**Arizona Crime Victim Law Group**

**Website Copy - Round 3**

**September 23, 2019**

**NAME**

Arizona Crime Victim Law Group

**URL**

AZCrimeVictims.org

**HERO**

Arizona Crime Victim Rights Law Group

Helping crime victims navigate through the criminal justice system at no cost to them.

**OUR MISSION**

Our mission is to help crime victims navigate through all facets of the criminal justice system to exercise constitutional and statutory protected rights. We seek enforcement of victim rights as counsel of record throughout the prosecution process and after conviction. Our goal is to provide victims with an understanding of their rights in a respectful and dignified manner.

We are a non-profit organization that provides legal services to crime victims at no cost to them throughout the criminal justice system. We appear as counsel of record on behalf of crime victims in pre-trial court proceedings, throughout trial, sentencing, restitution, probation, release, and parole. We act as a single point of contact as the attorney of record for the victim among:

* Prosecutors
* Victim services agencies
* Department of Corrections
* Adult Probation Services Department
* Clerk of the Court
* Assigned Judges
* Courts of Appeal
* Supreme Court

**VICTIM RIGHTS**

We advocate for victim rights helping to ensure that they are not overwhelmed or confused by the complex criminal justice system. We represent victims in all types of criminal proceedings in local, state, and federal courts.

Examples of services we provide:

1. PROSECUTION. Discuss the case with attorneys who prosecute the crime against the defendant.

2. INPUT. Provide input about pre-conviction release or modification of release conditions

3. VICTIM IMPACT. Work with victims to present victim impact statements and evidence at sentencing

4. RESTITUTION. Develop claims for economic loss and assist in obtaining a restitution award and recovery of  victims’ economic losses

5. ANALYSIS & REFERRAL. Analyze and represent or refer victims to civil, probate and/or domestic relations attorneys.

6. POST-CONVICTION. Provide input and appear at hearings on post-conviction release or modification of release conditions.

7. TRAINING. We provide training and resources particularly on topics such as establishing and collecting economic loss.  We have presented throughout the country on this topic to prosecutors, advocates, other victim rights attorneys, civil attorneys and judges.  If you are involved in the victim rights community and would like to receive training or a presentation about helping crime victims establish and recover their economic losses, please let us know.  We would be happy to help.

**WHO WE SERVE**

Quote: “In case after case we found victims, and their families, were ignored, cast aside, and treated as non-participants in a critical event in their lives.” - Senator Dianne Feinstein, 150, CONG. REC. 7296 (2004)

We provide legal services as counsel of record and access to social support services at no cost to victims of crime including:

* Victims of theft, fraud or other white collar crime
* Victims of violent crime
* Victims of vehicular crime
* Victims of property crime

**WHO WE ARE**

In 2015, attorney Randall Udelman and Dan Levey founded the non-profit Arizona Crime Victim Rights Law Group.  In addition to serving victims, members of the Arizona Crime Victim Rights Law Group are also available to criminal justice agencies for victim rights training and educational presentations.

<Randy Pic>

**Randall Udelman**

Randall Udelman, a practicing attorney for almost 30 years, has been providing crime victims with legal services as counsel of record at no cost to them since 2009.

Randall has extensive experience helping clients seek accountability for harm. His private practice focuses on disputes involving insurance carriers and commercial litigation. He has represented victims of crime, consumers who have suffered harm due to fraud, and victims who have suffered bodily injury or property damage.

Randall has been a past recipient of the Arizona Attorney General’s Office Distinguished Service Award, is an advisory board member with the National Crime Victim Law Institute a member of the National Alliance of Victim’s Rights Attorneys & Advocates and a former member of the National Crime Victim Bar Association.

<Dan Pic>

**Dan Levey**

For the past 20 years, Dan has been providing victim advocacy and support services to crime victims as Executive Director of Parents of Murdered Children, Governor’s Adviser for Victims, and Director of Victim Services at the Attorney General’s Office. Dan has served as State Chairman of Mother’s Against Drunk Driving Operations Council, board member and National President of the National Organization of Victim Assistance, a member of the National Institute of Justice, Cold Case Task Force and the Arizona Supreme Court’s Commission on Victims isn’t eh Court and Arizona Supreme Court Capital Case Committee.

Dan has received several awards for his advocacy including the United States Attorney General’s Ronald W. Reagan Public Policy Award honoring individuals whose leadership, vision and innovation have led to significant changes in public policy and practice that benefit crime victims.

Dan has been a dedicated advocate for victim rights since 1996 when he suffered a personal tragedy involving the murder of his brother Howard.

**Board of Directors (3)**

Need pics and 2-sentence description of each director.

**FAQs**

**Restitution**

**Definition of Crime Victim Restitution**

**What is restitution?**

The purpose of restitution is to make the victim whole by compensating victims for their “economic loss,” defined as any loss incurred by a person as a result as a result of the commission of an offense.1

**How is restitution determined?**

Generally speaking, the court determines restitution. Restitution equals the“… full amount of the economic loss as determined by the court and in the manneras determined by the court…”2 The Mandatory Victim Restitution Act, requires mandatory restitution “to each victim in the full amount of each victim’s losses as determined by the court and without consideration of the economic circumstances of the defendant.”3 The victims views shall be considered.4

**Economic Loss**

**Definition & Examples of Economic Loss**

**What are some of examples of economic losses?**

Attorneys at the Arizona Crime Victims Law Group can helprecover losses resulting from a crime . Some examples include:

**Lost earnings, interest, and medical care.** Arizona law states that economic loss includes lost interest, lost wages, lost profits, lost earnings, lost earning capacity and other losses that would not have been incurred but for the offense.5 It can also include medical expenses, mental health counseling, and future medical care costs.6

**Property and other costs.** Restitution may also include other costs incurred as a direct result of crime such as mileage to/from court, burial costs, property cleanupcosts, property loss, and other costs of collection, relocation costs, residential security costs, costs to retrofit a home or vehicle, and credit monitoring.7

What are some examples of losses which are **not** recoverable?

**Non-economic losses.** Non-economic losses such as punitive damages, pain and suffering and consequential damages. But non-economic losses in other states such as California may be recoverableinclude but not limited to psychological harm for victims of certain child sexual assault cases, post-sentencing interest at ten percent. 7

**Attorney fees.** Actual and reasonable attorney fees incurred in exercising victim’s rights, and to convince prosecutor to file charges or to help investigate or support charge (adjunct prosecutor).8

**Pain and suffering**. Pain and suffering damages are not allowable in Arizona but they may be allowable for certain types of child sexual assault cases in other states such as California.9

**Punitive damages.** Punitive damages designed to punish, not to make victim whole.10

**Consequential damages**. *Id*. (indirect economic losses).

**Are there limits to losses covered by restitution law?**

According to the Mandatory Victim Restitution Act, there are limits to restitution.11 For example, a voluntarily incurred costs of a private investigation are not recoverable as “expenses incurred during participation in the investigation or prosecution of the offense.”12

**Does the court consider a defendant’s ability to pay when deciding what restitution to award a victim?**

After considering all evidence of economic loss, the court must award a victim the full amount of the economic loss as determined by the court without regard to the defendant’s ability to pay. (Insert Footnote 13)

**What happens after a court awards a dollar amount for restitution?**

**After determining the amount of restitution, the court or designee must also specify the manner in which the defendant must pay restitution (usually by requiring monthly payments). The court must consider the economic circumstances of the defendant, assets and income including worker’s compensation benefits and social security income and shall consider views of the victim. The court must also make all reasonable efforts to ensure that victims receive full restitution entering all reasonable orders necessary to accomplish this objective. (Insert Footnote 14)**

**Can a victim disagree with the manner of payment?**

If a victim disagreeswith the manner of payment, they may file a petition at any time to change the manner of payment.15

**Restitution Enforcement**

**Examples of Methods of Enforcement**

**How can restitution be enforced?**

After discovery (a thorough examination of the defendant’s income, assets, and expenses), our attorneys would help negotiate a payment plan with consequences for non-payment. Some considerations and mechanisms of enforcement include:

**If defendant incarcerated.** If the defendant is incarcerated, the Arizona Department of Corrections shall withdraw between 20-50% of a prisoner’s spendable account balance for payment of restitution and to comply with the manner of payment ordered. (Insert Footnote 16)

**If defendant is on probation.** If the defendant on probation, we’d work with probation department to ensure compliance with manner of payment ordered. The law states that a probation officer shall notifycourt when defendant has not paid restitution for a minimum of four months.17 Remedies may include hearings, Petition for Order to Show Cause regarding civil contempt and could include incarceration with a purge order, probation revocation, garnishment order or levy or community restitution.18 The law allows different methods depending on whether the non-payment was willful.(Insert Footnote 19)

**Abstract of judgement.** Federal law provides that at the request of a victim … the clerk of the court shall issue an abstract of judgmentcertifying that a judgment has been entered in favor of such victim in the amount specified in the restitution order. Upon registering, recording, docketing or indexing such abstract … “the abstract of judgment shall be a lien on the propertyof the defendant… in the same manner and to the same extent and under the same conditions as a judgment of a court of general jurisdiction in that State.” 20

**Same manner as civil action.** An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action. 21

**Tax intercepts.** If full restitution has not been paid, the department of revenue shall… intercept any state tax refunds and any federal tax refunds, as provided by law, due the offender and transfer the money…. For disbursement to the victim.22

**Criminal restitution order.** Attorneys on our staff can file liens with the county recorder (lien on real property), department of motor vehicles (lien on automobiles), and secretary of state (lien on personal property).23

**Other FAQs**

**Challenges, Civil Actions, Bankruptcy, Resources**

**Can a defendant challenge essential allegations of the criminal defense in a separate civil action?**

No, the defendant is estopped from challenging essential allegations of the criminal offense in a separate civil action.24

**Can a victim recover economic losses as both restitution and in a separate civil action?**

No, a victim cannot recover economic losses twice, however, a victim can recover general damages, pain and suffering and punitive damages in a civil action and economic losses in a criminal case. It is important to do this correctly. Otherwise a defendant may try to argue you are seeking damages in a separate civil lawsuit that you already received in a criminal restitution award or that you seek restitution in a criminal case for what has already been paid in a separate civil lawsuit. Ask for legal advice early to help minimize this possibility.

**Can restitution orders be discharged in bankruptcy?**

Unlike most civil judgments, restitution orders are non-dischargeable in bankruptcy.25

**Where can I find more information on crime victim rights in Arizona?**

To get more information on crime victims’ rights, including the Arizona Victims’ Bill of Rights, please visit: <https://www.azcourts.gov/selfservicecenter/AZ-Victims-Center>

Please feel free to contact us and ask for a copy of our handout on "Victim Restitution:  It's Real Money to Real People."

**Is your law group available for training members of law enforcement, attorneys, judges, etc.?**

Yes, we'd be happy to help your organization and have done so for many organizations in Arizona.

1 *State v. Howard*, 168 Ariz. 458, 459, 815 P.2d 5, 6 (App. 1991)

2 Ariz. Rev. Stat. Ann. §13-603(C)

3 18 U.S.C. §3664(f)(1)(A). Court must determine amount. 18 U.S.C. §3664

4 *A.R.S. §13-804(E)*

5 Ariz. Rev. Stat. Ann. §13-105(16)

6 *State v. Howard*, 168 Ariz. 458, 460, 815 P.2d 5, 7 (App. 1991)

7 *See* note 5, *supra*; *see also* cal. Penal Code §1202.4(f)(3); *see also State v. Quijada*, 2019 Ariz. App. Lexis 303, 439 P.3d 815, 828 (App. 2019).

8 *State v. Slover*, 220 Ariz. 239, 243, 204 P.3d 1088, 1092 (App. 2009)

9 A.R.S. §13-105(16) (“‘Economic loss’ means any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses that would not have been incurred but for the offense. Economic loss does *not* include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages.”) (emphasis added); *but see* Cal. Penal Code §1202.4(f)(3)

10 A.R.S. §13-105(16)

11 18 U.S.C. §3663

12 *Lagos v. United States*, 584 U.S. (2018)

13. A.R.S. §§13-603(C), -804(B) and -804(C) (“The court shall not consider the economic circumstances of the defendant in determining the amount of restitution.”).

14. A.R.S. §13-804(E)

15 A.R.S. §13-804(M)

16. A.R.S. §31-230(C)

17 A.R.S. §13-804(N).

18 A.R.S. §13-810(B)

19. Compare A.R.S. §13-801(E)(1)-(4) with A.R.S. §13-810(F)(1)-(3)

20 18 U.S.C. §3664(m)(1)(B)

21 A.R.S. §13-810(B) (“In addition to any other remedy provided by law, including a writ of execution or other civil enforcement….); see also Tex. Crim. P. Code Ann. § art. 42.037(m)

22 A.R.S. §42-1122(A); see also Md. Code Ann., Crim P. §11-616; Mont. Code Ann. §46-18-244(7)

23 A.R.S. §13-806(E) and (F)(1)-(3)

24 A.R.S. §13-807

25 A.R.S. §13-805(I)

**CONTACT Arizona Crime Victim Rights Law Group**

**OUR ADDRESS**

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