

# Kent County Prosecutor's Office

## Restitution Collection



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## **B) WAGES OR OTHER INCOME** - Use SCAO Form MC 12

<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/garnishment/mc12.pdf>

You will need to serve this form on the defendant's employer as well as the defendant. You will need the employer's name and address. Garnishment orders last for 91 days. If your restitution is not fully paid you must repeat the process after the time runs out.

## **C) GARNISH DEFENDANT'S MICHIGAN INCOME TAX REFUND**

Use SCAO Form 52

<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/garnishment/mc52.pdf>

You can only garnish the defendant's state income tax. You CANNOT garnish a federal or local tax refund or credit. This form may be used each year until the restitution is fully paid.

## **D) REQUEST AND ORDER TO SEIZE PROPERTY**

Use SCAO Form MC19

<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/generalcivil/mc19.pdf>

Serve this form on the defendant, THEN give it to a court appointed officer, (i.e. Sheriff's Civil Division). The COURT OFFICER can then seize the defendant's property and sell it at auction and the proceeds from the auction are then given to the victim. If excess money is taken in from the sale after restitution is paid, the remains are given back to the defendant. **AT NO TIME SHOULD A VICTIM ATTEMPT TO SEIZE A DEFENDANT'S PROPERTY ON THEIR OWN!**

## **E) ENCUMBERING ASSETS**

File a certified copy of the Judgment of Sentence with the Register of Deeds in every county in which the defendant owns real property. This lien clouds the title of the defendant's property when a title check reveals the lien. When the property is sold, the victim can be paid from the proceeds.

## **F) ESTATE PROCEEDINGS**– Use SCAO Form PC 579

<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/probate/pc579.pdf>

A restitution order remains in effect until it is fully satisfied, so if a defendant passes away this form may be served on the Probate Court of the county in which the defendant passed away. Money can be obtained if assets remain in the estate of the defendant.

Hopefully one or more of these methods will help you in collecting any remaining restitution owed to you after the defendant is no longer under court ordered custody or probation. If you have any questions you can always contact the Legal Assistance Center at 616-632-6000 for further help or hire an attorney to assist you.

# **RESTITUTION COLLECTION METHODS - AFTER PROBATION**

## **INTRODUCTION**

An order of restitution entered in a criminal case remains effective until it is satisfied in full MCL 780.766(13). Restitution must be a condition of probation or parole and agents must review files twice a year regarding payments. Unfortunately not all restitution orders are paid in full during the time the defendant is under court supervision. What can you do if you are still owed money and the defendant is removed from probation or parole?

An order of restitution is a judgment and lien against all property of the defendant. MCL 780.766(13). It does not expire until satisfied (paid) in full. There are ways **YOU** can collect the restitution that was ordered by the court. You do **NOT** have to file a separate civil lawsuit unless there are damages or losses that are not covered by the restitution order. Here are some ways you can attempt on your own to collect the money owed to you by the defendant. If you need assistance with any of the information contained here, or any of the forms, you may contact the Legal Assistance Center located on the 5<sup>th</sup> floor of the Kent County Courthouse to assist you. You may also contact a private attorney for assistance in collecting the remaining restitution.

## **STEP 1--OBTAIN A JUDGMENT OF SENTENCE**

A Judgment of Sentence contains the actual restitution order of the court. You may obtain a certified copy of the Judgment of Sentence from the Clerk of the Court that issued the sentence. Courts may not impose a fee on a victim for enforcing an order of restitution.

**TIP:** Keep in mind that if you are part of multiple victims in a case, your claim may be in line behind claims of other victims, which may be why you are not getting paid. The system works that if/when the person/persons in front of you are fully compensated, then your claim will be paid next. If the defendant is making payments, and the payments simply have not made it to your claim, **YOU CANNOT FILE ANYTHING.** You will simply have to wait your turn.

## **STEP 2--DISCOVER IF THE DEFENDANT HAS ASSETS**

Payments towards satisfying any outstanding restitution may be done in a variety of ways; garnishment of any wages or income, bank accounts, property owned by defendant, or state income tax refunds. It is therefore vital that you discover what, if any, assets the defendant has. How can you do this?

Use a "*Subpoena Order to Appear and/or Produce.*" This is a form that can be obtained at [www.courts.mi.gov](http://www.courts.mi.gov), under State Court Administrator's Office (SCAO) Form MC 11 <http://courts.mi.gov/Administration/SCAO/Forms/courtforms/general/mc11.pdf>

2. Fill the form out completely. Use the criminal case number the defendant was convicted under as the case number for this form. The form must be served on the defendant and you keep a copy.

**TIP:** The Clerk of the Court where you obtained the Judgment of Sentence can give you the last known address of the defendant in order to serve the necessary paperwork. You can also try Google, Facebook, or any other way you would find an individual on line. Also, you can get a motion date by going on [accesskent.com](http://accesskent.com) under 17<sup>th</sup> Circuit Court and on the left hand side of screen there is a box where you find online services. Under motion calendar you can find the days the judge on your criminal case holds motions, and pick one of those for your motion, and fill out a motion card to give to the court to get it on their schedule. Put that date on the form you are sending to the defendant.

3. When the defendant is served, there will be a time and court listed on the form telling them when/where to appear. You must appear also to question the defendant. The defendant will be put under oath at this hearing and you may then question the defendant regarding bank accounts, jobs, property, anything they have where you may obtain payment.

**TIP:** Questioning is done out of court, in a conference room in the courthouse. If you are afraid of facing the person convicted, you may contact the Kent County Prosecutor's Office for assistance in conducting the questioning or you can hire your own lawyer to do it.

### **STEP 3--GARNISH & SEIZURE**

If the defendant has a bank account, job, property, or any other income or assets you must then obtain a court order to get control of those items. All forms listed below may be found at [www.courts.mi.gov](http://www.courts.mi.gov).

**TIP:** It would be beneficial to bring a copy of one of each of these forms listed below when you question the defendant. You can fill it out immediately and also will know what information you need to have when completing it. Use the case number of the criminal case for the case number on these forms. File them in the court where you obtained your Judgment of Sentence.

#### **BANK ACCOUNTS-use SCAO Form MC 13.**

<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/garnishment/mc13.pdf>

You will need the defendant's SSN, account number, etc. This form must be served on the defendant's banking institution and the defendant. This form is only used once. If there is not enough money to satisfy your restitution, you must repeat the process again, if you have reason to believe more money has been placed into the accounts