VICTIM'S GUIDE FOR ENFORCING A RESTITUTION ORDER

General Information

When a judgment entered in a criminal case orders a defendant to make restitution to a victim of crime, payments made by the defendant are collected by the Clerk of Court and forwarded to the victim.

If the defendant fails to satisfy the restitution as ordered by the court, **SDCL 23A-28-1 allows the victim to enforce the restitution order in the same manner as a judgment in a civil action.**

The process for Enforcing a Restitution Order does **not** apply to juvenile records. If the defendant is a juvenile, the victim may be able to proceed against the juvenile's parents subject to the limitations in SDCL 25-5-15.

The purpose of this brochure is to explain the court process for enforcing a restitution order in the same manner as a judgment in a civil action. **This information is not to be confused with legal advice. If you feel you need assistance with this court process, you should consider consulting with an attorney.**

Procedure

- The victim may file a UJS-126 Application to Enforce Restitution Order form (see attached) with the Clerk of Court **in the county where the case was prosecuted**. The Clerk of Court will verify the current amount of restitution that is past due for the victim. No filing fee is required.

- When filing the Application to Enforce Restitution Order form, the victim will need a copy of the current Order Approving Plan of Restitution, Judgment of Conviction, or Order Suspending Imposition of Sentence that spells out the restitution plan as ordered by the court (he/she may request this from the Clerk of Court). Only the sentencing court can modify the terms of the restitution order.

- Once the Application to Enforce Restitution Order is filed, an RST docket card showing the past due restitution the defendant owes the victim is created and made available to the public. The RST docket card has the same effect as a judgment in a civil action and may be executed, levied on, and become a lien on the property of the defendant. However, **unlike** a judgment in a civil action, the RST docket card does **not** expire and is **not** discharged by bankruptcy court.

- The victim can file a transcript (copy) of the RST docket card in any other county. A $10 fee is required. The victim can request an execution be issued in the county where the action is

filed or in any county where a transcript of the RST docket card is filed. A $5 fee is required. An execution is a court order authorizing the sheriff to seize property belonging to the defendant and sell it to satisfy the judgment. **There is no guarantee that the sheriff will be able to locate and sell sufficient property to satisfy the RST docket.**

- When a restitution payment is receipted on a criminal case with a related RST docket card, the clerk will record the payment on the RST docket card and disburse the restitution to the victim. When the defendant pays the full amount of restitution owed to the victim, the clerk will receipt it on the criminal case, **satisfy** the RST docket card, and disburse the restitution to the victim.

Questions

If you have questions about enforcing a restitution order in a case where you are a victim of crime, you may contact the Legal Form Help Line at 1-855-784-0004 or email that office at https://ujs.sd.gov/self-help/submit-a-question/.

STATE OF SOUTH DAKOTA   IN CIRCUIT COURT
COUNTY OF _____   _____ JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
 	
               Plaintiff
 	
vs
 	
_____,
               Defendant
	File No: _____
	
	Application to Enforce Restitution Order
	(in same manner as a judgment in a civil action)

☐ Pursuant to SDCL 23A-28-1, I hereby request that the restitution to be paid pursuant to the Court Order in the above-referenced criminal action be enforced in the same manner as a judgment in a civil action. **The current amount of restitution owed to me is $_____.** (the clerk of court can provide the current amount owed upon request)

☐ I have provided the Clerk of Court with a copy of the Order Approving Plan of Restitution, Judgment of Conviction, or Order Suspending Imposition of Sentence that contains the plan of restitution ordered by the Court.

Dated this _____ day of _____, 20____.

_____
Applicant Signature

_____
Applicant Name (Please Print)

_____
Applicant Address (Please Print)

_____
Applicant Phone No.: