

# GA Sample Restitution Motion

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[Attorney Name] ([State] Bar # [number])  
[Address ]  
[Phone ]  
[Email address]

*Attorney for the Crime Victim*

**IN THE STATE COURT OF [FILL IN] COUNTY  
STATE OF GEORGIA**

PEOPLE OF THE STATE OF GEORGIA	)	Case No. [FILL IN]
	)	
Plaintiff,	)	<b>CRIME VICTIM'S MOTION FOR</b>
	)	<b>RESTITUTION<sup>1,2</sup></b>
vs.	)	
	)	Date:
[NAME OF DEFENDANT],	)	Time:
	)	Dept:
Defendant.	)	
	)	

<sup>1</sup> [Practitioner's Note: For purposes of this sample motion, the *South Eastern Reporter* is cited as the source for case law, and citations to other authorities generally follow *The Bluebook: A Uniform System of Citation* (20th ed 2015). The citation format may not conform to the format used by Georgia courts. See Ga. S. Ct. R. 22 ("All citations of authority must be full and complete. Georgia citations must include the volume and page number of the official Georgia reporters (Harrison, Darby or Lexis)").]

<sup>2</sup> [Practitioner's Note: This sample motion is designed for a case in which the crime victim seeks an order to enforce his/her/their right to restitution, and the victim has factual basis to support a claim that his/her/their right to restitution is not being adequately honored or protected, or it has been violated, by the prosecutor or the court. For example, the victim has reason to believe the prosecutor will not be requesting restitution for certain losses that should be recoverable; or the court failed to consider for restitution or awarded no or inadequate restitution for the victim. In such a case, the victim's motion for restitution falls squarely within the scope of the procedures established by the newly adopted statute, Georgia Code § 17-17-15. See Georgia Code § 17-17-15(c) (effective Jan. 1, 2019). Subsection (c) provides, in part:

When a victim has made a written request to the prosecuting attorney to be heard according to this chapter in a criminal proceeding and alleges that he or she was not given such opportunity by the prosecuting attorney or court, such victim may file a motion requesting to be heard on such matter. When a victim alleges that any other provision of this chapter has not been complied with, such victim may file a motion alleging such deficiency and requesting to be heard on such matter.

*Id.* § 17-17-15(c)(2)(A). If the victim seeks to file a motion for restitution proactively without such factual basis, this sample motion can be adapted; in such a case, section 17-17-15 may at first glance appear to create a procedural hurdle. See *id.*; see also Ga. Code Ann. § 17-17-15(c)(5) ("A motion filed pursuant to this subsection shall be the only means of raising or enforcing the rights provided under this chapter or Article I, Section I, Paragraph XXX of the Constitution of Georgia."). Construing the statute as prohibiting a crime victim from filing a pre-violation

To the Honorable [name], judge of the above-entitled court, the People of the State of Georgia, by and through [the prosecutor], and to defendant and [her/his/their] attorney(s) of record:

NOTICE IS HEREBY GIVEN that on [date], or as soon thereafter as the matter may be heard, in Department [number] of this Court, located at [address], the Crime Victim, [Name/Pseudonym],<sup>3</sup> by and through undersigned counsel, will move the Court for an order directing defendant to pay restitution in the amount of [\$\_\_\_\_\_]. The motion is based on this notice, the attached Memorandum of Points and Authorities, all pleadings and any other evidence filed with the court, and such evidence as may be presented at the hearing on the motion.

Dated: \_\_\_\_\_

Respectfully submitted,

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[Attorney Name] ([State] Bar # [number])  
[Address]  
[Phone]  
[Email address]

*Attorney for the Crime Victim*

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proactive motion for restitution, where the right to restitution is also separately afforded, *see* Ga. Code Ann. § 17-14-3 (providing “a judge of any court . . . shall, in sentencing an offender, make a finding as to the amount of restitution due any victim, and order an offender to make full restitution”), would lead to an absurd result. Practitioners interested in filing a proactive motion may contact NCVLI for technical assistance via [this page](#).]

<sup>3</sup> [Practitioner’s Note: If you are using a pseudonym for the victim in a legal brief for the first time to protect her/his/their privacy, consider adding this footnote: All references herein to the crime victim shall refer to [Pseudonym] to protect [her/his/their] right to privacy. *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”); *King v. State*, 535 S.E.2d 492, 494 (Ga. 2000) (noting that the privacy guaranteed by Georgia’s constitution is “far more extensive than that protected by the Constitution of the United States, and stating that “privacy is considered a fundamental constitutional right”); *see also Smith v. State*, 714 S.E.2d 51, 52 n.4 (Ga. Ct. App. 2011) (referring to victim by her initials in order to protect her privacy); *Jones v. State*, 733 S.E.2d 72, 74 n.2 (Ga. Ct. App. 2012) (referring to minor victims by initials only); *cf.* Ga. Const. art. I, § 1, para. XXX (eff. Jan. 1, 2019) (stating that victims of crime “shall be accorded the utmost dignity and respect and shall be treated fairly by the criminal justice system of this state and all agencies and departments that serve such system”); Ga. Code Ann. § 17-17-1 (finding and declaring it to be the policy of the state that victims of crime be treated “fairly and with dignity by all criminal justice agencies involved in the case”).]

## **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 of these losses to this motion or submit such information in connection with a restitution hearing (e.g., receipts, estimates, or affidavits), you may need to redact information to protect the victim’s privacy or statutory privileges. Include relevant facts and procedural history that support your argument (below) that the victim’s right to restitution has not been adequately protected and is at imminent risk of lost, or the right has been violated. See Practitioner’s Note, supra note 1.]*

### **ARGUMENT**

**I. [NAME/PSEUDONYM] HAS STANDING IN THIS COURT TO ASSERT AND SEEK ENFORCEMENT OF [HER/HIS/THEIR] RIGHTS.**

Under Georgia law, crime victims have numerous enforceable rights, including the right to be heard at sentencing, right to restitution and right to be treated fairly. *See* Ga. Const. art. I, § 1, Para. XXX(a)(4) (constitutional amendment known as “Marsy’s Law” eff. Jan. 1, 2019) (affording “right upon request to be heard at any scheduled court proceedings involving the release, plea, or sentencing of the accused”); Ga. Code Ann. §§ 17-17-1(4) (affording “right to be heard at any scheduled court proceeding,” subject to certain exceptions); 17-17-1(7) (affording “right to restitution as provided by law”); 17-17-1(9) (affording “right to be treated fairly and with dignity by all criminal justice agencies involved in the case”); *cf.* Ga. Code Ann. § 17-14-3 (requiring the sentencing court to “order an offender to make full restitution to [the] victim”).

Georgia law explicitly recognizes victims have standing to assert and seek enforcement of their rights. *See* Ga. Const. art. I, § 1, Para. XXX(b) (eff. Jan. 1, 2019) (stating that victims “shall have the right to assert the rights enumerated” in Paragraph XXX(a)); *see also* Ga. Code Ann. §§ 17-17-15(c)(2), (c)(5) (eff. Jan. 1, 2019) (providing victims with standing to file motions pursuant to this statute).<sup>4,5</sup>

[Name/Pseudonym] is a crime victim as defined by Georgia law. Under Georgia’s crime victims’ rights laws, a “victim” is “an individual against whom a crime has allegedly been perpetrated, including crimes alleged as delinquent acts.” Ga. Const. Art. I, § 1, Para. XXX(a) (eff. Jan. 1, 2019); *accord* Ga. Code Ann. § 17-17-3(11)(A) (defining “victim” to mean “[a] person against whom a crime has been perpetrated or has allegedly been perpetrated”).<sup>6</sup> A “victim” under Georgia’s restitution statute is defined as any natural person, or his or her

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<sup>4</sup> [Practitioner’s Note: Even in the absence of a statute that explicitly provides victim standing, crime victims have standing to assert and seek enforcement of their rights under the traditional tests for standing. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (holding that an individual has standing to assert rights in court if three elements are met: (1) the litigant has suffered an “injury in fact”; (2) there is a causal connection between the injury and the conduct complained of; and (3) the injury is redressable by a favorable decision of the court). *Feminist Women’s Health Ctr. v. Burgess*, 651 S.E.2d 36, 37-39 (2007) (observing that “[a]s a general rule, a litigant has standing to challenge the constitutionality of a law . . . if the law has an adverse impact on that litigant’s own rights”; “[i]n the absence of [Georgia] authority, [the Court] frequently ha[s] looked to United States Supreme Court precedent concerning Article III standing to resolve issues of standing to bring a claim in Georgia’s courts; and adopting the third-party standing test articulated by *Powers v. Ohio*, 499 U.S. 400, 411 (1991)); *cf. Paroline v. United States*, 572 U.S. 434, 439 (2014) (assuming, without discussion, that the crime victim has standing to seek enforcement of her statutory right to restitution by challenging, by way of a petition for a writ of mandamus, the trial court’s decision to award no restitution).]

<sup>5</sup> [Practitioner’s Note: A procedure for seeking enforcement of victims’ rights is set forth by newly amended Georgia Code § 17-17-15. Section 17-17-15(c) provides, in part:

When a victim has made a written request to the prosecuting attorney to be heard according to this chapter in a criminal proceeding and alleges that he or she was not given such opportunity by the prosecuting attorney or court, such victim may file a motion requesting to be heard on such matter. When a victim alleges that any other provision of this chapter has not been complied with, such victim may file a motion alleging such deficiency and requesting to be heard on such matter.

Ga. Code Ann. § 17-17-15(c)(2)(A). If this motion is being filed pursuant to section 17-17-15, be sure to follow the procedures, including the 20-day deadline for filing. *Id.* § 17-17-15(c)(2)(B).]

<sup>6</sup> [Practitioner’s Note: If the victim is a minor, or is deceased or legally incapacitated, other persons may be recognized as a “victim” for purposes of victims’ rights. *See* Ga. Code Ann. § 17-17-3(11)(B)-(C).]

personal representative or estate, “suffering damages caused by an offender’s unlawful act.” Ga. Code Ann. § 17-14-2(9). [*Insert explanation of how the victim in this case meets the statutory definition of “victim.” Hopefully the following statement can be made: “It is undisputed that [Name/Pseudonym] meets this definition.”*]

[Name/Pseudonym], as a victim in this case, has a right to restitution. [*Explain how the victim has standing. This includes explaining how the victim’s right to restitution has been violated, or how it has not been adequately protected and is at imminent risk of being lost—e.g., inserting facts that show the prosecutor did not seek restitution for all expenses/losses or the court refused to consider certain expenses/losses.*]. Accordingly, [Name/Pseudonym] has standing to seek the relief requested below, and [he/she/they] properly appears before this Court to seek enforcement of [her/his/their] statutory rights.

**II. [NAME/PSEUDONYM] HAS THE RIGHT TO RESTITUTION FOR EXPENSES THAT FLOW DIRECTLY FROM DEFENDANT’S CRIMINAL CONDUCT, INCLUDING THE COSTS OF [*insert relevant costs being sought*].**

Restitution serves both penological and compensatory aims: restitution requires criminal defendants to take responsibility for damage they have caused, helps deter crime, and “is punishment when ordered as part of a criminal sentence,” *Harris v. State*, 413 S.E.2d 439, 440 (Ga. 1992); and restitution serves the goal of attempting to make the victim “whole,” *Adams v. State*, 662 S.E.2d 782, 785 (Ga. Ct. App. 2008) (noting that a purpose of restitution is to “make the victim whole”), *disapproved of on other grounds by Turner v. State*, 720 S.E.2d 264, 268 n.15 (2011)). In furtherance of these aims, section 17-14-3 of the Georgia Code mandates the Court to order “full restitution.” Ga. Code Ann. § 17-14-3 (stating that the court “shall . . . order an offender to make full restitution to such victim”); *cf.* Ga. Code Ann. § 17-14-1 (“It is declared to be the policy of this state that restitution to their victims by those found guilty of crimes or

adjudicated as having committed delinquent acts is a primary concern of the criminal justice system and the juvenile justice system.”).

The Code does not provide an exhaustive list of loss categories for which restitution is proper. Rather, the statute allows restitution for “all special damages which a victim could recover against an offender in a civil action, including a wrongful death action, based on the same act or acts for which the offender is sentenced,” except punitive damages and damages for pain and suffering, mental anguish, or loss of consortium. Ga. Code Ann. § 17-14-2(2); *see also McMahon v. State*, 643 S.E.2d 236, 238 (Ga. Ct. App. 2011) (finding a court must determine the proper measure of damages for the type of civil suit a victim could assert).<sup>7</sup> These damages are not limited by any law that may cap economic damages. Ga. Code Ann. § 17-14-2.

In this case, [Name/Pseudonym] incurred [*identify all economic loss incurred by the victim. Explain the causal connection between the loss and address any anticipated argument regarding potential intervening causes. Explain why the services/expenses were necessary here or in the itemized section below.*]

Accordingly, [Name/Pseudonym] seeks the following in restitution [*choose all relevant categories*]:<sup>8</sup>

- **Medical Services.** Medical expenses, including future medical expenses, are appropriate categories for restitution when defendant’s criminal conduct caused the loss and the loss is adequately supported. *See Elasser v. State*, 722 S.E.2d

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<sup>7</sup> [Practitioner’s Note: If civil cases are cited in the motion to support certain categories of loss, consider adding a footnote here: Because the Court may look to civil case for the proper measure of damages a crime victim may recover in criminal restitution, [Name/Pseudonym] cites civil case below in support of certain categories of loss.]

<sup>8</sup> [Practitioner’s Note: The following list of restitution categories is not intended to be exhaustive. Only when working with the victim will you be able to determine what expenses/losses should be recovered in order for the victim to be made “whole.” This list is intended as a starting point. Other examples of successful restitution requests can be found on NCVLI’s online law library: <https://law.lclark.edu/live/files/17976-11-0813-645-drftpub-pdf-sample-casespdf>.]

327, 330 (Ga. Ct. App. 2011) (affirming the restitution order where “it is undisputed that the trial court’s order of restitution for medical costs did not exceed the amount of costs incurred by the victim”); *see also Bull Street Church of Christ v. Jensen*, 504 S.E.2d 1, 7 (Ga. Ct. App. 1998) (allowing, in a civil case arising out of failure to supervise in a case of child molestation, an award of past and future medical expenses when supported by competent evidence). Due to defendant’s actions, [Name/Pseudonym] was required to seek *[and will continue to require to seek]* medical services as a result of defendant’s crimes. *[If not outlined above, include all economic loss in the form of medical services incurred and expected to be incurred by the victim, as well as why they were necessary. Address the causal connection between the loss and any anticipated argument regarding potential intervening causes. Note that if attaching receipts or other relevant information, you may need to redact certain information to protect the victim’s privacy and safety.]* Accordingly, in order for the “offender to make full restitution to such victim,” as required by Ga. Code Ann. § 17-14-3, restitution for past and future medical services in the amount of \$ [redacted] is appropriate.

- **Mental Health Services.** Restitution for mental health services, including future mental health services, is appropriate when the expenses are caused by defendant’s criminal conduct and the expenses are supported by competent evidence. *See Ledford v. State*, 375 S.E.2d 280, 280 (Ga. Ct. App. 1988) (affirming trial court’s restitution order requiring that the defendant pay for the victims’ family counseling expenses); *see also Bull Street Church of Christ v. Jensen*, 504 S.E.2d 1, 7 (Ga. Ct. App. 1998) (allowing, in a civil case for failure to

supervise in a case of child molestation, an award of past and future mental health expenses when supported by competent evidence). Due to defendant's actions, [Name/Pseudonym] was required to seek *and will continue to require to seek* mental health services as a result of defendant's crimes. *If not outlined above, include all economic loss in the form of mental health services incurred and expected to be incurred by the victim, as well as why they were necessary. Address the causal connection between the loss and any anticipated argument regarding potential intervening causes.*] Accordingly, in order for the "offender to make full restitution to such victim," as required by Ga. Code Ann. § 17-14-3, restitution for past and future mental health services in the amount of \$ [redacted] is appropriate.

- **Lost or Damaged Property.**<sup>9</sup> Due to defendant's actions, [Name/Pseudonym] suffered damage to his/her/their personal property. *If not outlined above, include all damage to property, including whether property was lost or destroyed. Address the causal connection between the loss and any anticipated argument regarding potential intervening causes. Include receipts/valuations to substantiate restitution amount sought.*] Accordingly, in order for the "offender to make full restitution to such victim," as required by Ga. Code Ann. § 17-14-3, restitution for the property in the amount of \$ [redacted] is appropriate. *See, e.g., Galimore v. State*, 743 S.E.2d 545, 549 (Ga. Ct. App. 2013) (affirming award of restitution for stolen laptop and other items based on victim's opinion testimony); *In re W.J.F.*,

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<sup>9</sup> [Practitioner Note: When restitution is ordered for property that the defendant stole or destroyed, the amount of damages is based on the fair market value of the property. *See Galimore v. State*, 743 S.E.2d 545, 548 (Ga. Ct. App. 2013); *Hawthorne v. State*, 648 S.E.2d 387, 388 (Ga. Ct. App. 2007) ("The correct determination for the amount of restitution is the fair market value of the property rather than the replacement cost.")]

691 S.E.2d 271 (Ga. Ct. App. 2010) (requiring juvenile to pay restitution for property damage and labor costs to repair the damage).

- **Lost Wages.** Georgia law permits the recovery of restitution for work time lost as a direct result of defendant's criminal conduct toward the victim. *See Jackson v. State*, 779 S.E.2d 402, 404 (Ga. Ct. App. 2015) (stating that a "trial court may, in an appropriate case, require an offender to compensate a victim for her lost wages"). In this case, [Name/Pseudonym] lost [number of days] of work due to the defendant's criminal conduct because [she/he/they] [insert why the victim was unable to work as a direct result of defendant's conduct: e.g., was too ill to work; was required to meet with the prosecution; was attending court proceedings; was working with the insurance company, etc.]. [Name/Pseudonym] earns [insert hourly rate or salary]. Accordingly, in order for the "offender to make full restitution to such victim," as required by Ga. Code Ann. § 17-14-3, restitution for the property in the amount of \$ [redacted] is appropriate.
- **Future lost income.** As stated above, victims are entitled to "all special damages which a victim could recover against an offender in a civil action," with limited exceptions not applicable here. Ga. Code Ann. § 17-14-2(2). Special damages in civil actions include future lost income. *See, e.g., Smith v. Crump*, 476 S.E.2d 817, 822-23 (Ga. Ct. App. 1996) (upholding award of future lost income); *Robert & Co. Assoc. v. Tigner*, 351 S.E.2d 82, 90 (Ga. Ct. App. 1986) (same). Awarding future lost income is also in line with the criminal justice goal that courts award victims "full" restitution in order to make them "whole." *Adams v. State*, 662 S.E.2d 782, 785 (Ga. Ct. App. 2008) (noting that one purpose of restitution is to

“make the victim whole”), *disapproved on other grounds by Turner v. State*, 720 S.E.2d 264, 268 n.15 (Ga. Ct. App. 2011). In order to be made whole,

[Name/Pseudonym] is entitled to a restitution award that includes future lost earnings. *[Insert why the victim will be unable to work as a direct result of defendant’s conduct. For example, the victim is physically injured and unable to continue to do manual labor and does not have the education to pursue a different job. You may wish to attach a declaration from the victim or provide other support for these statements]*. Accordingly, restitution for future lost income is appropriate, and the victim is entitled to \$ [redacted] in future lost income.

- **Transportation costs.** Georgia statute specifically allows for special damages in the form of “costs of transportation to and from court proceedings related to the prosecution of the crime,” among other travel expenses the victim incurred as a result of the crime. Ga. Code Ann. §17-14-2(2). [Name/Pseudonym] incurred *[Identify travel costs, including mileage—i.e., the number of miles from house to courtroom, if travelled by car, multiplied by the current IRS mileage rate; the cost of bus/public/air transportation fare; etc. Include receipts or other support. If necessary, redact addresses or other potentially identifying information to protect the victim]*. Accordingly, in order for the “offender to make full restitution to such victim,” as required by Ga. Code Ann. § 17-14-3, [Name/Pseudonym] is entitled to \$ [redacted] in restitution for transportation costs.
- **Relocation expenses.** Although a matter of first impression in Georgia, other jurisdictions have determined that relocation expenses may be appropriate when necessary for the victim’s well-being. *See, e.g., State v. Shepherd*, 60 A.3d 213,

216 (Vt. 2012) (affirming restitution order for relocation expenses to victims who moved from Vermont to Hawaii as a result of defendant's crimes); *In re Fields*, 579 N.E.2d 318 (Ohio Ct. Cl. 1989) (granting moving costs necessary for the physical and mental well-being and rehabilitation of a victim after a rape occurred in the victim's home); *State v. Brady*, 819 P.2d 1033, 1033 (Ariz. Ct. App. 1991) (finding moving expenses were directly attributable to the crime of sexual assault when they were incurred to restore the victim's equanimity). *[Insert facts that required the victim to move. Include supporting itemized receipts. If the new address is listed in these receipts, you may wish to redact it for the victim's privacy and safety.]* Because relocation was necessary for *[Name/Pseudonym]*'s well-being (to be made "whole"), and relocation was necessary because of defendant's criminal actions, *[Name/Pseudonym]* is entitled to \$\_\_\_\_\_ in restitution for relocation expenses.

- **"Full value of the life of the decedent," including funeral expenses.** Georgia's restitution statute specifically allows restitution for "all special damages which a victim could recover against an offender in a civil action, *including a wrongful death action*, based on the same act or acts for which the offender is sentenced." Ga. Code Ann. § 17-14-2(2) (emphasis added). Georgia's Wrongful Death Act allows for the recovery of the "full value of the life of the decedent" by the decedent's surviving spouse, child, or parent. Ga. Code Ann. §§ 51-4-2; 51-4-4; 19-7-1. In addition, when the death of the decedent results from "a crime or from criminal or other negligence, the personal representative of the deceased person shall be entitled to recover for the funeral, medical, and other necessary expenses

resulting from the injury and death of the deceased person.” Ga. Code Ann. § 51-4-5. *[Insert facts including relationship between decedent and the individual seeking restitution on the decedent’s behalf or as a victim in her/his/their own right, and defendant’s role in causing the death. Include the costs of any medical expenses the decedent suffered, as well as the cost of all funeral expenses. You may also wish to secure an expert opinion on the “full value of the life of the decedent.”]*. Accordingly, **[Name/Pseudonym]** is entitled to restitution in the amount of \$\_\_\_\_\_.

- **Attorney Fees.** Victims are entitled to restitution for damages they could have recovered in a civil action, Ga. Code Ann. § 17-14-2(2), and that may include attorney fees. *See Jackson v. State*, 779 S.E.2d 402, 405 (Ga. Ct. App. 2015) (awarding restitution for attorney fees the victim incurred to remove the fraudulently obtained loan from his credit report and to avoid liability for that loan). Under Georgia law, attorneys’ fees are routinely awarded for intentional torts. *See* Ga. Code Ann. § 13-6-11 (allowing recovery of attorneys’ fees “where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense”); *Bunch v. Byington*, 664 S.E.2d 842, 848 (Ga. Ct. App. 2008) (“Every intentional tort invokes a species of bad faith and entitles a person so wronged to recover the expenses of litigation including attorney fees.”) (citation omitted).<sup>10</sup> Here, **[Name/Pseudonym]** could recover damages in a civil suit for the intentional tort(s) of: *[Identify relevant*

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<sup>10</sup> **[Practitioner’s Note]**: If wrongful death is at issue, courts routinely award attorney fees in wrongful death actions. *See Tillett v. Patel*, 383 S.E.2d 622, 624 (Ga. Ct. App. 1989) (allowing recovery of attorneys’ fees in wrongful death action); *Weathers v. City of Hinesville*, 578 S.E.2d 477, 479-80 (Ga. Ct. App. 2002) (same).]

*intentional torts based on the fact of the case, e.g., assault and battery,<sup>11</sup> sexual assault and battery,<sup>12</sup> sexual harassment,<sup>13</sup> false imprisonment,<sup>14</sup> injury to personal property,<sup>15</sup> etc.<sup>16</sup> Insert facts and explain why victim would be able to recover for each relevant tort, including explaining defendant's intent. Include documentary support and provide a breakdown of the amount of attorney's fees spent on reimbursable matters. Redact information as necessary to protect victim privacy and privilege.]<sup>17</sup> Accordingly, in order for the "offender to make full*

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<sup>11</sup> See Ga. Code Ann. § 51-1-13 ("A physical injury done to another shall give a right of action to the injured party); § 51-1-14 ("Any violent injury or illegal attempt to commit a physical injury upon a person is a tort for which damages may be recovered"); see also *Davis v. Knight*, 394 S.E.2d 634, 635-36 (Ga. Ct. App. 1990) (stating that the victims' "independent claim of assault and battery can support their prayer for attorney fees and expenses").

<sup>12</sup> See Ga. Code Ann. § 51-1-13 ("A physical injury done to another shall give a right of action to the injured party); *id.* at § 51-1-14 ("Any violent injury or illegal attempt to commit a physical injury upon a person is a tort for which damages may be recovered"). When the contact is made to the victim's "intimate parts" without the victim's consent, the claim sounds in sexual assault or sexual battery. Ga. Code Ann. § 16-6-22.1. These torts can support an award of attorney fees. See *Davis v. Knight*, 394 S.E.2d 634, 635-36 (Ga. Ct. App. 1990) (stating that the victims' "independent claim of assault and battery can support their prayer for attorney fees and expenses"); *Ferman v. Bailey*, 664 S.E.2d 285, 291-92 (Ga. Ct. App. 2008) (upholding the jury's award of attorneys' fees in claims for sexual assault and harassment, and intentional infliction of emotional distress, as they were intentional torts).

<sup>13</sup> Sexual harassment is an intentional tort that can give rise to claims for recovery under Title VII of the Civil Rights Act of 1964. *Liebno v. Drexel Chem. Co.*, 586 S.E.2d 67, 69 (Ga. Ct. App. 2003) (describing two types of actionable sexual harassment under Title VII: quid pro quo and hostile environment); see also *Ferman v. Bailey*, 664 S.E.2d 285, 291-92 (Ga. Ct. App. 2008) (upholding the jury's award of attorneys' fees in claims sounding in sexual assault and harassment, and intentional infliction of emotional distress, as these claims were intentional torts).

<sup>14</sup> False imprisonment is defined in Georgia's civil code as "the unlawful detention of the person of another, for any length of time, whereby such person is deprived of his personal liberty." Ga. Code Ann. § 51-7-20. This tort can support an award of attorney fees. See *Todd v. Byrd*, 640 S.E.2d 652, 661 (Ga. Ct. App. 2006), *overruled on other grounds* by *Ferrell v. Mikula*, 672 S.E.2d 7 (Ga. Ct. App. 2008) (noting that the intentional tort of false imprisonment may authorize the award of attorneys' fees) (*overruled on other grounds*).

<sup>15</sup> Any deprivation, abuse, or damage of personal property is an actionable tort. Ga. Code Ann. §§ 51-10-1; 51-10-3. When the taking is intentional, the victim is entitled to attorneys' fees. *Felker v. Chipley*, 540 S.E.2d 285, 298 (Ga. Ct. App. 2000) ("A conversion is an intentional tort and will support an award of attorney's fees.").

<sup>16</sup> [Practitioner's Note: The list of torts identified here is not intended to be an exhaustive list; it includes some of the most common intentional torts that may arise in a criminal proceeding for which attorney's fees may be awarded.]

<sup>17</sup> [Practitioner's Note: While no Georgia case law addresses this issue, a court might not be inclined to award the full amount of attorney fees allowed in a civil case to the extent that the fees are associated with tasks the court considers to be part of the prosecutor's job. If this is a concern, contact NCVLI for [technical assistance](#).]

restitution to such victim,” as required by Ga. Code Ann. § 17-14-3,

[Name/Pseudonym] is entitled to \$\_\_\_\_\_ in restitution for attorney’s fees.

### CONCLUSION

Under Georgia law, a crime victim has a right to restitution. Here, [Name/Pseudonym] has shown that [she/he/they] is entitled to restitution for all of the aforementioned losses.

Therefore, [Name/Pseudonym] requests that the Court grant this motion and order mandatory restitution in the total amount of \$ [amount] to [Name/Pseudonym].<sup>18</sup>

Dated: \_\_\_\_\_

Respectfully submitted,

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[Attorney Name] ([State] Bar # [number])  
[Address ]  
[Phone ]  
[Email address]

*Attorney for the Crime Victim*

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<sup>18</sup> [Practitioner’s Note: If restitution is not due in full and immediately, consider requesting that the judgment includes a payment schedule; due date for each payment; minimum amount for each payment; date by which the full amount of restitution shall be paid; interest on late payments; and when interest shall begin to accrue. See Ga. Code Ann. § 17-14-14(d) (“If the ordering authority permits the offender to pay restitution in other than a lump sum, the ordering authority may require the offender to pay interest on the amount of restitution due the victim or the victim’s estate. Such interest shall be set at the same rate as is provided by Code Section 7-4-12 for judgments.”).]