

CO Sample Restitution Motion

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DISTRICT COURT, [FILL IN] COUNTY, COLORADO
[FILL IN COURT ADDRESS]

THE PEOPLE OF THE STATE OF)	Case No. [FILL IN] ¹
COLORADO,)	
Plaintiff)	CRIME VICTIM'S MOTION FOR
)	RESTITUTION
vs.)	
[NAME OF DEFENDANT],)	Hon. [FILL IN]
Defendant)	
)	
[NAME/PSEUDONYM],)	
Crime Victim.)	
)	

COMES NOW the crime victim, [Name/Pseudonym],² by and through undersigned counsel, and respectfully asserts [his/her/their] right to restitution from defendant for the actual

¹ [Practitioner's Note: For purposes of this sample pleading, the *Pacific Reporter* citation format is used. See *Public Domain Citation Format for Colorado Supreme Court and Colorado Court Of Appeals Cases*, https://www.courts.state.co.us/Courts/Supreme_Court/Directives/CJD%2012-01.pdf (“[T]o promote equal access to Colorado’s system of justice, [Chief Justice Directive 12-01] establishe[d] a public domain citation format Legal practitioners and self-represented parties [are] permitted—but not required—to use the public domain citation format instead of citing to the *Pacific Reporter*. Irrespective of which citation format is used, a parallel citation to the other format is . . . not required.”).]

² [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 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) (“[A] right of personal privacy . . . does exist under the Constitution.”); see also *People v. Dunaway*, 88

pecuniary damages resulting from the crime. § 24-4.1-302.5(h), C.R.S. [Name/Pseudonym] suffered losses as a result of the crime, amounting to [\$XXX.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 [\$XXX.XX]. This request is supported by the attached memorandum of points and authorities.³

Respectfully submitted [date].

[Attorney, Esq.] Colorado Bar # [number]
[Address]
[Phone Number]
[Fax Number]
[Email Address]
Attorney for Crime Victim

P.3d 619, 622 n.1 (Colo. 2004) (en banc) (“To protect the child’s anonymity, the younger child, the victim in this case, will be referred to interchangeably as: the ‘child,’ the ‘infant,’ or the ‘baby.’”); *People ex rel. Tooley v. Seven Thirty-Five E. Colfax, Inc.*, 697 P.2d 348, 369 (Colo. 1985) (en banc) (“It is firmly established that the liberty interest protected by the due process clause of the United States Constitution encompasses ‘a right of personal privacy, or a guarantee of certain areas or zones of privacy.’” (internal citations omitted); *Martinelli v. District Court*, 612 P.2d 1083, 1091 (Colo. 1980) (en banc) (internal citations omitted) (characterizing the constitutional right to privacy discussed in *Whalen v. Roe* as a “right to confidentiality” that “encompasses the ‘power to control what we shall reveal about our intimate selves, to whom, and for what purpose’” and establishing a three-part test governing potential disclosure, in the context of a civil dispute where litigants sought access to personnel materials); *cf. People v. Bryant*, 94 P.3d 624 (Colo. 2001) (en banc) (discussing the importance of victim privacy in the context of information protected by the rape shield law that was reviewed *in camera*); *Doe v. Heitler*, 26 P.3d 539, 541 (Colo. Ct. App. 2001) (internal citation omitted) (“[A] plaintiff [in a civil case] seeking to proceed anonymously must show that he or she has a substantial privacy right that outweighs the ‘customary and constitutionally-embedded presumption of openness in judicial proceedings.’ Among the factors relevant to a determination of whether this showing has been made are: whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature; whether identification poses a risk of retaliatory physical or mental harm to the requesting party or to innocent nonparties; whether the action is against a governmental or a private party; whether the plaintiff would be compelled to admit his or her intention to engage in illegal conduct, thereby risking criminal prosecution; and the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.”.)]

³ [Practitioner’s Note: Although this sample is styled as one to be filed by crime victims, it can be adapted to one filed by the state. See, e.g., § 18-1.3-603(2), C.R.S. (providing that “[t]he court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims”); § 24-4.1-301, C.R.S. (declaring the legislative mandate that all crime victims “are honored and protected by . . . prosecutors . . . in a manner no less vigorous than the protection afforded criminal defendants”); § 24-4.1-302.5(1)(o), C.R.S. (assuring crime victims “that in any criminal proceeding . . . the prosecutor . . . will take appropriate action to achieve a swift and fair resolution of the proceedings”); § 24-4.1-303(1), C.R.S. (mandating that “prosecutorial agencies . . . shall ensure that victims of crimes are afforded the rights” provided by law).]

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

*[Insert relevant facts, including itemized losses incurred as a result of the criminal conduct. If you choose to attach documentation detailing the actual pecuniary damages or to submit documentation in connection with a restitution hearing (e.g., receipts, estimates or affidavits), consider redacting information that could compromise crime victims' rights to privacy and/or protection.]*⁴

ARGUMENT

I. THE CRIME VICTIM HAS STANDING TO ASSERT AND SEEK ENFORCEMENT OF [HIS/HER/THEIR] RIGHT TO RESTITUTION.

Victims of crime are guaranteed myriad constitutional and statutory rights, including the right to restitution and the rights to be present and heard in connection with sentencing proceedings. *See, e.g.*, Colo. Const. art. II, § 16a (guaranteeing victims the right to be informed; present for critical stages; and heard when relevant); § 18-1.3-601, C.R.S. (declaring that convicted persons who impose hardships on crime victims “should be under a moral and legal obligation to make full restitution to those harmed” as the basis for the legislature’s intent to facilitate procedures “to provide for and collect full restitution for victims of crime in the most expeditious manner” and mandating that the restitution provisions be “liberally construed to accomplish all such purposes”); § 18-1.3-603(1)(a)-(d), C.R.S (mandating consideration of restitution in connection with “every order of conviction” in all but certain narrowly defined

⁴ [Practitioner’s Note: Prosecutors carry the burden of proving the amount of restitution and the nexus for damages by a preponderance of the evidence; the court is required to base the order of restitution on the information presented to the court by the prosecutor. *See, e.g.*, § 18-1.3-603(2), C.R.S. (requiring the order of restitution be based on the information presented to the court by the prosecutor, “who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims”); *Accord People v. Perez*, 413 P.3d 266, 269 (Colo. Ct. App. 2017) (stating in a decision affirming restitution for sick leave and vacation leave that “the prosecution bears the burden of proving, by a preponderance of the evidence, both the amount of restitution owed and that the victim’s losses were proximately caused by the defendant”).]

exceptions); § 24-4.1-302.5(1)(b), C.R.S. (guaranteeing victims “[t]he right to be informed of and present for . . . critical stages[,]” including sentencing, resentencing, modification of a sentence, appellate review and appellate decisions); § 24-4.1-302.5(1)(d)(II)-(V), C.R.S. (granting victims the right to be heard, *inter alia*, at sentencing, resentencing, modification of a sentence and acceptance of pleas); § 24-4.1-302.5(1)(h), C.R.S. (guaranteeing victims the right to a restitution determination based on the “actual pecuniary damages that resulted from the commission of the crime”).

Victims of crime have standing to assert their constitutional and statutory rights, including the right to restitution and the rights to be present and heard in connection with sentencing proceedings. *See, e.g., Gansz v. People*, 888 P.2d 256, 257 (Colo. 1995) (en banc) (observing that victims of crime have standing when they assert “an injury in fact to a legally protected or cognizable interest” and finding that the victim in that case did not have standing, as Colorado law did not provide victims with the right to be heard at a hearing on a district attorney’s motion to dismiss criminal charges (citing *Maurer v. Young Life*, 779 P.2d 1317 (Colo. 1989) (en banc); *Conrad v. City & County of Denver*, 656 P.2d 662 (Colo. 1982) (en banc); *Wimberly v. Ettenberg*, 570 P.2d 535 (Colo. 1977) (en banc))); *see also C.W.B., Jr. v. A.S.*, 410 P.3d 438, 443 (Colo. 2018) (reiterating, in a family law matter, that standing requires “an injury in fact . . . to a legally protected interest” and observing that those “protected by a statute or constitutional provision are generally best situated to vindicate their own rights” (citing *Ainscough v. Owens*, 90 P.3d 851, 855-56 (Colo. 2004) (en banc) and quoting *City of Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 437 (Colo. 2000) (en banc))); *Greenwood Vill.*, 3 P.3d at 436-37 (explaining that standing encompasses a constitutional prong and a prudential prong; the constitutional prong requires an injury in fact,

and the prudential prong requires a nexus between the injury in fact and the legally protected right). Crucially, the determination of standing does not turn on whether one is a party to a criminal proceeding; the sole question is whether the test for standing is met, and Colorado courts have granted standing to non-parties with rights at issue in connection with criminal proceedings. *See, e.g., People v. Bryant*, 94 P.3d 624 (Colo. 2004) (en banc) (considering a First Amendment challenge brought by members of the media in connection with a highly publicized criminal case, without explicitly discussing standing; and affirming the constitutionality of a protective order prohibiting further dissemination of information discussed during *in camera* rape shield proceedings that was inadvertently provided to the media by the court reporter).^{5, 6}

The victim in this case satisfies the requirements for standing to assert [his/her/their] right to restitution. [Discuss and apply Colorado’s standing test, specifically addressing the injury in fact, the legally protected right and the nexus between the injury and the right, under the facts of the case.].

[Name/Pseudonym] is a crime victim, for purposes of restitution, as defined by law. *See* § 18-1.3-602(4)(a), C.R.S. ([insert applicable subsection]) (defining “victim” as “any person

⁵ Indeed, victims’ rights must be read and interpreted through the lens of due process and be afforded in a manner that allows victims to assert their rights in a meaningful way. *See, e.g., Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (observing that a fundamental aspect of due process is the right to be heard in a “meaningful time and in a meaningful manner”); *Whiteside v. Smith*, 67 P.3d 1240, 1248-49 (Colo. 2003) (en banc) (reiterating that due process requires the right to be heard in a way that is meaningful and emphasizing that the requirements of due process are not fixed or rigid but instead are flexible, adapting to the rights and circumstances involved); *see also* § 24-4.1-302.5(1), C.R.S. (guaranteeing victims of crime the rights to justice and due process).

⁶ [Practitioner’s Note: Jurisdictions nationally recognize that party status is not a prerequisite to or a substitute for engaging in a standing analysis, as it is not uncommon for nonparties—including crime victims—to have standing for limited purposes in connection with criminal proceedings. *See, e.g., Melissa J. v. Superior Court*, 237 Cal. Rptr. 5, 6 (Cal. Ct. App. 1987) (“The victim is not considered a party to a criminal proceeding. However, where the court has issued an order concerning restitution, the victim may assert [his/her/their] legitimate rights by the procedures available to parties.”); *Ford v. State*, 829 So. 2d 946, 948 (Fla. Dist. Ct. App. 2002) (granting the victim’s petition for certiorari with regard to the victim’s right to restitution); *Doe v. United States*, 666 F.2d 43, 46 (4th Cir. 1981) (observing that while the federal rape shield provision does not explicitly provide standing for a victim’s right to appeal, standing is “implicit as a necessary corollary of the rule’s explicit protection of the privacy interests Congress sought to safeguard” and that “[n]o other party in the evidentiary proceeding shares these interests to the extent that they might be viewed as a champion of the victim’s rights”).]

aggrieved by the conduct of an offender and includes but is not limited to the following:” [insert corresponding definition]). [Insert explanation of how the victim in this case meets the definition of “victim.”]. Thus, [Name/Pseudonym] properly appears before this court to assert [his/her/their] constitutional and statutory rights, *inter alia*, to restitution and to be present and heard in connection with sentencing proceedings and is entitled to seek full and meaningful enforcement of [his/her/their] rights.

II. THE CRIME VICTIM HAS THE RIGHT TO RESTITUTION FOR EXPENSES THAT FLOW DIRECTLY FROM DEFENDANT’S CRIMINAL CONDUCT, INCLUDING COSTS FOR [INSERT RELEVANT COSTS SOUGHT].

Victims of crime in Colorado are guaranteed the right to restitution. *See, e.g.*, § 18-1.3-601, C.R.S. (acknowledging the hardships imposed on victims of crime; declaring that convicted persons who caused such hardships “should be under a moral and legal obligation to make full restitution to those harmed”; recognizing the rehabilitative and deterrent impacts of restitution and that an effective criminal justice system “requires timely restitution”; declaring the intent of the legislature to facilitate procedures “to provide for and collect full restitution for victims of crime in the most expeditious manner”; and mandating that the restitution provisions be “liberally construed to accomplish all such purposes”); § 18-1.3-603(1)(a)-(d), C.R.S (mandating consideration of restitution in connection with “every order of conviction[,]” whether the conviction is for a “felony, misdemeanor, petty, or traffic misdemeanor offense” in all but certain narrowly defined exceptions; and specifying that each order will contain a provision: 1) ordering the payment of a specific amount of restitution, 2) ordering defendant to pay restitution in a specific amount to be determined at a later date, 3) ordering defendant to pay restitution for the actual costs of specific future treatment (in addition to or instead of an order for a specific amount of restitution), or 4) with a specific finding that no victim suffered a pecuniary loss and

that no order for restitution will be ordered); § 24-4.1-301, C.R.S. (declaring, *inter alia*, that the rights of “all victims” of crime be “honored and protected by law enforcement agencies, prosecutors[] and judges in a manner no less vigorous than the protection afforded criminal defendants”); § 24-4.1-302.5(1)(h), C.R.S. (guaranteeing crime victims “[t]he right to have the court determine the amount, if any, of restitution to be paid to a victim pursuant to part 6 of article 1.3 of title 18, C.R.S., by any person convicted of a crime against such victim for the actual pecuniary damages that resulted from the commission of the crime”); *see also People v. Stafford*, 93 P.3d 572, 574 (Colo. Ct. App. 2004) (explaining that “restitution serves to make the victim whole” and distinguishing restitution from fines and monetary penalties that potentially implicate Eighth Amendment concerns).⁷

Restitution is defined as “any pecuniary loss suffered by a victim and includes but is not limited to all out-of-pocket expenses, interest, loss of use of money, anticipated future expenses, rewards paid by victims, money advanced by law enforcement agencies, money advanced by a governmental agency for a service animal, adjustment expenses[] and other losses or injuries proximately caused by an offender’s conduct and that can be reasonably calculated and recompensed in money.” § 18-1.3-602(3)(a), C.R.S.⁸

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.*]

⁷ [Practitioner’s Note: Colorado law further provides that restitution is to be paid in full and on a specified payment schedule. *See* § 18-1.3-205, C.R.S. (providing that every sentence that includes a term of probation shall include, as conditions of probation, payment in full by defendant and payments “within a period of time specified by the court”).]

⁸ [Practitioner’s Note: The legal definition of restitution does not include: “damages for physical or mental pain and suffering, loss of consortium, loss of enjoyment of life, loss of future earnings[] or punitive damages.” § 18-1.3-602(3)(a), C.R.S.; *see also* § 18-1.3-602(3)(a.5)-(d), C.R.S.]

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:]^{9, 10}

- Medical: *People v. Rivera*, 250 P.3d 1272, 1274-78 (Colo. App. 2010) (observing that “[c]ounseling and mental health costs are considered medical expenses under the restitution statute” and affirming restitution for the victim’s counseling expenses where there was sufficient evidence in the record to support that the counseling was attributable to defendant’s criminal conduct); *People v. Webb-Johnson*, 113 P.3d 1253, 1254 (Colo. App. 2005) (holding that restitution for medical expenses was properly ordered because it fell in the category of “anticipated future expenses” (quoting § 18-1.3-602(3)(a), C.R.S.)); *People v. Wheatley*, 805 P.2d 1148, 1151 (Colo. App. 1990) (affirming restitution for medical expenses that covered treatment for the victim’s physical wounds as well as the victim’s post-traumatic counseling, where there was sufficient evidence in the record to support the court’s conclusion that “the trauma imposed upon the victim’s pre-existing mental state” necessitated counseling).
- Lost Wages, and Moving Expenses: *People v. Henson*, 307 P.3d 1135, 1139 (Colo. App. 2013) (affirming restitution for the victim’s lost wages, as there was sufficient evidence to

⁹ [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(s). This list is intended as a starting 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>.]

¹⁰ [Practitioner’s Note: If relevant, consider addressing how comparative negligence should not be considered when determining the amount of such restitution. See, e.g., *People v. Duran*, 991 P.2d 313, 314 (Colo. App. 1999) (observing that “the [state] supreme court rejected the contention that a victim’s ‘comparative negligence’ should be considered when determining the amount of such restitution” (citing to *People v. Johnson*, 780 P.2d 504, 507 (Colo.1989))).]

support the trial court’s conclusion that the victim did not work for six and a half days as a result of defendant’s criminal conduct); *People v. Bryant*, 122 P.3d 1026, 1027-29 (Colo. App. 2005) (defining “lost wages” as “wages not received by the victim from the date the crime was committed to the date restitution is imposed, or sooner if the victim is comparably employed prior to that date, whereas ‘loss of future earnings’ are earnings not expected to be received by the victim after restitution is imposed” and affirming restitution for the victim’s lost wages, the cost associated with early termination of a lease and moving expenses, where the victim’s loss of security was not to attenuated from defendant’s criminal conduct).

- Family Members’ Travel Expenses: *People v. Lane*, 343 P.3d 1019, 1027-28 (Colo. App. 2014) (concluding in a murder case that “the trial court did not err in awarding restitution [for travel expenses to attend the trial] to all three of the victim’s siblings” in a murder case); *People v. Lassek*, 122 P.3d 1029, 1036 (Colo. App. 2005) (affirming restitution for travel expenses incurred by the parents of the deceased victim, as “[t]he parents’ attendance at [their son’s Air Force] memorial service was a natural and probable consequence that would not have occurred without defendant’s actions”).
- Vacation and Sick Leave: *People v. Perez*, 413 P.3d 266, 271 (Colo. App. 2017) (concluding that “expended vacation and sick leave[, whether vested or unvested,] are compensable as ‘other losses . . . proximately caused by an offender’s conduct . . . that can be reasonably calculated and recompensed in money’” and remanding to the trial court to correct an amount ordered that was unsupported by the record (quoting § 18-1.3-602(3)(a), C.R.S.)).
- Lost Overtime Wages: *People ex rel. D.S.L.*, 134 P.3d 522, 527-28 (Colo. App. 2006) (upholding an “order that [juvenile] make restitution for the victim’s lost overtime wages . . .

[because the order was] based on a reasonable calculation of income the victim was unable to earn [due to a broken finger]” prior to sentencing as a result of the wrongful conduct).

- Attorney Fees, Lost Wages, Telephone Bills And Travel Expenses: *People v. Cheek*, 734 P.2d 654, 655 (Colo. App. 1986) (affirming restitution for the custodial parent’s “attorney fees, lost wages, telephone bills[] and travel expenses” that were incurred while recovering custody of the child and defending against an out-of-state petition for custody; and holding that such expenses were the direct result of the non-custodial parent’s violation of a custody order).
- Property Damage: *People v. Smith*, 181 P.3d 324, 327 (Colo. App. 2007) (reversing a trial court’s order of restitution and remanding with instructions to the lower court to calculate and order full restitution, in light of the determination that “restitution can include repair costs even if those costs exceed the damaged object’s value”).
- Loss of Use: *People v. Suttmiller*, 240 P.3d 504, 508 (Colo. App. 2010) (holding that when “an item has been stolen and subsequently returned to the owner [even if the victim has no out-of-pocket expenses], the owner may recover from the thief as damages for the temporary loss of use of the item *at least* the replacement rental value of the item”).¹¹
- Interest: *Roberts v. People*, 130 P.3d 1005, 1005-06 (Colo. 2006) (en banc) (holding that probationary restitution orders must contain pre-judgment and post-judgment interest, as pre-judgment interest serves “to compensate fully victims for loss of use of money from the time the money is stolen to the time a restitution award is entered” and post-judgment interest serves to expedite restitution payments).

¹¹ If a stolen item is not returned, “replacement value is appropriate when the victim demonstrates that [he/she/they] must or will replace an item that is not readily replaceable at a fair market value cost.” *Stafford*, 93 P.3d at 575-76.

CONCLUSION

Under Colorado law, [Name/Pseudonym] has a right to restitution for [his/her/their] pecuniary damages, as detailed above, which resulted from defendant's criminal conduct. In addition, [Name/Pseudonym] has a right to full and timely restitution that is to be paid on a payment schedule specified by the Court. Therefore, [Name/Pseudonym] respectfully requests that the Court grant this Motion for Restitution and order defendant to pay full and timely restitution to [Name/Pseudonym] in the amount of [XXXX.XX].¹²

Respectfully submitted [date].

[Attorney, Esq.] Colorado Bar # [number]
[Address]
[Phone Number]
[Fax Number]
[Email Address]
Attorney for Crime Victim

¹² [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.*, § 24-4.1-302.5(1)(i), C.R.S. (providing that crime victims have a "right to be informed of the victim's right to pursue a civil judgment against any person convicted of a crime against the victim for any damages incurred by the victim as a result of the commission of the crime regardless of whether the court has ordered such person to make restitution to the victim"); *see also People v. Daly*, 313 P.3d 571, 578 (Colo. App. 2011) ("conclud[ing] that the doctrine [of abatement ab initio] does not apply to civil judgments created by restitution orders".)]