

# NY Sample Restitution Motion

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

*Attorney for the Crime Victim*

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF [COUNTY]**

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PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

-against-

[NAME OF DEFENDANT],

Defendant.

Index No. [NUMBER/YEAR]

Hon. [ASSIGNED JUDGE]

**CRIME VICTIM'S MOTION FOR  
RESTITUTION<sup>1,2</sup>**

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<sup>1</sup> [Practitioner's Note: For purposes of this sample motion, the regional reporters—*North Eastern Reporter* and *New York Supplement*—are generally 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 New York courts and practitioners. See, e.g., Debbie Lanin & Frank Culino, *Interactive Citation Workbook for the Bluebook: A Uniform System of Citation and Interactive Citation Workbook for ALWD Guide to Legal Citation*, New York, LexisNexis Law School Publishing Advisory Board, at 1 (LexisNexis 2015), [https://www.lexisnexis.com/documents/pdfstore/New\\_York\\_Bluebook\\_and\\_ALWD\\_Final.pdf](https://www.lexisnexis.com/documents/pdfstore/New_York_Bluebook_and_ALWD_Final.pdf) (observing that though “[t]here is no one prevailing source for citation of legal authorities in documents filed in New York courts,” New York’s Civil Practice Law and Rules require decision to be “cited from the official reports, if any” (citing N.Y. C.P.L.R. 5529(e)); *New York Law Reports Style Manual* (2017), <http://www.nycourts.gov/reporter/style-manual/2017/2017-SM.htm>.)

<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. If the victim seeks to file a motion for restitution proactively without such factual basis, this sample motion can be adapted; in such case be prepared to strengthen the standing analysis in section I, *infra*, and consider addressing/distinguishing two trial court cases, *People v. Robinson*, 898 N.Y.S.2d 438 (Sup. Ct. 2010) and *People v. Smakaj*, No. 03867-2008, 2010 WL 2574051 (N.Y. Sup. Ct. Jun. 14, 2010). In each of these cases, a New York trial court rejected a crime victim attorney’s notice of appearance in the criminal case where nothing in the record showed the victim’s rights were at risk. See *Robinson*, 898 N.Y.S.2d at 439 (denying the victim’s attorney’s request to file a notice of appearance; charactering it as one that improperly “seeks to allow a private individual to become a

Crime Victim, [Name/Pseudonym],<sup>3</sup> by and through undersigned counsel, hereby moves 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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party to a criminal prosecution”; and stating that “if either the People or the defendant in a criminal proceeding seek relief that might effect a non-party’s rights, including the complainant, that person has standing to enter the proceeding to ask the court to protect those rights”); *Smakaj*, 2010 WL 2574051, \*2 (denying the victim’s attorney’s request to file a notice of appearance; stating the law does not permit the crime victim “to become a party to the criminal prosecution” or to “intervene or be joined in a criminal case”; and distinguishing this case from other cases where the victim and other third-party witnesses were properly permitted to file motions to quash subpoena *duces tecum* to prevent the disclosure of their records). *Robinson* and *Smakai* are not binding precedent, and practitioners intending to proceed with a proactive motion for restitution 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 his/her/their privacy, consider adding this footnote: All references herein to the crime victim shall refer to [Pseudonym] to protect [his/her/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”); *Roe v. Wade*, 410 U.S. 113, 152-53 (1973) (“[A] right to personal privacy . . . does exist under the Constitution.”); *Crosby v. State, Workers’ Comp. Bd.*, 442 N.E.2d 1191, 1193-94 (N.Y. 1982) (recognizing an individual has a right to personal privacy under the federal constitution); *see also* N.Y. Civ. Rights § 50-b (providing that the “[t]he identity of any victim of a sex offense . . . shall be confidential”; “[n]o . . . court file or other documents . . . which identifies such a victim shall be made available for public inspection”; and disclosure of the victim’s identity is limited by statute); *People v. Bradford*, 937 N.E.2d 528, 529, n.\* (N.Y. 2010) (“Because the [victim’s] identity must remain confidential[,] . . . in this opinion we refer to her as ‘Jane.’” (citing N.Y. Civil Rights § 50–b)).]

## 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 and statutory privileges. Include relevant facts and procedural history that support your standing argument below (e.g., facts that show the victim’s right to restitution has not been adequately protected and is at imminent risk of lost, or the right has been violated).]*

### ARGUMENT

#### **I. [NAME/PSEUDONYM] HAS STANDING TO ASSERT AND SEEK ENFORCEMENT OF [HER/HIS/THEIR] RIGHT TO RESTITUTION.**

Under New York law, crime victims have statutory rights, including the right to participate at sentencing and the right to restitution. *See* N.Y. Exec. Law § 646-a(2)(d), (e) (providing that victims must be given notice of their right to give a victim impact statement or make a statement at sentencing); N.Y. Crim. Proc. Law § 380.50 (granting victims the right to be heard at sentencing); N.Y. Exec. Law § 646-a(2)(f) (providing that victims must be given notice of their right to request restitution); *see also* N.Y. Penal Code § 60.27(1). Crime victims have standing to assert and seek enforcement of their rights when the test for standing is met—*i.e.* when they assert an injury in fact to a legally protected interest. *See Matter of Dist. Attorney of Suffolk Cty.*, 448 N.E.2d 440, 443 (N.Y. 1983) (citations omitted) (“[T]he contemporary rule is that a party has standing to enforce a statutory right if its abuse will cause him injury and it may fall within the “zone of interest” protected by the legislation . . . . As we have had occasion to

observe in recent years, ‘[o]nly where there is a clear legislative intent negating review \* \* \* or lack of injury in fact \* \* \* will standing be denied’ . . . .”); *see also People v. Robinson*, 898 N.Y.S.2d 438, 440 (Sup. Ct. 2010) (“[I]f either the People or the defendant in a criminal proceeding seek relief that might affect a non-party’s rights, including the complainant, that person has standing to enter the proceeding to ask the court to protect those rights.”); *see, e.g., In re Grand Jury Investigation in New York Cty.*, 779 N.E.2d 173, 175 (N.Y. 2002) (assuming without discussion the hospitals that filed the motion to quash have standing to challenge the grand jury subpoenas duce tecum for the emergency room records; and concluding the Appellate Division correctly granted the motion on the ground that compliance would violate the physician-patient privilege).

[Name/Pseudonym] is a crime victim as defined by New York law. For purposes of restitution, a crime victim is defined, in part, as “any person who has suffered a financial loss as a direct result of” certain criminal conduct by the defendant. N.Y. Penal Code § 60.27(4)(b).

*[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 meets the standing test by identifying an injury in fact and how it falls within the zone of interest protected by statute. 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.]*

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 is designed to compensate the victim and to “reinforce[] the offender’s sense of responsibility for the offense,” while “providing a constructive opportunity for the offender to pay his or her debt to society.” *People v. Horne*, 767 N.E.2d 132, 136 (N.Y. 2002). In furtherance of these aims, the Penal Code provides that the Court “shall consider restitution or reparation to the victim” and “shall require, unless the interests of justice dictate otherwise, . . . that the defendant to make restitution of the fruits of the offense and reparation for the [victim’s] actual out-of-pocket loss.” N.Y. Penal Code § 60.27(1).

New York’s restitution statute does not provide an exhaustive list of loss categories for which restitution is proper. Rather, what is clear is that restitution should be “the sum necessary to compensate the victim for out-of-pocket losses” and make the victim “whole.” *People v. Tzitzikalakis*, 864 N.E.2d 44, 46 (N.Y. 2007); *People v. Kim*, 694 N.E.2d 421, 423 (N.Y. 1998) (emphasis in original) (stating that the goals of restitution are “to insure, to the maximum extent possible, that victims will be made whole and offenders will be rehabilitated and deterred, by requiring *all* defendants to confront concretely, and take responsibility for, the *entire* harm resulting from their acts”). The statute authorizes courts to order restitution for all “out-of-pocket loss” caused by the crime. N.Y. Penal Code § 60.27(1). While the statute generally caps damages at \$15,000 for felonies and \$10,000 for non-felonies, the court “in its discretion, may impose restitution or reparation in excess” of these amounts, limited to the return of the victim’s property and medical expenses actually incurred by the victim. N.Y. Penal Code § 60.27(5)(a), (b).

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 and include applicable law and arguments.]:<sup>4</sup>

- **Medical and Mental Health Costs.** Out-of-pocket medical and mental health expenses may be included in a restitution award, with no cap as to amount, if the award is based on medical expenses actually incurred by the victim. See N.Y. Penal Code § 60.27(5)(a), (b); see also *People v. Periard*, 788 N.Y.S.2d 725, 725 (App. Div. 2005) (awarding \$480 in medical expenses resulting from defendant’s burglary and attempted rape); *People v. Stevens*, 922 N.Y.S.2d 596, 600 (App. Div. 2011) (affirming award of \$2,000 for victims’ counseling costs associated with defendant’s act of arson). [If not outlined above, include all economic loss in the form of medical and mental health services 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, restitution for actual medical and mental health services in the amount of \$ [redacted] is appropriate.

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<sup>4</sup> [Practitioner’s Note: The list of restitution categories included in this sample is not intended to be exhaustive. Only when working with the victim will you be able to determine what expenses/economic losses should be recovered in order to compensate the victim for all economic loss incurred as a result of the crime. This list is intended as a starting point. Other examples of successful restitution requests can be found on 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>.]

- Lost Wages.** Restitution may be awarded for lost wages and services due to defendant’s crime. *See, e.g., People v. Periard*, 788 N.Y.S.2d 725, 726 (App. Div. 2005) (awarding \$1,681.50 in lost wages from lost work due to the mental trauma the victim sustained as a result of defendant’s burglary and attempted rape); *People v. Pugliese*, 978 N.Y.S.2d 552, 554 (App. Div. 2014) (concluding that “the People established the value of the sick leave through the victim’s testimony at the restitution hearing” and affirming restitution for that value); *People v. Robinson*, 20 N.Y.S.3d 454, 455 (App. Div. 2015) (affirming, in a criminal contempt case arising from defendant’s violation of an order of protection, the restitution order for lost wages where the victim lost her job because of the volatile situations caused by defendant, and she could not find new work for 12 weeks). In this case, [Name/Pseudonym] lost [number of days] of work due to the defendant’s criminal conduct because [explain why the victim was unable to work as a direct result of defendant’s conduct—e.g., the victim was too ill to work, the victim was required to meet with the prosecution, the victim attended court proceedings, etc.—and include supporting documentation]. [Name/Pseudonym] earns [insert hourly rate or salary]. Accordingly, restitution for lost wages in the amount of \$ [redacted] is appropriate.
- Future lost income.** As stated above, victims are entitled to restitution for all “actual out-of-pocket loss caused” by the criminal conduct. N.Y. Penal Code § 60.27(1). Victims who can establish actual loss of future income as a result of defendant’s criminal conduct is entitled to restitution for that loss. Awarding future lost income is also in line with the criminal justice goal that courts award

restitution in an amount that will make the victims “whole” and require “defendants to confront concretely, and take responsibility for, the *entire* harm resulting from their acts.” *People v. Kim*, 694 N.E.2d 421, 423 (N.Y. 1998) (emphasis in original).<sup>5</sup> In this case, [Name/Pseudonym] is entitled to a restitution award that includes future lost earnings. [Explain 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 for a certain number of months, and the victim 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.

- **Funeral Expenses.** Funeral expenses are an out-of-pocket loss that can be included in a restitution request. *See People v. Canada*, 549 N.Y.S.2d 286, 286 (App. Div. 1989) (affirming restitution award to parents for the medical expenses and funeral expenses of the victim); *People v. Burkett*, 957 N.Y.S.2d 417, 423 (App. Div. 2012) (affirming restitution award for funeral expenses). [Insert facts including relationship between decedent and the individual seeking restitution on

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<sup>5</sup> [Practitioner’s Note: While New York case law has not addressed the issue of future loss income, case law does recognize that restitution may be awarded for a future expense. *See People v. Gkanios*, 605 N.Y.S.2d 942, 942 (App. Div. 1993) (emphasis added) ( modifying the judgment to delete the order directing defendant to pay restitution “in an amount not to exceed \$10,000”; explaining the “purpose of the restitution provision was to defray the cost of any counseling expenses which the victim *might incur in the future*”; and finding that “there is no [longer a] need for restitution” because “the victim apparently failed to seek counseling”). If the victim wants to seek restitution for future loss income, but the amount of loss cannot be determined at the time of sentencing, consider informing the court that the victim needs additional time to determine the full amount of loss and requesting that the court retain jurisdiction to address restitution separately from the rest of defendant’s sentence. *Cf. People v. Swiatowy*, 721 N.Y.S.2d 185, 185-86 (App. Div. 2001) (finding the County Court “properly severed the issue of restitution” at sentencing because “the information concerning the full extent of damages was not available for presentation to the court at the time”; concluding the delay was not unreasonable under the facts of the case; and holding the County Court retained jurisdiction to order restitution 13 months after sentencing”).]

*the decedent's behalf or as a victim in her/his/their own right. Include the costs of all funeral expenses.]* Accordingly, [Name/Pseudonym] is entitled to restitution

for funeral expenses in the amount of \$\_\_\_\_\_.

- **Lost or Damaged Property.** Because restitution is intended to put the victim in the financial position that he/she/they would be in but for the crime, courts commonly award restitution for lost or damaged property caused by defendant's criminal act, and this category of loss is not subject to statutory cap. *See* N.Y. Penal Code § 60.27(5)(a), (b); *People v. Brabant*, Nos. 1281-2000, 1282-2000, 2001 WL 1704919, at \*1 (N.Y. Cty. Ct. Nov. 7, 2001) (awarding restitution for stolen items; and noting that while fair market value will be the appropriate measure of loss in most cases, in some circumstances, replacement value may be the appropriate standard); *People v. Periard*, 788 N.Y.S.2d 725, 726 (App. Div. 2005) (awarding restitution for replacement costs of certain items damaged by defendant). 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. Explain whether you are seeking fair market value or replacement cost, and why.]* Accordingly, [Name/Pseudonym] is entitled to restitution for [lost and/or damaged] property in the amount of \$\_\_\_\_\_.

- **Travel Costs and Other Expenses Associated with the Victim's Participation in the Criminal Case.** Because restitution is intended to reimburse the victim for

out-of-pocket expenses associated with the crime, courts may award restitution for expenses incurred as a result of the victim's participation in the investigation and prosecution of the crime. *See, e.g., People v. Denno*, 867 N.Y.S.2d 278, 279-80 (App. Div. 2008) (affirming award of \$728.11 in reparation for the travel cost and lost wages incurred by the child-victim's parent to fly from Texas to New York to exercise her right to be present and heard at the sentencing proceeding).<sup>6</sup>

[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 fare/car rental/airline tickets; the cost of hotels, etc. Include receipts or other support. If necessary, redact addresses or other potentially identifying information to protect the victim*]. Accordingly, [Name/Pseudonym] is entitled to \$ [redacted] in restitution for transportation and other costs.

- **Relocation expenses.** Although a matter of first impression in New York, when a victim is forced to relocate for his or her physical or psychological well-being as a result of defendant's criminal conduct, the out-of-pocket expenses associated with that move should be properly awarded under New York's restitution statute. *See, e.g., State v. Rodriguez*, 863 N.W.2d 424, 430 (Minn. Ct. App. 2015) (stating that because the victim suffered psychological trauma as a result of the offense, and

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<sup>6</sup> [Practitioner's Note: For additional examples of recoverable travel expenses and the context in which they arise, see the out-of-state decisions that the *Denno* court cited with approval. *See People v. Denno*, 867 N.Y.S.2d at 280. Those cases include: *In re Welfare of J.A.D.*, 603 N.W.2d 844, 847 (Minn. Ct. App. 1999) (affirming award of restitution to the child-victim's parent for lost wages and mileage expenses incurred to drive the child-victim to the police station to participate in the criminal investigation); *State v. Madrid*, 85 P.3d 1054, 1057-58 (Ariz. Ct. App. 2004) (affirming restitution for travel expenses incurred by the murder victim's family to attend the murder trial); and *People v. Lassek*, 122 P.3d 1029, 1036 (Colo. App. 2005) (affirming restitution for travel expenses incurred by the deceased victim's parents to attend the victim's memorial service).]

moving expenses were directly linked to that trauma, it was within the district court’s discretion to award restitution for those expenses); *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 child victim after a rape occurred in the child’s home); *Strough v. State*, 501 So.2d 488 (Ala. Crim. App. 1986) (finding no abuse of discretion in awarding restitution for relocation expenses in child abuse case); *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; these cases tend to be particularly compelling when the victim is a child victim, or a sexual assault victim and the assault occurred in the home. Include 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 psychological well-being, and relocation was necessary because of defendant’s criminal actions, [Name/Pseudonym] is entitled to \$\_\_\_\_\_ in restitution for relocation expenses.

- **Attorney Fees.** A restitution award may include attorney fees incurred by the victim in connection with the criminal case where the victim shows that the fees are an actual out-of-pocket loss caused by defendant’s criminal conduct. *See, e.g., People v. Young*, 618 N.Y.S.2d 983, 985 n.1, 988 (Sup. Ct. 1994) (awarding the entity-victim’s “outside attorney fees directly incurred in connection with this

criminal prosecution, when litigation ensued over subpoenas issued by the defendant for voluminous bank records” upon finding that “absent the commission of this crime by the defendant there would not have been such expense”). [Include a breakdown of the amount of attorney’s fees spent on reimbursable matters. Redact information as necessary to protect victim privacy and privilege.] Accordingly, [Name/Pseudonym] is entitled to \$\_\_\_\_\_ in restitution for attorney fees.

### CONCLUSION

Under New York law, [Name/Pseudonym] has a right to restitution for all of [his/her/their] out-of-pocket losses. Here, [Name/Pseudonym] has shown that [she/he/they] is entitled to restitution for the aforementioned losses. Therefore, [Name/Pseudonym] requests that the Court grant this motion and order defendant to pay full and timely restitution to [Name/Pseudonym] in the amount of \$ [total amount].<sup>7</sup>

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

Respectfully submitted,

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

*Attorney for the Crime Victim*

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<sup>7</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 N.Y. Crim. Proc. Law § 420.10(a) (“The court may direct . . . (i) That the defendant pay the entire amount at the time sentence is pronounced; (ii) That the defendant pay the entire amount at some later date; or (iii) That the defendant pay a specified portion at designated periodic intervals.”).]