



MATTHIESEN, WICKERT & LEHRER, S.C.
Hartford, WI ❖ New Orleans, LA ❖ Irvine, CA
❖ Austin, TX ❖ Jacksonville, FL
Phone: (800) 637-9176
gwickert@mwl-law.com
www.mwl-law.com

SUBROGATION OF CRIMINAL RESTITUTION IN ALL 50 STATES

Restitution is the recovery from an economic loss suffered as the result of the commission of a crime. An often-overlooked area of recovery for subrogated carriers is the possibility of obtaining court-ordered restitution from a criminal defendant as part of their sentencing. Approximately two-thirds of the states provide for the availability of some sort of court-ordered restitution to be paid to victims of crime. The states that do allow for restitution often have conflicting statutes and criteria with regard to how, when, and to whom restitution may be awarded. Although restitution statutes have been progressively getting stronger, studies show that nearly half of crime victims are not awarded any sort of restitution – usually because the victim fails to request it.

The answer to whether a subrogated carrier is entitled to restitution usually hinges on whether the state involved has defined “victim” to include indirect victims such as insurance companies. The right of an insurance company to recover restitution is sometimes set forth in a state’s statutes, but more frequently it is declared in an appellate decision interpreting that state’s restitution laws.

Restitution to victims is a developing body of law, and the restitution rights of insurance companies are even less developed. In fact, there are many states where the restitution rights of a subrogated insurance carrier have not yet been decided. The adage, “If you don’t ask, the answer is always ‘No’,” is nowhere truer than with the intersection of subrogation and restitution. It doesn’t hurt to ask, and often, restitution is the only form of recovery that will be available to a subrogated carrier. The following chart details the restitution laws in all 50 states.

Many states’ laws provide that a criminal or juvenile order for restitution is enforceable as a civil judgment. Restitution statutes “engraft[] a civil remedy onto a criminal statute, creating a procedural shortcut for crime victims who would be entitled to a civil recovery against the offender.” *State v. Lodahl*, 2021 WL 26080 (Mont. 2021). State law usually provides for a procedure for the enforcement of civil judgments based on such restitution orders. This is usually accomplished by obtaining the Order for Restitution and/or an Abstract of Judgment signed by the criminal judge. It should list you as a victim and identify the criminal who owes you the restitution. While procedures do vary, many states allow you to file the Order for Restitution with the County Recorder, establishing a lien. The victim can also hire a collection attorney to enforce the restitution debt.

| STATE | CASE/STATUTE | SUBROGATION RECOVERY RIGHTS |
|---------|--|---|
| ALABAMA | <p>Ala. Stat. § 15-18-65, <i>et seq.</i></p> <p>Ala. Stat. § 15-18-65.</p> <p><i>Richardson v. State</i>, 603 So.2d 1050 (Ala. Crim. App. 2004); <i>Strough v. State</i>, 501 So.2d 488 (Ala. Crim. App. 1986); <i>Ex parte Stutts</i>, 897 So.2d 431 (Ala. Crim. App. 2004); <i>Hagler v. State</i>, 625 So.2d 1190 (Ala. Crim. App. 1993); <i>Butler v. State</i>, 608 So.2d 773 (Ala. Crim. App. 1992).</p> | <p>Alabama’s <i>Restitution to Victims of Crimes Act</i> provides for the recovery of restitution by a victim from a criminal defendant. Ala. Stat. § 15-18-65, <i>et seq.</i> It states that it is essential “that all perpetrators of criminal activity or conduct be required to fully compensate all victims of such conduct or activity for any pecuniary loss, damage or injury as a direct or indirect result thereof.” Ala. Stat. § 15-18-65. Perpetrators of criminal activity or conduct are required to fully compensate all victims for any pecuniary loss, damage, or injury as a direct or indirect result thereof when the “defendant’s criminal act was the proximate cause of the victim’s injury and a reasonable person could have foreseen or anticipated that the injury might occur as a natural consequence of the action.” <i>Richardson v. State</i>, 603 So.2d 1050 (Ala. Crim. App. 2004) Therefore, before a criminal defendant can be held responsible for making restitution to a victim, it must be shown that the criminal defendant’s conduct was the proximate cause of the injury or damage for which restitution is being ordered. <i>Strough v. State</i>, 501 So.2d 488 (Ala. Crim. App. 1986). The court has broad discretion with regard to the payment and amount of restitution. <i>Ex Parte Stutts</i>, 897 So.2d 431 (Ala. Crim. App. 2004). Absent a clear abuse of discretion, a trial court’s restitution award will not be overturned. <i>Id.</i></p> <p>Alabama considers a subrogated insurance company to be a “victim” for purposes of recovering restitution from a criminal defendant. <i>Hagler v. State</i>, 625 So.2d 1190 (Ala. Crim. App. 1993). This is because the term “victim” is meant to encompass persons who were not necessarily the primary object of the defendant’s criminal conduct. <i>Butler v. State</i>, 608 So.2d 773 (Ala. Crim. App. 1992). In <i>Hagler v. State</i>, a criminal defendant was ordered to pay restitution to the victim’s mother in the amount of \$1,280 and to the Wal-Mart Group Health Plan. The court concluded that Wal-Mart Group Health Plan was a “victim” of the criminal’s wrongful conduct.</p> |
| ALASKA | <p>Alaska Stat. § 12.55.045 (West).</p> <p><i>Lonis v. State</i>, 988 P.2d 441 (Alaska Ct. App. 2000).</p> | <p>Alaska statute allows for a “victim” to recover damages in restitution from a criminal defendant. A court can “order the defendant to make restitution” under the statute, including “restitution to the victim or other person injured by the offense... or as otherwise authorized by law.” Alaska Stat. § 12.55.045 (West).</p> <p>Applicable case law in Alaska has determined that an insurance company qualifies as a “victim” for purposes of awarding criminal restitution, as the appropriate statute had defined a “victim” as “[a]ny person whom the court determines has suffered a direct or indirect pecuniary damage as a result of the defendant’s criminal activities.” <i>Lonis v. State</i>, 988 P.2d 441 (Alaska Ct. App. 2000).</p> |
| ARIZONA | <p>A.R.S. § 13-804.</p> <p><i>State v. Morris</i>, 839 P.2d 434 (Ariz. App. 1992).</p> | <p>An Arizona court can award criminal restitution, to be paid by the defendant, to not only the person directly harmed by a defendant, but also to “any person who suffered an economic loss caused by the defendant’s conduct.” A.R.S. § 13-804.</p> <p>Arizona courts have recognized that if the individual immediately affected by the defendant’s conduct has their losses paid by an insurer, they have not suffered an “economic loss” under the statute. Therefore, the insurance company indemnifying their insured for losses as a result of a defendant’s criminal conduct is in the same position of economic loss their insured. <i>State v. Morris</i>, 839 P.2d 434 (Ariz. App. 1992). An insurance company can be classified as a victim under Arizona case law.</p> |

| STATE | CASE/STATUTE | SUBROGATION RECOVERY RIGHTS |
|------------|---|--|
| ARKANSAS | <p>A.C.A. § 5-4-205.</p> <p><i>Singleton v. State</i>, 357 S.W.3d 891 (Ark. 2009).</p> | <p>Under Arkansas statute, a court can order a defendant to pay criminal restitution, including amounts for the cost of medical treatment, lost income, physical therapy, and funeral costs. According to the same statute, a “victim” includes “any person, partnership, corporation, or governmental entity or agency that suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant’s offense or criminal episode.” A.C.A. § 5-4-205.</p> <p>The Supreme Court of Arkansas has stated that an insurance company is a corporation that incurred monetary expense as an indirect result of the defendant’s criminal conduct when it compensates an insured for a loss suffered at the hands of the criminal defendant. They also determined that, according to the statute, an insurer is a “‘victim’ eligible for restitution” and “an ‘aggrieved party’ eligible for restitution for its loss caused by [the defendant’s] crime.” Therefore, an insurance company can be classified as a “victim” for purposes of criminal restitution. <i>Singleton v. State</i>, 357 S.W.3d 891 (Ark. 2009).</p> |
| CALIFORNIA | <p><i>People v. Busser</i>, 186 Cal. App.4th 1503, 1509, 113 Cal. Rptr.3d 536, 540 (2010); Cal. Penal Code § 1202.4; <i>People v. Johns</i>, 2015 WL 3542355 (Cal. App. 2015).</p> | <p>Although California courts allow for criminal restitution when they are the direct victim of the criminal conduct - <i>i.e.</i>, fraud committed by the defendant directed at the insurance company - case law distinguishes these cases from when an insurance company simply reimburses their insured as a victim of criminal conduct: “Insurance companies that ‘suffer the consequences of crime only by reimbursing the crime-related losses of their policyholders [do] not reasonably fall within [the] definition [of direct victims].’” However, a workers’ compensation carrier is entitled to be reimbursed out of criminal restitution received by an employee if the carrier has paid workers’ compensation benefits.</p> <p>Notwithstanding limitations on restitution, an insured entitled to restitution is still subject to whatever contractual reimbursement/subrogation rights the insurer may have. <i>People v. Millard</i>, 95 Cal. Rptr.3d 751 (Cal. App. 2009). Moreover, a restitution award can be assigned to the third-party payor (insurance or other) who can obtain recovery directly as the assignee of the award. While technically, an insurer cannot be directly awarded restitution, unless it is a direct victim of a crime, it does have alternative avenues available to it within the restitution arena. <i>People v. Hume</i> (2011) 196 Cal. App.4th 990, 1001; <i>Vigilant Insurance Co. v. Chiu</i> (2009). In <i>Vigilant</i>, the subrogated insurer pursued a direct civil action against Chiu, who argued that the restitution award was assigned to Vigilant and thus the civil judgment was duplicative. The court disagreed. Later, relying on <i>Vigilant</i> and working with the insured, the insurer converted a criminal restitution award in favor of the insured to a civil judgment and then recorded an assignment of the judgment in favor of the insured.</p> |
| COLORADO | <p>C.R.S. § 18-1.3-601.</p> <p>C.R.S. § 18-1.3-602(4)(a)(III).</p> <p><i>People v. Davis</i>, 2026 WL 626791 (Colo. App. 2026).</p> | <p>Colorado allows for criminal restitution, as “[p]ersons found guilty of causing such suffering and hardship should be under a moral and legal obligation to make full restitution to those harmed by their misconduct,” and such restitution assists in rehabilitation and deterrent of future criminal conduct for criminal defendants. C.R.S. § 18-1.3-601.</p> <p>The Colorado criminal restitution statute also states that anyone who suffered a loss as the result of a contractual relationship can be classified as a “victim,” and an insurer specifically fits this definition, as enumerated in the statute. C.R.S. § 18-1.3-602(4)(a)(III).</p> |

| STATE | CASE/STATUTE | SUBROGATION RECOVERY RIGHTS |
|----------------------|--|---|
| CONNECTICUT | <p>C.G.S.A. § 53a-28 (West).</p> <p><i>State v. Jones</i>, 55 Conn. App. 243, 739 A.2d 697 (1999).</p> | <p>Connecticut statute allows a court to order criminal restitution if there was damage to person or property as a result of a criminal offense, and if the victim specifically requests it. C.G.S.A. § 53a-28 (West).</p> <p>Although restitution has been awarded to an insurer as a “victim,” the statute does not specifically qualify an insurer as such. In <i>State v. Jones</i>, the court stated that the criminal defendant must abide by a probation order which included an amount in restitution to an insurer. <i>State v. Jones</i>, 55 Conn. App. 243, 739 A.2d 697 (1999).</p> |
| DELAWARE | <p>Del. Code Ann. Tit. 11 § 4106(d)(2).</p> <p><i>Nathan v. State</i>, 962 A.2d 256 (Del. 2008).</p> | <p>If a criminal defendant is convicted of “stealing, taking, receiving, converting, defacing, or destroying property” a court can order that they pay restitution to the victim of any such offense. Although the statute does not expressly label an insurer as a “victim,” it does state that the disbursement of restitution funds will go first to the individual victims before an insurer will receive any amount. Del. Code Ann. Tit. 11 § 4106(d)(2).</p> <p>Delaware case law further states that prior Delaware court decisions “have construed the term ‘victim’ as used in § 4106(a) as ‘one who suffers injury, loss, or death as a result of the voluntary act or undertaking of another,’ and have included insurers who pay compensation to policy-holding victims in that definition as well.” <i>Nathan v. State</i>, 962 A.2d 256 (Del. 2008).</p> |
| DISTRICT OF COLUMBIA | <p>D.C. Code Ann. § 16-711.</p> <p>18 U.S.C.A. § 3663 (West).</p> | <p>The District of Columbia codified their criminal restitution law in D.C. Code Ann. § 16-711, which allows a court to award restitution in an amount and manner they see fit, but case law on the topic has not addressed if an insurer will be allowed to recover restitution from a liable criminal defendant. However, D.C. case law has deferred to the applicable federal statute, which states that the “term ‘victim’ means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered.” 18 U.S.C.A. § 3663 (West).</p> |
| FLORIDA | <p>F.S.A. § 775.089 (West).</p> <p><i>State v. Williams</i>, 689 So.2d 1233, 1234 (Fla. Dist. Ct. App. 1997).</p> | <p>Florida courts are permitted to award restitution paid by a criminal defendant to “any victim” who sustained a loss as a result of the defendant’s criminal conduct. The criminal restitution statute is inclusive of direct and indirect injuries, stating that a “victim” is “each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant’s offense or criminal episode.” F.S.A. § 775.089 (West).</p> <p>Case law in Florida interprets the statute to mean that an insurer qualifies as a “victim,” as “Florida’s restitution statute requires the trial court to consider the amount of the loss sustained by any victim,” and further stated that an insurer would be subrogated to the rights of its insured. <i>State v. Williams</i>, 689 So.2d 1233, 1234 (Fla. Dist. Ct. App. 1997).</p> |
| GEORGIA | <p>O.C.G.A. § 17-14-1 (West).</p> <p>O.C.G.A. § 17-14-2 (West).</p> <p><i>In the Interest of C.B.</i>, 221 Ga. App. 102, 470 S.E.2d 493, 494 (1996).</p> | <p>Per Georgia statute, the courts have the authority to order criminal restitution paid “by those found guilty of crimes or adjudicated as having committed delinquent acts” to the “victims” of those acts. O.C.G.A. § 17-14-1 (West).</p> <p>The statute also specifically includes as a possible “victim” “[a]ny... public or private corporation... suffering damages caused by an offender’s unlawful act.” O.C.G.A. § 17-14-2 (West). Case law affirms the statute and states that “in cases where insurers have paid for crime-related losses, the trial courts have authority to order restitution be paid to the insurer.” <i>In the Interest of C.B.</i>, 221 Ga. App. 102, 470 S.E.2d 493, 494 (1996).</p> |

| STATE | CASE/STATUTE | SUBROGATION RECOVERY RIGHTS |
|----------|--|--|
| HAWAII | Haw. Rev. Stat. § 706-646 (West). <i>State v. Loebel</i> , 127 Haw. 241, 277 P.3d 335 (Haw. Ct. App. 2012). | Hawaii allows for awards of criminal restitution to direct victims, “including a business entity, trust, or governmental entity,” but case law has determined that under that specific section of the statute, an insurer is not a “direct victim” and, therefore, not entitled to criminal restitution. Haw. Rev. Stat. § 706-646 (West); <i>State v. Loebel</i> , 127 Haw. 241, 277 P.3d 335 (Haw. Ct. App. 2012). An insurance company is not a “victim” under § 706-646, and this statute disallows restitution to the extent the victim received insurance payments. If the victim is covered by insurance, then restitution is not allowed. <i>In Interest of CM</i> , 2017 WL 4325895 (Haw. 2017). |
| IDAHO | Idaho Code Ann. § 19-5304 (West). | According to Idaho statute, a court can order a defendant determined guilty of a crime which results in an economic loss to the victim to make restitution to that victim. Restitution can be ordered for any economic loss, and the existence of an insurance policy providing coverage for the victim’s loss won’t eliminate the defendant’s obligation to pay restitution. Idaho statute defines a “victim” who could receive restitution as someone “directly injured,” a health care provider who provides medical treatment to such a victim, or a person or entity “who suffers economic loss because such person or entity has made payments to or on behalf of a directly injured victim pursuant to a contract including, but not limited to, an insurance contract...” Idaho Code Ann. § 19-5304 (West). |
| ILLINOIS | 730 I.L.C.S. § 5/5-5-6. | If a defendant is convicted for a violation of the Illinois Criminal Code, and the victim suffered a personal injury or damage to his/her property as a result, a court can order the appropriate criminal restitution. According to the Illinois statute, an insurance carrier who has indemnified the victim may be entitled to restitution of the appropriate “out-of-pocket expenses, losses, damages, or injuries” but specifically disavows restitution for damage awards of pain and suffering. 730 I.L.C.S. § 5/5-5-6. |
| INDIANA | Ind. Code Ann. § 35-38-2-2.3(a)(5). <i>Jaramillo v. State</i> , 803 N.E.2d 243 (Ind. Ct. App. 2004), | Under Indiana statute, a court can order a defendant to make restitution to the “victim,” their estate, or a family member of a deceased victim. Amount of restitution can be comprised of property damages, medical costs, and lost earnings. The court in <i>Jaramillo v. State</i> , 803 N.E.2d 243 (Ind. Ct. App. 2004), did not discuss the source of their authority to allow restitution to an insurance company as a “victim,” but did affirm an award of restitution to a life insurance company. |

| STATE | CASE/STATUTE | SUBROGATION RECOVERY RIGHTS |
|-----------|--|---|
| IOWA | <p>I.C.A. § 910.1; <i>State v. Shears</i>, 920 N.W.2d 527 (Iowa 2018)</p> | <p>Under Iowa statute, victims will be paid first out of restitution awards, but courts can also order restitution paid by each defendant, upon a guilty plea or verdict, to court for fines or penalties, restitution to public agencies, correctional fees, or court-appointed attorney costs.</p> <p>The same statute specifically defines a “victim” as “a person who has suffered pecuniary damages as a result of the offender’s criminal activities” and explicitly states that an insurer cannot be a victim for purposes of criminal restitution, unless insurance fraud has been perpetrated against the carrier. I.C.A. § 910.1.</p> <p>Iowa courts have also interpreted the restitution statute using civil tort causation principles when determining whether damages are recoverable. In <i>State v. Shears</i>, 920 N.W.2d 527 (Iowa 2018), the Iowa Supreme Court held that a city could recover restitution for damage to police vehicles caused during a high-speed pursuit when officers used their patrol vehicles to stop a fleeing suspect. The defendant argued that the damage resulted from the officers’ execution of a PIT maneuver rather than from his own conduct in eluding police. The court rejected that argument, holding that restitution may be awarded when the damage is a foreseeable consequence of the defendant’s criminal conduct. Applying civil causation principles, the court concluded that damage to police vehicles is a foreseeable result of fleeing from law enforcement and that an officer’s intervention during a pursuit does not break the chain of causation. <i>Id.</i> at 540. Although the decision arose in the criminal restitution context, the court’s reliance on civil causation principles provides strong support for recovery of police-vehicle damages arising from pursuits and PIT maneuvers.</p> |
| KANSAS | <p><i>State v. Bowers</i>, 239 Kan. 417, 427, 721 P.2d 268, 276 (1986); <i>State v. Hinckley</i>, 13 Kan. App.2d 417, 418, 777 P.2d 857, 859 (1989); <i>State v. Bowers</i>, 239 Kan. 417, 428, 721 P.2d 268, 277 (1986); K.S.A. § 21-6607; <i>State v. Blaylock</i>, 2017 WL 839522 (Kan. Ct. App. 2017).</p> | <p>Kansas courts have determined that a defendant sentenced to imprisonment will not be required to also pay restitution, and that such restitution will only be ordered if a sentence is suspended, or if the defendant is given probation. <i>State v. Bowers</i>, 239 Kan. 417, 427, 721 P.2d 268, 276 (1986).</p> <p>Although case law states that a “victim” can extend to a secondary, aggrieved party, it also has been determined that “an insurer, who has assumed a contractual obligation to pay a sum of money in excess of the amount of damage suffered by the victim as a result of the criminal conduct, cannot recover.” <i>State v. Hinckley</i>, 13 Kan. App.2d 417, 418, 777 P.2d 857, 859 (1989). However, additional case law affirmed restitution awarded to organization which reimbursed insurers. <i>State v. Bowers</i>, 239 Kan. 417, 428, 721 P.2d 268, 277 (1986). A subrogated carrier is now considered an “aggrieved party” under § 21-6607 (Conditions of probation or suspended sentence). <i>State v. Blaylock</i>, 2017 WL 839522 (Kan. App. 2017).</p> |
| KENTUCKY | <p>K.R.S. § 533.030 (West). <i>Clayborn v. Com.</i>, 701 S.W.2d 413 (Ky. Ct. App. 1985).</p> | <p>Kentucky courts allow for restitution to victims where they have suffered monetary damage as a result of the defendant’s crime, including compensation for medical expenses. K.R.S. § 533.030 (West). However, because an insurer is not an aggrieved party or direct victim, it cannot recover restitution. <i>Clayborn v. Com.</i>, 701 S.W.2d 413 (Ky. Ct. App. 1985).</p> |
| LOUISIANA | <p>La. Code Crim. Proc. Ann. art. 895(A)(7). <i>Travelers Ins. Co. v. Chalona</i>, 293 So.2d 498 (La. App. 1974).</p> | <p>For purposes of suspending a criminal sentence, a judge can require restitution as a condition to probation. La. Code Crim. Proc. Ann. art. 895(A)(7). In addition, case law in Louisiana does state that an insurer can be entitled to that restitution. <i>Travelers Ins. Co. v. Chalona</i>, 293 So.2d 498 (La. Ct. App. 1974).</p> |

| STATE | CASE/STATUTE | SUBROGATION RECOVERY RIGHTS |
|---------------|--|---|
| MAINE | 17 M.R.S.A. § 1321. <i>State v. Miller</i> , 669 A.2d 164, 164 n.2 (Me. 1995). | Maine allows for restitution to victims, who may recover against a liable criminal defendant per the statute. 17 M.R.S.A. § 1321. Maine case law also expressly provides that an insurer qualifies as a victim. <i>State v. Miller</i> , 669 A.2d 164, 164 n.2 (Me. 1995). |
| MARYLAND | Md. Code Ann. [Crim.] § 11-606(a)(3), (b). | A court in Maryland can order a criminal defendant to pay restitution, and Maryland specifically enumerates by statute that restitution may be paid to an insurer. Even in light of this statute, the direct victim of the defendant's criminal act has priority over the insurer in a right to restitution payment. Md. Code Ann. [Crim.] § 11-606(a)(3), (b). |
| MASSACHUSETTS | Mass. Ann. Laws ch. 258B, § 3(o). | Although the applicable statute in Massachusetts allows for a liable criminal defendant to be ordered to make restitution payments to a "victim," neither Massachusetts case law nor statute has specifically addressed whether an insurer qualifies as a "victim" in allowing their receipt of restitution. Mass. Ann. Laws ch. 258B, § 3(o). |
| MICHIGAN | M.C.L.A. § 771.3 <i>People v. Norman</i> , 454 N.W.2d 393 (Mich. Ct. App. 1989). | Michigan statute states that criminal defendants may be liable for restitution to "victims" of their criminal conduct, and applicable case law has clarified that an insurer will be able to qualify as a "victim" for purposes of recovering restitution payments. M.C.L.A. § 771.3; <i>People v. Norman</i> , 454 N.W.2d 393 (Mich. Ct. App. 1989). |
| MINNESOTA | M.S.A. § 609.10(5). <i>In the Matter of the Welfare of: L.J.M.</i> , 1991 Minn. App. LEXIS 309 (Minn. Ct. App. 1991). | Per the Minnesota statute, a court can order a criminal defendant convicted of a felony to make restitution payments in addition to either/both imprisonment or payment of any applicable fine. M.S.A. § 609.10(5). Minnesota case law also states that an insurer will qualify as a "victim" for purposes of recovery of restitution. <i>In the Matter of the Welfare of: L.J.M.</i> , 1991 Minn. App. LEXIS 309 (Minn. Ct. App. 1991). "Victim" means a natural person who incurs loss or harm as a result of a crime, including a good faith effort to prevent a crime, and for purposes of sections 611A.04 and 611A.045, also includes (1) a corporation that incurs loss or harm as a result of a crime, (2) a government entity that incurs loss or harm as a result of a crime, and (3) any other entity authorized to receive restitution under section 609.10 or 609.125. The term "victim" includes the family members, guardian, conservator, or custodian of a minor, incompetent, incapacitated, or deceased person. A workers' compensation carrier is a "victim" under the plain meaning of the restitution statute. <i>State of Minnesota, Respondent, v. Julio Armando Alvarado, Appellant.</i> , 2025 WL 1922440 (Minn. App. 2025). |
| MISSISSIPPI | M.C.A. § 99-37-3. <i>In the Interest of B.D. v. State</i> , 720 So.2d 476, 482 (Miss. 1998). | Mississippi allows for a "victim" to recover restitution from a liable criminal defendant. M.C.A. § 99-37-3. For purposes of an insurer recovering restitution payments, an insurance company may qualify as a "victim" according to Mississippi case law. <i>In the Interest of B.D. v. State</i> , 720 So.2d 476, 482 (Miss. 1998). |
| MISSOURI | <i>State v. Gladden</i> , 294 S.W.3d 73 (Mo. Ct. App. 2009). | A Missouri court has the authority to order that a criminal defendant pay restitution to a "victim" or "any dependent of the victim." Missouri case law also states that a court will have the ability to award restitution to an insurer who has reimbursed a direct victim. <i>State v. Gladden</i> , 294 S.W.3d 73 (Mo. Ct. App. 2009). |

| STATE | CASE/STATUTE | SUBROGATION RECOVERY RIGHTS |
|---------------|---|--|
| MONTANA | <p>Mont. Code Ann. § 46-18-241.</p> <p><i>State v. Fenner</i>, 325 P.3d 691 (Mont. 2014); <i>State v. Lodahl</i>, 2021 WL 2660080 (Mont. 2021).</p> <p>Mont. Code Ann. § 46-18-243(2)(a)(iv).</p> | <p>Montana statute expressly states that victims can recover restitution from liable criminal defendants. The statute also defines a “victim” who has sustained a loss, “including a person suffering an economic loss,” which includes an insurer. Mont. Code Ann. § 46-18-241. The Montana Supreme Court has said that this restitution statute contains no provision requiring an offset in the defendant’s favor or indicating that a victim should receive less from the defendant where subrogation is involved. <i>State v. Fenner</i>, 325 P.3d 691 (Mont. 2014). Montana’s restitution statutes reflect intent to “require an offender to make <i>full restitution</i> to any victim who has sustained pecuniary loss.” It said that the issue of subrogation has no bearing on the amount of restitution that an insured/victim must pay. While the restitution statutes include an insurer as a victim to the extent that it has paid reimbursement for the loss, there is no provision requiring deduction of any such reimbursement from the amount the offender must be ordered to pay. Mont. Code Ann. § 46–18–243(2)(a)(iv).</p> <p>In <i>State v. Lodahl</i>, the Supreme Court held that the Montana State Workers’ Compensation Fund was a “victim” under § 46–18–243(2)(a)(iv). The Fund was an insurance company that compensated the victim for her qualifying losses, including medical expenses and lost wages, which resulted from the assault.</p> |
| NEBRASKA | <p>Neb. Rev. Stat. § 29-2280.</p> <p><i>State v. Holecek</i>, 621 N.W.2d 100 (Neb. 2000).</p> | <p>Under the applicable Nebraska statute, “victims” are allowed restitution payments from a liable criminal defendant, when they have suffered a loss or property damage as a result of the criminal conduct. Neb. Rev. Stat. § 29-2280. Nebraska case law has also stated that an insurer who has reimbursed the victim due to the defendant’s criminal conduct will, therefore, qualify as a “victim.” <i>State v. Holecek</i>, 621 N.W.2d 100 (Neb. 2000).</p> |
| NEVADA | <p>N.R.S. § 176.033(1)(c).</p> <p><i>Martinez v. State</i>, 115 Nev. 9, 974 P.2d 133 (1999).</p> | <p>Nevada courts may award restitution to a “victim” when proper, in an amount they determine appropriate. N.R.S. § 176.033(1)(c). Nevada case law, however, has determined that an insurer does not qualify as a “victim” for restitution purposes. <i>Martinez v. State</i>, 115 Nev. 9, 974 P.2d 133 (1999). Instead, a district court must offset the defendant’s restitution obligation by the amount the insurer paid to the victim for losses subject to the restitution order. The amount to be offset is limited to the portion of the payments intended to compensate the victim for costs recoverable as restitution; thus, any portion directed to pay attorney fees or excludable damages such as pain and suffering should not be credited against the restitution. <i>Nied v. State</i>, 509 P.3d 36 (Nev. 2022).</p> |
| NEW HAMPSHIRE | <p>N.H. Rev. Stat. Ann. § 651:62(I).</p> <p><i>State v. McCarthy</i>, 839 A.2d 22 (N.H. 2003).</p> | <p>A New Hampshire court can award restitution in an amount they determine appropriate, regardless of a criminal defendant’s ability to pay. N.H. Rev. Stat. Ann. § 651:62(I). The applicable statute also defines a “victim” as one who has suffered an economic loss as a result of the criminal conduct, and case law supports that an insurer can recover restitution payments as long as it is subrogated to the rights of its insured/“victim.” <i>State v. McCarthy</i>, 839 A.2d 22 (N.H. 2003).</p> |
| NEW JERSEY | <p>N.J. Stat. Ann. § 2C:43-3.</p> <p><i>State v. Jones</i>, 789 A.2d 131 (N.J. Super. Ct. App. Div. 2002).</p> | <p>New Jersey statute permits recovery of restitution by a “victim,” albeit in an amount based upon the severity of the defendant’s criminal conduct. N.J. Stat. Ann. § 2C:43-3. Appropriate case law has stated that insurers can recover restitution payments only after making payments to their insured. <i>State v. Jones</i>, 789 A.2d 131 (N.J. Super. Ct. App. Div. 2002).</p> |

| STATE | CASE/STATUTE | SUBROGATION RECOVERY RIGHTS |
|----------------|---|---|
| NEW MEXICO | <p>N.M.S.A. § 31-17-1.</p> <p><i>State v. Brooks</i>, 862 P.2d 57 (N.M. Ct. App. 1993).</p> | <p>New Mexico statute states restitution will be made by criminal defendants to the “victims” of the criminal activities, defined as a person who “suffered actual damages as a result” of the above-mentioned criminal activities—and actual damages include all damages a victim might recover in a civil action against the defendant. N.M.S.A. § 31-17-1. Since an insurer has subrogation rights after payments made to insured, they qualify as a victim in New Mexico case law. <i>State v. Brooks</i>, 862 P.2d 57 (N.M. Ct. App. 1993).</p> |
| NEW YORK | <p>N.Y. Penal Law § 60.27(1).</p> <p><i>People v. Kim</i>, 694 N.E.2d 421 (N.Y. 1998).</p> | <p>New York statute allows for restitution to be paid by criminal defendant to “victim” of their criminal conduct. N.Y. Penal Law § 60.27(1). Applicable case law states that an insurer will qualify as a “victim” for purposes of recovery of restitution payments. <i>People v. Kim</i>, 694 N.E.2d 421 (N.Y. 1998).</p> |
| NORTH CAROLINA | <p>N.C.G.S.A. § 15A-834.</p> <p>N.C.G.S.A. § 15A-1343(d)</p> <p><i>State v. Stanley</i>, 339 S.E.2d 668 (N.C. Ct. App. 1986).</p> | <p>Under the North Carolina statute, a criminal defendant will be liable for restitution to the “victim” of their criminal conduct. N.C.G.S.A. § 15A-834. Additional statutory language qualifies that no third party will be allowed to benefit through restitution—and case law shows that courts have interpreted this to mean that an insurer cannot recover restitution payments. N.C.G.S.A. § 15A-1343(d); <i>State v. Stanley</i>, 339 S.E.2d 668 (N.C. Ct. App. 1986).</p> |
| NORTH DAKOTA | <p>N.D.C.C. §§ 12.1-32-08 and 12.1-32-02.</p> <p><i>State v. Vick</i>, 587 N.W.2d 567, 568 (N.D. 1998).</p> | <p>North Dakota statute allows a “victim” to recover restitution payments from criminal defendant due to criminal conduct. N.D.C.C. § 12.1-32-08; N.D.C.C. § 12.1-32-02. Related case law determined that an insurer who has indemnified their insured as a “victim” of criminal defendant’s conduct suffers an economic loss, and therefore, will become a “victim” for purposes of recovery of restitution. <i>State v. Vick</i>, 587 N.W.2d 567, 568 (N.D. 1998).</p> |
| OHIO | <p>Ohio Rev. Code Ann. § 2929.18.</p> <p><i>State v. Martin</i>, 747 N.E.2d 318, 338 (Ohio Ct. App. 2000).</p> | <p>Ohio statute allows for recovery of restitution by “victim” from liable criminal defendant. Ohio Rev. Code Ann. § 2929.18. Applicable case law has included an insurer as a victim entitled to restitution recovery. <i>State v. Martin</i>, 747 N.E.2d 318, 338 (Ohio Ct. App. 2000). Note, however, that there are cases which call this into question. In <i>State v. Didion</i>, 877 N.E.2d 725 (Ohio App. 2007) and <i>State v. Perkins</i>, 941 N.E.2d 1227 (Ohio App. 2010), the courts directly refute the ability of a third-party insurer to recover restitution. <i>State v. Didon</i> specifically cite the changes made to § 2929.18(A)(1) in 2004, which used to allow restitution for “victims & third parties.” The amendment removed the reference to “third parties.” However, there is an argument to be made that our right to subrogation does not make us a “third party”, but a subrogee of the victim.</p> <p>Also, in <i>State v. Bartholomew</i>, 894 N.E.2d 307 (Ohio 2008), the Ohio Supreme Court allowed the trial court to designate its own agency for the purposes of restitution. Thus, if the trial court can designate who can be considered an agency for the purposes of criminal restitution, it stands to reason that the trial court can designate who can be considered a “victim” for the purposes of criminal restitution as well.</p> |
| OKLAHOMA | <p>Okla. Stat. tit. 22 § 991f.</p> <p>Okla. Stat. tit. 22 § 991(f)(2).</p> | <p>Oklahoma statute specifically allows a court to award a “victim” restitution paid by a convicted criminal defendant. Okla. Stat. tit. 22 § 991f. Although no Oklahoma case law or statute directly addresses an insurer’s right to restitution amounts, a “victim” under the restitution statute is defined as “any person, partnership, corporation or legal entity that suffers an economic loss as a direct result of the criminal act of another person.” Okla. Stat. tit. 22 § 991(f)(2).</p> |

| STATE | CASE/STATUTE | SUBROGATION RECOVERY RIGHTS |
|----------------|---|--|
| OREGON | <p>O.R.S. § 137.106(1).</p> <p><i>Oregon v. Divers</i>, 625 P.2d 681 (Or. Ct. App. 1981); <i>State v. Ramos</i>, 2014 WL 6693789 (2014).</p> | <p>Oregon statute allows for a “victim” to recover restitution payments from a liable criminal defendant. O.R.S. § 137.106(1). Applicable case law has stated that, as an insurer could recover any benefits paid through a right of subrogation, it can, therefore, be included as a “victim” for purposes of restitution. <i>Oregon v. Divers</i>, 625 P.2d 681 (Or. Ct. App. 1981).</p> <p>Evidence that medical bills were paid by an institutional insurer at a contracted rate was sufficient to prove the reasonableness of medical expenses. <i>State v. Campbell</i>, 296 Or. App. 22 (2019).</p> |
| PENNSYLVANIA | <p>18 Pa. C.S. § 1106(a).</p> <p>18 Pa. C.S. § 1106(c)(1)(ii)(D).</p> <p><i>Commonwealth of Pennsylvania v. Pozza</i>, 750 A.2d 889 (Pa. Super. Ct. 2000).</p> <p><i>Commonwealth v. Wright</i>, 2022 WL 1741121 (Super. 2022).</p> | <p>Pennsylvania statute allows for a “victim” to recover the appropriate restitution from a liable criminal defendant. 18 Pa. C.S. § 1106(a). The applicable Pennsylvania case law and statutory language allow for classification of an insurer as a “victim” for purposes of restitution recovery. 18 Pa. C.S. § 1106(c)(1)(ii)(D); <i>Commonwealth of Pennsylvania v. Pozza</i>, 750 A.2d 889 (Pa. Super. Ct. 2000). A victim’s insurer is considered a victim under the Crime Victim’s Act, 18 Pa.C.S. §§ 11.101, <i>et seq.</i> <i>Commonwealth of Pennsylvania v. Langston</i>, 2018 WL 1062779 (Pa. Super. 2018). In criminal matters, a criminal “has no standing to question contractual or subrogation rights which govern disposition of moneys paid via restitution to the victim. <i>Commonwealth v. Kerr</i>, 444 A.2d 758 (Pa. Super. 1982). In <i>Kerr</i>, the Superior Court rejected the offender’s argument that a “right of subrogation transforms the sentence [ordering restitution] into an order directing payment to one who was not the victim of the crime.” <i>Id.</i> at 760-61.</p> <p>In a Superior Court case, the court ordered the criminal to pay restitution to The Phia Group, which was merely the recovery and reimbursement subrogation vendor for HCR ManorCare, and didn’t actually pay the claims. Because § 1106 defines “insurance company” as “entity that compensates a victim for loss under an insurance contract” and says the court may order the defendant to pay restitution to “the insurance company”, the subrogation vendor was not entitled to any restitution. <i>Commonwealth v. Wright</i>, 2022 WL 1741121 (Super. 2022).</p> |
| RHODE ISLAND | <p>R.I.G.L. § 12-19-33.</p> <p><i>State v. Traudt</i>, 679 A.2d 330 (R.I. 1996).</p> | <p>Rhode Island case law allows for recovery of restitution by a “victim” against a liable criminal defendant. <i>State v. Traudt</i>, 679 A.2d 330 (R.I. 1996). In addition, restitution may be awarded by a judge in a family court matter, per the applicable Rhode Island statute. R.I.G.L. § 12-19-33. Despite the availability of restitution awards, neither case law nor statutes have decided on criminal restitution being available to an insurer.</p> |
| SOUTH CAROLINA | <p>S.C. Code Ann. § 17-25-322(A).</p> | <p>The applicable South Carolina restitution statute allows for restitution awards to “victims,” but designates a special hearing to determine amount of restitution that “victim” will be entitled to, considering pecuniary damages or loss suffered by the “victim.” S.C. Code Ann. § 17-25-322(A). Despite allowance of restitution to “victim,” neither the courts nor the legislature have addressed whether an insurer can recover as a “victim” restitution amounts.</p> |
| SOUTH DAKOTA | <p>S.D.C.L. § 23A-28-2(5).</p> <p><i>State v. Wingler</i>, 734 N.W.2d 795 (S.D. 2007).</p> | <p>Per the South Dakota statute, any “victim” who suffers a pecuniary loss due to a criminal defendant’s conduct will be entitled to recover restitution amounts. S.D.C.L. § 23A-28-2(5). Case law on the issue has determined that, where an insurer must indemnify their insured as a result of criminal defendants’ conduct, insurer will be a “victim” per the statute. <i>State v. Wingler</i>, 734 N.W.2d 795 (S.D. 2007).</p> |

| STATE | CASE/STATUTE | SUBROGATION RECOVERY RIGHTS |
|---------------|--|--|
| TENNESSEE | T.C.A. § 40-35-304 <i>State v. Alford</i> , 970 S.W.2d 944 (Tenn. 1998). | Under the Tennessee statute, a court can award restitution to a “victim” of criminal defendant’s conduct. T.C.A. § 40-35-304 However, Tennessee case law has determined that an insurer will not qualify as a victim for purposes of restitution recovery. <i>State v. Alford</i> , 970 S.W.2d 944 (Tenn. 1998). |
| TEXAS | Tex. Civ. Prac. & Rem. Code Ann. § 42.037(f)(1). <i>Cox v. State</i> , 1998 Tex. App. LEXIS 62, * 3 (Tex. Ct. App. 1998). | Texas statute gives a court the authority to order that a criminal defendant pay restitution to a “victim” of their offense. When the “victim” has been compensated from a source other than the criminal defendant, they will not be entitled to restitution; rather, the court can award restitution to the party who compensated the “victim.” Tex. Civ. Prac. & Rem. Code Ann. § 42.037(f)(1). Texas case law has affirmed that an insurer may be such a party after compensating their insured—the “victim.” <i>Cox v. State</i> , 1998 Tex. App. LEXIS 62, * 3 (Tex. Ct. App. 1998). |
| UTAH | U.C.A. § 76-3-201. U.C.A. § 76-3-201(1)(e)(i). <i>State v. Stirba</i> , 972 P.2d 918 (Utah 1998). | Per the Utah statute, a criminal defendant will be liable for restitution to a “victim” of their criminal conduct. U.C.A. § 76-3-201. The statute further defines a “victim” as anyone who, upon the determination of the court, suffered a pecuniary loss as a result of the aforementioned criminal conduct. U.C.A. § 76-3-201(1)(e)(i). Utah case law has determined that under that definition, an insurer qualifies as a “victim” and could be entitled to restitution from the criminal defendant. <i>State v. Stirba</i> , 972 P.2d 918 (Utah 1998). |
| VERMONT | Vt. Stat. Ann. tit. 28, § 252(b)(6). <i>State v. Webb</i> , 559 A.2d 658 (Vt. 1989). | According to Vermont’s statute on restitution, a court can require that a criminal defendant make restitution payments to the “victim” of their criminal conduct. Vt. Stat. Ann. tit. 28, § 252(b)(6). Case law clarifies that only direct “victims” can recover restitution, and an insurer is not such a direct “victim”; therefore, they are not eligible for restitution recovery. <i>State v. Webb</i> , 559 A.2d 658 (Vt. 1989). However, in <i>State v. Bonfanti</i> , 603 A.2d 365 (Vt. 1991), the court held that there does exist a limited circumstance in which an insurance company can be awarded restitution; when they are the direct victim. In other words, when subrogating, they are an indirect victim. |
| VIRGINIA | Va. St. § 19.2-305. <i>Alger v. Commonwealth of Virginia</i> , 450 S.E.2d 765, 767 (Va. Ct. App. 1994). | Under the applicable Virginia statute, an “aggrieved party” may be awarded restitution if they suffered a loss or damages due to the criminal defendant’s conduct, which resulted in a conviction. Va. St. § 19.2-305. Per the associated case law, if an insurer pays their insured as the “victim” of the criminal conduct, they will qualify as a “victim” for purposes of being awarded restitution. <i>Alger v. Commonwealth of Virginia</i> , 450 S.E.2d 765, 767 (Va. Ct. App. 1994). |
| WASHINGTON | R.C.W.A. § 9.94A.753. <i>State v. Barnett</i> , 675 P.2d 626 (Wash. Ct. App. 1984). | Under the Washington statute on restitution, a court will determine the amount of restitution after its application has been ordered. R.C.W.A. § 9.94A.753. According to applicable case law, an insurer will qualify as a “victim” under the statute, and therefore, be entitled to restitution. <i>State v. Barnett</i> , 675 P.2d 626 (Wash. Ct. App. 1984). |
| WEST VIRGINIA | W. Va. St. § 61-11A-4. <i>State v. Lucas</i> , 496 S.E.2d 221 (W. Va. 1997). | According to the West Virginia statute, criminal defendants may be liable fore restitution to “victims” of their criminal conduct. W. Va. St. §§ 61-11A-4. Per the appropriate case law, a “victim” may include an insurer who paid money to an insured/criminal defendant, due to act of arson. <i>State v. Lucas</i> , 496 S.E.2d 221 (W. Va. 1997). |

| STATE | CASE/STATUTE | SUBROGATION RECOVERY RIGHTS |
|-----------|---|--|
| WISCONSIN | <p>Wis. Stat. § 973.20.</p> <p><i>State v. Baker</i>, 626 N.W.2d 862 (Wis. Ct. App. 2001).</p> | <p>Under the Wisconsin statute, a court can impose full or partial restitution against a criminal defendant, to a “victim” of their crime. Wis. Stat. § 973.20 (1r). Case law on point has determined that an insurer may be able to recover restitution as a “victim” of a criminal defendant’s criminal conduct. <i>State v. Baker</i>, 626 N.W.2d 862 (Wis. Ct. App. 2001). Section 973.20 (5)(d) specifically provides, “In any case, the restitution order may require that the defendant do one or more of the following: ... If justice so requires, reimburse any insurer, surety or other person who has compensated a victim for a loss otherwise compensation under this section.”</p> |
| WYOMING | <p>Wyo. Stat. Ann. §§ 7-9-102 and 7-9-101(a)(v).</p> <p><i>Meerscheidt v. State</i>, 931 P.2d 220 (Wyo. 1997).</p> <p><i>Hudson v. State</i>, 466 P.3d 839 (Wyo. 2020).</p> | <p>The applicable Wyoming statute covering restitution allows for recovery against a liable criminal defendant by the “victim” affected by the criminal conduct. Wyo. Stat. Ann. § 7-9-101(a)(v). Strangely, an insurer which has paid part of a victim’s pecuniary damages can qualify as a “victim” and, therefore, have a claim to restitution payments, but <u>only</u> if it does <i>not</i> have a right of subrogation and the insured has no duty to pay the proceeds of restitution to the insurer. Wyo. Stat. Ann. § 7-9-101(a)(v); <i>Meerscheidt v. State</i>, 931 P.2d 220 (Wyo. 1997). Even more bizarre is the fact that courts have held that without evidence of the <i>absence of a subrogation agreement</i>, the owner’s insurance company, which paid owner for damage to his truck, did not qualify as a “victim” that could be awarded restitution. <i>Hudson v. State</i>, 466 P.3d 839 (Wyo. 2020).</p> |

These materials and other materials promulgated by Matthiesen, Wickert & Lehrer, S.C. may become outdated or superseded as time goes by. If you should have questions regarding the current applicability of any topics contained in this publication or any publications distributed by Matthiesen, Wickert & Lehrer, S.C., please contact Gary Wickert at gwickert@mw-law.com. This publication is intended for the clients and friends of Matthiesen, Wickert & Lehrer, S.C. This information should not be construed as legal advice concerning any factual situation and representation of insurance companies and/or individuals by Matthiesen, Wickert & Lehrer, S.C. on specific facts disclosed within the attorney\client relationship. These materials should not be used in lieu thereof in any way.