FOR [INSERT TYPES OF RELEVANT COSTS SOUGHT].**

Restitution, under Alaska law, serves two purposes: “(1) it reimburses the victim for [his/her/their] loss, and (2) it sanctions the defendant for [his/her/their] crime.” *Dorris v. State*, 656 P.2d 578, 584 (Alaska Ct. App. 1982). Alaska law requires courts to consider various factors when contemplating restitution, including the “public policy that favors requiring criminals to compensate for damages and injury, including loss of income, to their victims” and the “financial burden” imposed on victims as a result of defendants’ criminal conduct. Alaska Stat. Ann. § 12.55.045(a); *see also* Alaska Stat. Ann. § 12.55.005 (providing that the sentencing court consider, *inter alia*, the “restoration of the victim and the community”).

In addition to establishing victims’ right to restitution, Alaska law incorporates protections to ensure crime victims’ right to restitution is meaningfully enforced, including requiring the defendant to compensate victims for the full amount of their damages or loss. *See, e.g., Hodges v. State*, 158 P.3d 864, 866 (Alaska Ct. App. 2007) (observing that Alaska Stat. Ann. § 12.55.045(g) provides that “crime victims are entitled to a restitution order that directs the defendant to compensate them for the full amount of their loss”);<sup>7</sup> *cf.* Alaska R. Crim. P. 32

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<sup>7</sup> [Practitioner’s Note: Courts may not consider the defendant’s ability to pay when determining the amount of restitution, *see, e.g.,* Alaska Stat. Ann. § 12.55.045(g) (providing that “[t]he court may not, in ordering the amount of restitution, consider the defendant’s ability to pay restitution”); however, the court is required to assess the defendant’s ability to pay when preparing a payment schedule. *See Hodges*, 158 P.3d at 864 (finding no due process violation in setting “the total amount of restitution without regard to a defendant’s ability to pay,” so long as the sentencing judge considers “the defendant’s ability to pay when the judge sets the schedule and the monetary amount of defendant’s payments toward that restitution obligation”); *see also* Alaska Stat. Ann. § 12.55.045(c) (“If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a

(mandating that “[i]f the defendant is placed on probation, the judgment of conviction shall include the payment of restitution as a condition of probation”).

Restitution, which must be supported by substantial evidence, is to be calculated using the amount of damages or loss sustained by the victim, as a result of defendant’s criminal conduct. *See, e.g.*, Alaska Stat. Ann. § 12.55.045(a) (mandating, unless declined by the victim, that courts order restitution when presented with “credible evidence”); *see also Welsh v. State*, 314 P.3d 566, 568 (Alaska Ct. App. 2013) (observing that restitution under both the statute governing restitution as a provision of the sentence and restitution as a condition of probation should be assessed according to the “actual damages or loss suffered by the victim or other injured person”);<sup>8</sup> *Peratrovich v. State*, 903 P.2d 1071, 1078 (Alaska Ct. App. 1995) (holding “that a restitution order must be based on substantial evidence of monetary loss or expense, not mere speculation”).

In this case, [Name/Pseudonym] incurred [*identify the damages or losses sustained and sought by the victim, explaining how these damages or losses were caused by defendant’s criminal conduct.*]

Accordingly, [Name/Pseudonym] seeks the following in restitution: [*Identify relevant categories of loss and include the applicable law and arguments. Included below are a few examples that may apply in a given case*]:<sup>9</sup>

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specified period of time or in specified installments. If the defendant fails to make one or more payments required under this section, the victim or the state on the victim’s behalf may enforce the total amount remaining under the order of restitution as provided in (1) of this section.”.)]

<sup>8</sup> [Practitioner’s Note: The Alaska Court of Appeals has held that restitution should not be based on the “amount of the defendant’s unjust gain[,]” but instead should be based on the damages or loss caused by the defendant’s crime. *Welsh*, 314 P.3d at 568.]

<sup>9</sup> [Practitioner’s Note: The list of restitution categories included in this sample is not intended to be exhaustive. Only when working with an individual victim will you be able to determine what damages/losses are necessary to fully compensate the victim for the financial costs incurred as a result of the crime. This list is intended as a starting

- Past and Future Counseling: *See, e.g., W.S. v. State*, 174 P.3d 256, 260 (Alaska Ct. App. 2008) (observing that Alaska courts have “interpreted [Alaska Statutes, section 12.55.045] broadly—as authorizing restitution not only for a victim’s past mental health counseling, but also a victim’s future counseling when the need for this counseling, and the projected amount of the counseling expenses, are firmly established” and holding that “‘suitable restitution’ in delinquency cases” includes expenses relating to victims’ mental health counseling); *Reece v. State*, 881 P.2d 1135, 1138 (Alaska Ct. App. 1994) (affirming restitution for partial moving expenses and “future costs of counseling” that were “adequately established in the sentencing record”).
- Moving, and Travel Expenses: *See, e.g., Riley v. State*, 60 P.3d 204, 223 (Alaska Ct. App. 2002) (affirming restitution for the cost of an airline ticket for the victim to move to his parents’ out of state residence “to recuperate from his injuries”); *Reece*, 881 P.2d at 1138 (affirming restitution for “partial moving expenses” where “the move was prompted by the sexual abuse for which [defendant] was convicted and the location . . . for a new residence was reasonable”).
- Property Damage: *See, e.g., Fee v. State*, 656 P.2d 1202, 1206 (Alaska Ct. App. 1982) (“hold[ing] that a [defendant] pleading guilty to criminal mischief in the third degree . . . can be required . . . to pay . . . restitution in excess of \$500 so long as the payment is made to ‘an aggrieved party’ and the amount does not exceed the ‘actual damages or loss caused by the crime for which conviction was had’”); *cf. Willett v. State*, 826 P.2d 1142, 1144 (Alaska Ct. App. 1992) (providing in the context of a defense challenge based on

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point. Other examples of successful restitution requests can be found among NCVLI’s online resources. *See, e.g., Sample Cases: Thinking Broadly About Restitution*, Rights Enforcement Toolkit (Nat’l Crime Victim Law Inst., Portland, Or.), Nov. 2018, [https://law.lclark.edu/live/files/27371-sample-cases-handoutrestitution.](https://law.lclark.edu/live/files/27371-sample-cases-handoutrestitution)

the sufficiency of the evidence that a direct measure of property damage in a criminal mischief case is “reasonable cost of repair” and an alternative measure is by diminution in value, which requires a showing of property value).

- Retail Theft: *Morris v. State*, 334 P.3d 1244, 1246 (Alaska Ct. App. 2014) (providing, “in cases involving the theft of retail merchandise, the general rule is that the retail price of an item is *prima facie* evidence of its market value”).
- Interest: *See, e.g., Dorris*, 656 P.2d at 584 (explaining that because “the purpose of the restitution statute is to make the victim whole[,]” requiring reasonable interest was permissible); *Clark v. State*, 953 P.2d 159, 167 (Alaska Ct. App. 1998) (observing that “[i]nterest on restitution payments is permitted”).

[Discuss for each category how the damages or losses sustained and sought by the victim are supported by “substantial evidence” (attached as exhibits or otherwise in the record) and are not sought based on “mere speculation.”]<sup>10</sup>

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<sup>10</sup> [Practitioner’s Note: Even though restitution is generally limited to losses sustained from the offense(s) of conviction, restitution may be ordered for charges dismissed as part of a plea agreement, as long as certain conditions are met. *See, e.g., Kimbrell v. State*, 666 P.2d 454, 455 (Alaska Ct. App. 1983) (quoting *United States v. McLaughlin*, 512 F. Supp. 907, 908 (D. Md. 1981)) (holding that “it is permissible in sentencing a defendant on one charge to impose restitution for a separate dismissed charge if there are specific findings that: ‘(1) the amount of loss suffered by an identifiable aggrieved party is certain; (2) the defendant admits, and there is no factual question as to whether, the defendant caused or was responsible for the aggrieved party’s loss; and (3) the defendant consents, freely and voluntarily, to make full restitution’”).]

## CONCLUSION

Under Alaska law, [Name/Pseudonym] has constitutional and statutory rights to restitution and to be heard. [Name/Pseudonym] established that [he/she/they] was injured by defendant's criminal conduct and suffered [damages/losses] as a result.<sup>11</sup> Therefore, [Name/Pseudonym] respectfully requests that this Court grant this Motion for Restitution and order defendant to pay full restitution, in the amount of [\$XXX.XX].<sup>12, 13</sup>

Respectfully submitted [date]

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[Address]  
[Phone Number]  
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*Attorney for Crime Victim*

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<sup>11</sup> [Practitioner's Note: Monetary donations or insurance payments received by a victim of crime do not entitle defendants to an offset of the amount of restitution ordered. *See, e.g., Mahan v. State*, 51 P.3d 962, 970 (Alaska Ct. App. 2002) (holding that "when the victim of a crime receives money from a third party—either contractual payments from an insurance company or voluntary donations from members of the public—this money should not reduce the amount of restitution that the offender can be ordered to pay").]

<sup>12</sup> [Practitioner's Note: Under Alaska law, when restitution is ordered, "[i]f no due date [for restitution] is stated, the restitution amount is due immediately." Alaska R. Crim. P. 32.6(b)(2). If restitution is not due in full and immediately, consider requesting that the judgment include a payment schedule; due date for each payment; minimum amount for each payment; date full amount of restitution shall be paid by; interest; and when interest shall begin to accrue. *See* Alaska R. Crim. P. 32.6 (addressing the content and requirements for judgments of restitution); *see also* Alaska R. Crim. P. 32(c)(1)(B) (providing "[w]hen the sentence includes a requirement that the defendant pay restitution, the judge shall order restitution as described in Rule 32.6" and specifying that the judgment for restitution "is enforceable in the same manner as a judgment in a civil action"); Alaska Stat. Ann. § 12.55.045(c) (providing that "[i]f a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments").]

<sup>13</sup> [Practitioner's Note: It is worth noting that, in addition to seeking restitution, there may be civil remedies available to the victim. *See, e.g.,* Alaska Stat. Ann. § 12.55.045(b) (providing "[a]n order of restitution under . . . [Alaska Statute,] section [12.55.045] does not limit any civil liability of the defendant arising from the defendant's conduct").]