

West's Annotated Mississippi Code Currentness
Title 99. Criminal Procedure
→ Chapter 37. Restitution to Victims of Crimes

§ 99-37-1. Definitions

As used in this chapter:

- (a) "Criminal activities" shall mean any offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant.
- (b) "Pecuniary damages" shall mean all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses.
- (c) "Restitution" shall mean full, partial or nominal payment of pecuniary damages to a victim.
- (d) "Victim" shall mean any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities. "Victim" shall not include any coparticipant in the defendant's criminal activities, or any person knowingly participating in a criminal act at the time he became a victim.

§ 99-37-3. Imposition and amount

- (1) When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim; provided, however, that the justice court shall not order restitution in an amount exceeding Five Thousand Dollars (\$5,000.00).
- (2) In determining whether to order restitution which may be complete, partial or nominal, the court shall take into account:
 - (a) The financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant;
 - (b) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; and
 - (c) The rehabilitative effect on the defendant of the payment of restitution and the method of payment.
- (3) If the defendant objects to the imposition, amount or distribution of the restitution, the court shall, at the time of sentencing, allow him to be heard on such issue.
- (4) If the court determines that restitution is inappropriate or undesirable, an order reciting such finding shall be entered, which should also state the underlying circumstances for such determination.

§ 99-37-5. Payment and orders

(1) When a defendant is sentenced to pay a fine or costs or ordered to make restitution, the court may order payment to be made forthwith or within a specified period of time or in specified installments. If a defendant is sentenced to a term of imprisonment, an order of payment of a fine, costs or restitution shall not be enforceable during the period of imprisonment unless the court expressly finds that the defendant has assets to pay all or part of the amounts ordered at the time of sentencing.

(2) When a defendant sentenced to pay a fine or costs or ordered to make restitution is also placed on probation or imposition or execution of sentence is suspended, the court may make payment of the fine or costs or the making of restitution a condition of probation or suspension of sentence. Such offenders shall make restitution payments directly to the victim. As an alternative to a contempt proceeding under [sections 99-37-7 through 99-37-13](#), the intentional refusal to obey the restitution order or a failure by a defendant to make a good faith effort to make such restitution may be considered a violation of the defendant's probation and may be cause for revocation of his probation or suspension of sentence.

§ 99-37-7. Contempt for default

(1) When a defendant sentenced to pay a fine or to make restitution defaults in the payment thereof or of any installment, the court, on motion of the district attorney, or upon its own motion, may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or the restitution, or a specified part thereof, is paid.

(3) A judicial officer shall not be held criminally or civilly liable for failure of any defendant to pay any fine or to make restitution if the officer exercises his judicial authority in accordance with subsections (1) and (2) of this section to require the payment of such fine or restitution.

(4) When a fine or an order of restitution is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or make the restitution from those assets, and his failure to do so may be held to be contempt unless he makes the showing required in subsection (2) of this section.

§ 99-37-9. Imprisonment for contempt

The term of imprisonment for contempt for failure to make restitution shall be set forth in the commitment order, and shall not exceed one (1) day for each twenty-five dollars (\$25.00) of the restitution, or thirty (30) days if the order of the restitution was imposed upon conviction of a violation or misdemeanor, or one (1) year in any other case, whichever is the shorter period. A person committed for failure to make restitution shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

§ 99-37-11. Relief from payments

If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or

of each installment or revoking the fine or order of restitution or the unpaid portion thereof in whole or in part.

§ 99-37-13. Enforcement of judgments

A default in the payment of a fine or costs or failure to make restitution or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or restitution has actually been collected.

§ 99-37-15. Resumption of payments

Whenever an offender in the custody of the Department of Corrections is paroled, placed on earned probation or other form of release, and when such offender has been sentenced to make restitution pursuant to [section 99-37-3](#) but with respect to whom payment of all or a portion of the restitution was suspended until his release from confinement, the making of restitution shall be a condition of the offender's release. The commissioner of corrections shall establish a schedule by which payment of the restitution may be resumed. In fixing the schedule and supervising the released offender's performance thereunder, the commissioner shall consider the factors specified in [subsection \(2\) of section 99-37-3](#). The commissioner shall provide to the sentencing court a copy of the schedule and any modifications thereof. Such offenders shall make restitution payments directly to the victim.

As an alternative to a contempt proceeding under [sections 99-37-7](#) through [99-37-13](#), the intentional refusal to obey the restitution order or a failure by an offender to make a good faith effort to make such restitution may be considered a violation of an offender's release and may be cause for revocation of his parole, earned probation or other form of release.

§ 99-37-17. Civil actions

(1) Nothing in this chapter limits or impairs the right of a person injured by a defendant's criminal activities to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution pursuant to this chapter may not be introduced in any civil action arising out of the facts or events which were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in such civil action.

(2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability for pecuniary damages of a victim, that issue is conclusively determined as to the defendant, if it is involved in a subsequent civil action.

§ 99-37-19. Restitution centers

The boards of supervisors of the several counties and the governing authorities of municipalities are hereby authorized to cooperate with the Department of Corrections in the establishment of restitution centers. Such centers may house both probationers referred by the circuit courts as well as inmates transferred from other facilities of the Department of Corrections as provided in [Section 47-5-110](#). In order to qualify for placement in a restitution center, an offender must: (a) be convicted of a nonviolent offense that constitutes a felony, (b) not be convicted of a sex crime, and (c) not have drug, alcohol, emotional or physical problems so serious that the offender appears unlikely to meet obligations of the restitution program. Such centers shall be operated by the De-

partment of Corrections. County or municipal property may be utilized with the approval of the board of supervisors or municipal governing authority for the construction, renovation and maintenance of facilities owned by the state or a local political subdivision. Such facility may be leased to the Department of Corrections for a period of time for use as a restitution center.

It is the intent of this section that county and local governments contribute only to the establishment, renovation and maintenance of the physical plant of a restitution center and that the Department of Corrections support the operation of, and have sole jurisdiction over and responsibility for offenders in, such restitution program.

This section shall stand repealed on July 1, 2011.

§ 99-37-21. Institution and administration of centers

(1) The department of public welfare and the department of corrections are hereby authorized to cooperate in the institution and administration of services at restitution centers as authorized by [section 99-37-19](#) and at other facilities which provide opportunities for restitution for criminal acts.

(2) The department of public welfare and the department of corrections are authorized and directed, jointly or separately:

(a) to seek funding from federal or other sources to provide the maximum supportive services for offenders and the families of offenders who are participating in restitution programs;

(b) to develop additional programs whereby offenders may be afforded opportunities to contribute to society and the support of their families through restitution programs; and

(c) to develop pilot programs of counseling, training and supervision for parolees whereby restitution may be accomplished; such programs may be residential or nonresidential as appropriate.

§ 99-37-23. Delinquency cases

In delinquency cases before the youth court, the disposition order may include, in addition to any other requirement, restitution not in excess of actual damages caused by the child to be paid out of his assets or by performance of services acceptable to the parties and reasonably capable of performance within one (1) year.

§ 99-37-25. Payment for medical examination of rape victim; examination of accused

(1)(a) When a person is brought into a doctor's office, a hospital or a medical clinic by a law enforcement agency as the victim of an alleged rape or sexual assault having occurred in this state, or comes into a doctor's office, a hospital or a medical clinic alleging rape or sexual assault having occurred in this state, the bill for the medical forensic examination and the preparation of the sexual assault evidence collection kit will be sent to the Division of Victim Compensation, Office of the Attorney General. The Division of Victim Compensation shall pay for the medical examination conducted for the procurement of evidence to aid in the investigation and prosecution of the alleged offense. Such payment shall be limited to the customary and usual hospital and physician charges for such services in the area. Such payment shall be made by the Division of Victim Compensation directly to the health care provider. No bill for the examination will be submitted to the victim, nor shall the medical facility hold the victim responsible for payment. The victim may be billed for any further medical services not required for the investigation and prosecution of the alleged offense. In cases where the damage caused by the

alleged sexual assault requires medical treatment or diagnosis in addition to the examination, the patient will be given information about the availability of victim compensation and the procedure for applying for such compensation.

(b) Upon application submitted by the district attorney, provided the proper warrant or court order has been issued, the county in which an offense of sexual assault or of felonious abuse or battery of a child as described in [Section 97-5-39](#), touching or handling a child for lustful purposes as described in [Section 97-5-23](#), exploitation of children as described in [Section 97-5-33](#) or sexual battery as described in [Section 97-3-95](#), or statutory rape as defined in [Section 97-3-65](#), or an attempt to commit such offense has occurred shall pay for a medical forensic examination of the person arrested, charged or convicted of such offense to determine if the person so arrested, charged or convicted has any sexually transmitted disease and for the collection of evidence. Such payment shall be made by the county directly to the health care provider or other service performing the collection of evidence and tests. At the victim's request, a test for human immunodeficiency virus (HIV) shall be administered to the defendant/accused not later than forty-eight (48) hours after the date on which the information or indictment is presented, and the defendant/accused shall be subjected to follow-up testing for HIV upon a determination that such follow-up testing is medically necessary and reasonable. The results of any such test shall be confidential but shall be made available to the victim or, if the victim is a child, to the guardian of the victim. After an indictment, if the case is dismissed, the defendant is found not guilty or the case is not prosecuted within three (3) years of the indictment, all records of tests shall be returned to the accused or destroyed. Upon a showing of good cause, the court may retain such records and allow a case to remain open after the expiration of the three-year limitation provided herein.

(2) Any defendant who is convicted of, or pleads guilty or nolo contendere to, any offense or an attempt to commit any such offense specified in subsection (1)(b) shall be ordered by the court to make restitution to the Division of Victim Compensation in an amount equal to the compensation paid by the Division of Victim Compensation to the victim or medical provider for the medical forensic examination and to the county for tests for sexually transmitted diseases. Such restitution shall be in addition to any restitution which the court orders the defendant to pay the victim under the provisions of Chapter 37 of Title 99, (Sections 99-37-1 through 99-37-21), Mississippi Code of 1972.

(3) The Division of Victim Compensation is hereby authorized, in its discretion, to make application for and comply with such requirements as may be necessary to qualify for any federal funds as may be available as a result of services rendered to crime victims under the provisions of this section.

Current through all 2007 Sessions and Chs. 302, 309, 312, 373 and 376 of the 2008 Reg. Sess.
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