



HUMAN TRAFFICKING

RESTITUTION

RESOURCE GUIDE

This guide was prepared for the North Carolina Human Trafficking Commission by the Human Trafficking Institute, with contributions from Lindsey Lane, Senior Legal Counsel, and Matt Martens, HTI Fellow. Graphic design by Roaring Jellyfish Designs.

This project was supported by Grant No. 2019-V2-GX-0067 awarded by the NC Governor's Crime Commission as the State Administering Agency for funds awarded by the Office for Victims of Crime, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication, program/exhibition are those of the author(s) and do not necessarily reflect the views of the NC Governor's Crime Commission or the Department of Justice, Office for Victims of Crime.



HUMAN TRAFFICKING INSTITUTE

PRACTITIONER'S GUIDE TO MANDATORY RESTITUTION IN NORTH CAROLINA CRIMINAL HUMAN TRAFFICKING CASES

North Carolina law requires that defendants convicted of human trafficking pay restitution to their victims.¹ While an order of restitution is mandatory in human trafficking cases, practitioners including prosecutors and judges often lack understanding of how restitution should be calculated and entered as a judgment. This resource guide is intended to help create clarity in seeking and entering restitution orders, especially for victims of human trafficking. This document should be used as a companion resource to the general guide, *Restitution*, provided by the UNC School of Government.

I. WHAT IS RESTITUTION?

Restitution is court ordered compensation from a *criminal* defendant to a crime victim or to a party who provided assistance to the victim.² Practically speaking, restitution reimburses the victim for *any* loss incurred by the victim (or a third party on behalf of the victim) due to the action of the defendant. This may include wages for labor performed, costs incurred by the victim for medical treatment or rehabilitative care, or loss incurred due to damaged property.

Restitution is *not* compensation given to a victim for pain and suffering. Such compensation can be sought through a civil action for recovery. See section X for further discussion on civil means of recovery.

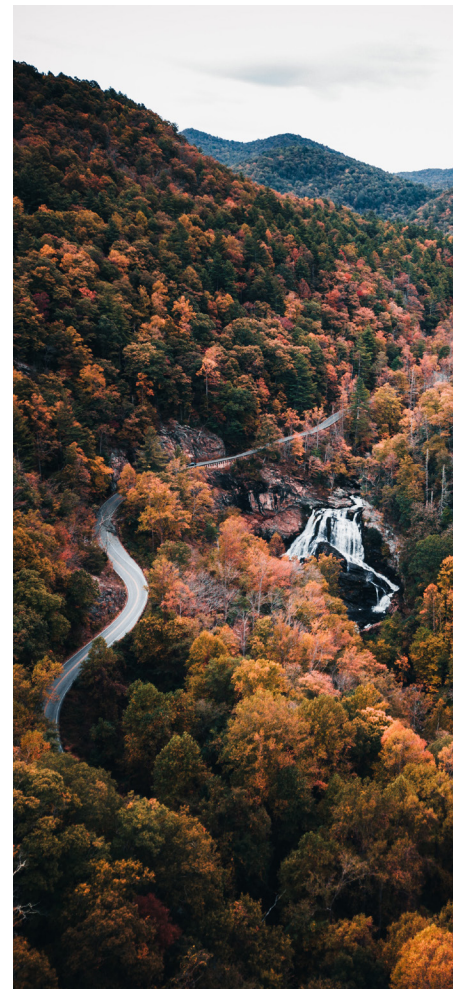
II. RESTITUTION IS MANDATORY

In October 2013, North Carolina enacted general statute §14-43.20, which *requires* convicted defendants in human trafficking cases to pay restitution to their victims. This provision applies to acts covered by Article 10A of Chapter 14 of the North Carolina General Statutes, including:

- § 14-43.11 - Human trafficking.
- § 14-43.12 - Involuntary servitude.
- § 14-43.13 - Sexual servitude.³

III. WHO MAY RECEIVE RESTITUTION UNDER §14-43.20?

Pursuant to the statute for restitution for victims of human trafficking, the court shall order restitution to be paid to the *victim*. The term “victim” is not defined in this specific statute, but it is defined in the general restitution statute as “a person directly and proximately harmed as a result of the defendant’s commission of the criminal offense.”⁴



¹ Chapter 14, Section 43.20(b) of the North Carolina General Statutes (hereinafter G.S.)

² James M. Markham, University of North Carolina School of Government, Administration of Justice Bulletin No. 2020/01 | July 2020

³ G.S. 14-43.20(b)

⁴ G.S. 15A-1340.34



In addition to ordering restitution to the victim, the restitution statute for victims of human trafficking also provides that restitution can be ordered for “...any costs reasonably certain to be incurred by or on behalf of the victim for medical care, psychological treatment, temporary housing, transportation, funeral services, and any other services designed to assist a victim.” This may include a person, organization, corporation, or association that provided assistance to the victim and is subrogated to the rights of the victim.⁵

BEST PRACTICE TIP: Prosecutors or victim advocates should understand the continuum of care that the victim has received to identify potential financial expenditures for the purpose of restitution, including that spent by third-party service providers or agencies.

IV. CALCULATION OF RESTITUTION

Victims of human trafficking can incur financial loss that differs significantly from victims of other crimes due to the physical, emotional, and psychological harm experienced while being exploited by a trafficker. These expenses can also continue for many years after the exploitation has ended.⁶ Financial losses to consider when asking the court to enter an order for restitution may include:

- Medical expenses
- Mental health expenses
- Lost wages
- Treatment for substance abuse
- Rehabilitation for trauma from the exploitation
- Personal items taken by the trafficker (phone, car, personal items)

Restitution should be determined by examining the evidence of financial loss to the victim, on a case-by-case basis. The State bears the burden of proof and must prove the amount of financial loss by a preponderance of the

VICTIMS OF HUMAN TRAFFICKING CAN INCUR FINANCIAL LOSS THAT DIFFERS SIGNIFICANTLY FROM VICTIMS OF OTHER CRIMES DUE TO THE PHYSICAL, EMOTIONAL, AND PSYCHOLOGICAL HARM EXPERIENCED WHILE BEING EXPLOITED BY A TRAFFICKER.



evidence.⁷ A prosecutor’s statement, standing alone, is insufficient to support an award of restitution.⁸ Restitution is to be determined by the court through the presentation of evidence during the trial or at a sentencing hearing after conviction of the defendant, or it is to be ordered pursuant to a stipulation by the parties.

Labor: When calculating a victim’s lost wages, practitioners should consider how much income the victim was denied during the exploitation. The statute provides that the court may also consider factors, “including the gross income or value to the defendant of the victim’s labor or services.”

In sex trafficking cases, for example, this amount could be proven by providing evidence of how much money the trafficker received from each commercial sex act, the number of commercial sex ads posted of the victim denoting the days they worked, or by providing evidence of the trafficker’s mandatory quotas. While victims of human trafficking may have difficulty providing linear testimony of how much money they made and gave to a trafficker each day, they are often keenly aware of quotas, and how often they met, exceeded, or failed to meet their trafficker’s demands.

⁵G.S. 15A-1340.37(b).

⁶ Future expenses reasonably related to the offense, such as continuing medical costs, are eligible to be included in the calculation of restitution awards. *State v. Canady*, 153 N.C. App. 455, 2002-NCCOA-01-1413. See also, James M. Markham, University of North Carolina School of Government, Administration of Justice Bulletin No. 2020/01 | July 2020

⁷*State v. Tate*, 187 N.C. App 593, 2007-NCCOA-07-314

⁸*State v. Wilson*, 340 N.C. 720, 1995-NCSC-2A94



In forced labor cases, practitioners may consider the businesses posted or known operating hours, number of customers observed frequenting a location, or the cost of goods or services to calculate restitution. For example, in hybrid cases of sex and labor trafficking such as illicit massage, traffickers may receive a flat fee per customer served, and undercover surveillance can provide information on how many customers were served each day.

When evidence cannot be provided on the exact amount of wage loss incurred by the victim, the statute provides that “at a minimum, the court shall order restitution in an amount equal to the value of the victim’s labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA)”⁹. This amount can be derived from determining the number of hours worked, multiplied by the standard minimum wage.

Bodily Damage: Traffickers use a variety of methods to coerce and control their victims, including the use of physical abuse. Similarly, victims of human trafficking can suffer bodily injury because of dangerous working conditions in both sex and labor trafficking. Practitioners should consider bodily damages for victims of human trafficking when calculating restitution. Bodily injuries incurred during a victim’s exploitation by a trafficker may include:

- Branding
- Injuries from agricultural or industrial equipment
- Injuries from sexual assault
- Loss of teeth or dental problems
- Chronic pain or injury from working conditions
- Injuries from failure to receive medical attention

If the offense results in bodily damage to the victim, the court shall consider:

- a. The cost of necessary medical and related professional services and devices or equipment relating to physical, psychiatric, and psychological care required by the victim;

PRACTITIONERS
SHOULD CONSIDER
RESTITUTION AS
EARLY AS POSSIBLE
IN A HUMAN
TRAFFICKING CASE.



- b. The cost of necessary physical and occupational therapy and rehabilitation required by the victim; and
- c. Income lost by the victim as a result of the offense.¹⁰

Property Loss: While trafficking schemes may vary from case to case, all models of trafficking include a mechanism of control over the victim. One way a trafficker may control a victim is through the victim’s property. As a means of exerting control over the victim, traffickers may take or cause the loss of:

- Vehicles
- Phones
- Personal identification documents
- Passports
- Personal items such as a purse or medication

When a victim has incurred a loss of property, the court shall attempt to return the property to the victim. If return is impossible, impractical, or inadequate, the court shall assess the value of property not returned to the victim and require payment to the victim accordingly.¹¹

BEST PRACTICE TIP: Practitioners should consider restitution as early as possible in a human trafficking case, so that it can be considered in the investigation and then produced at trial. Looking at victim restitution early in the investigation makes it possible to locate supporting evidence of lost wages, bodily damage, and property loss as the case progresses.

⁹ G.S. 14-43.20

¹⁰ G.S. 15A-1340.35(a)(1)

¹¹ G.S. 15A-1340.35(a)(2)



V. THE COURT MUST CONSIDER THE ABILITY OF THE DEFENDANT TO PAY RESTITUTION

Any conviction for human trafficking under G.S. 14-43.11 requires an active sentence of incarceration. A conviction for involuntary or sexual servitude under G.S. 14-43.12 or 14-43.13 may carry an active sentence of imprisonment. In accordance with such, the court must consider the ability of the defendant to make restitution payments when entering an order for restitution to the victim but need not make a specific finding of facts or conclusions of law.¹² The burden of showing a defendant's inability to pay rests with the defendant.¹³

A defendant's inability to pay should not preclude practitioners from seeking and awarding restitution for a victim of human trafficking. A defendant's financial circumstances may change over time, allowing a means for recovery by the victim.

VI. ENTERING AN ORDER FOR RESTITUTION

Restitution should be entered in the final judgment against the defendant, which typically occurs at the time of sentencing. The Court may reserve restitution or ask for a separate hearing to address restitution if the matter is contested and will require the presentation of evidence in addition to that provided at the time of trial. An award of restitution should include a restitution worksheet which should be prepared and filed with the clerk of court after the Court's determination.

BEST PRACTICE TIP: Restitution payments are typically collected by the clerk of court's office and forwarded to the victim. Practitioners should make sure that the victim's contact information is correct and should also clearly communicate to the victim that the information must remain current in order to receive restitution. Practitioners should also ask that the court protect the private information of the victim, including their mailing address, pursuant to victim confidentiality laws.¹⁴ This can be done by placing the victim's information under seal.



VII. CRIME VICTIMS COMPENSATION ACT

Article 1 of G.S. 15B establishes the North Carolina Crime Victims Compensation Act, in which victims of criminally injurious conduct may file for compensation of economic loss.¹⁵ If a victim of human trafficking receives compensation for injuries through the Crime Victims Compensation Fund, they may still receive court ordered restitution.¹⁶

Restitution shall be made to the victim or the victim's estate before it is made to any other party.

BEST PRACTICE TIP: The Crime Victims Compensation Fund (CVCF) may deny victims of human trafficking compensation from the CVCF for several reasons, including failure to report the injurious criminal act to law enforcement in a timely manner, prior felony convictions, or participating in criminal activity at or about the time that the victim's injury occurred.¹⁷ Unfortunately, this rule can exclude victims from receiving compensation if they made a delayed disclosure against their trafficker, or if they were involved in criminal activity such as drugs, promoting prostitution, financial crimes, or other crimes commonly found in human trafficking operations during their period of injury. Prosecutors and victim advocates should speak to the CVCF immediately if the victim would otherwise qualify for compensation though the CVCF to explain any extenuating circumstances, including the application of an affirmative defense if the victim was engaged in criminal activity at the behest of the trafficker.

¹² G.S. 15A-1340.36(a)

¹³ State v. Tate, 187 N.C. App 593, 2007-NCCOA-07-314

¹⁴ G.S. 14-43.17

¹⁵ G.S. 15B

¹⁶ G.S. 15B-24

¹⁷ G.S. 15B-11



VIII. CRIME VICTIMS RIGHT'S ACTS (CVRA)

Victims of human trafficking are provided certain rights and protections under the CVRA when the trafficker is charged with human trafficking, or any class A through E Felony. The right to restitution is included in the CVRA, and should be considered by practitioners pursuant to such, in addition to the mandatory language set forth in G.S. 14-43.20.

IX. REMITTANCE

The court may not remit all or part of an order of restitution, without first notifying the district attorney, the victim(s), the victim(s)' estate, and any other entity ordered to receive restitution, and provide an opportunity for these parties to be heard.¹⁸

X. COLLECTING RESTITUTION.

Defendants convicted of human trafficking can receive lengthy prison sentences. This can affect their ability to pay restitution. If the defendant is placed on probation or post-release supervision, any restitution ordered by the court shall be a condition of probation or post-release supervision, as provided in G.S. 15A-1343(d)¹⁹, or a condition of post-release supervision as provided in G.S. 148-57.1.²⁰

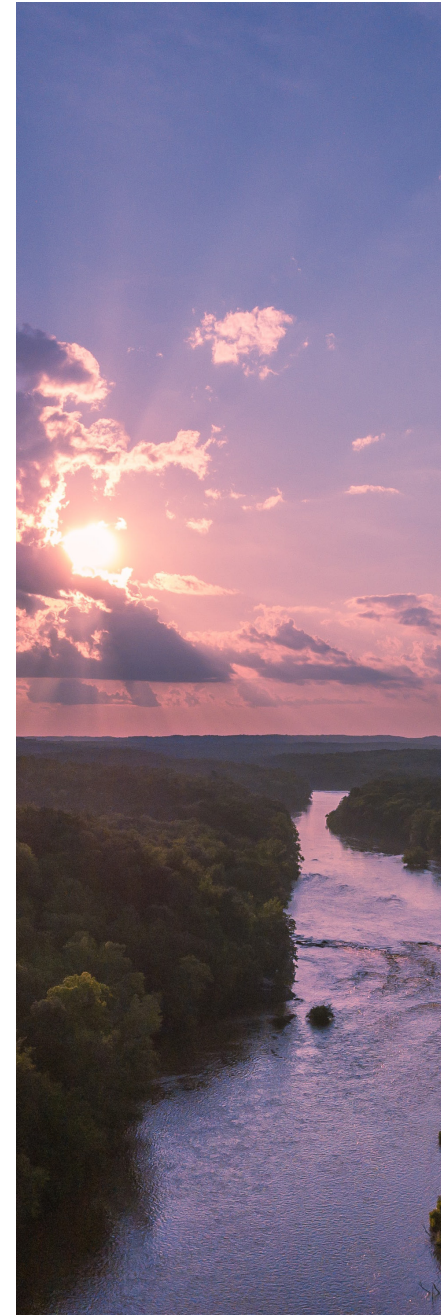
Victims of human trafficking may have the ability to enter their restitution award as a civil judgment against the defendant so long as the defendant is not on supervised probation or post-release supervision.²¹

BEST PRACTICE TIP: Practitioners should encourage victims of human trafficking to consult with an attorney on mechanisms for civil recovery against their trafficker. While restitution orders may be entered in criminal cases, victims should seek counsel from an attorney to explore their options in civil recovery also.

CONCLUSION

On paper, restitution is mandatory in all human trafficking cases; however, in practice, victims rarely receive a dollar of the amount they are entitled to by law. To make human trafficking victims whole and provide them with the necessary resources to rebuild their lives, practitioners must urge the court to award the restitution mandated by North Carolina General Statutes.

For questions or additional resources, please e-mail the Human Trafficking Institute at contact@traffickinginstitute.org.



¹⁸ G.S. 15A-1340.39

¹⁹ G.S. 15A-1343(d)

²⁰ G.S. 15A-1340.34(b)

²¹ G.S. 15A-1340.38



NORTH CAROLINA GENERAL STATUTE G.S. 14-43.20 - MANDATORY RESTITUTION

(b) Restitution. – Restitution for a victim is mandatory under this Article. At a minimum, the court shall order restitution in an amount equal to the value of the victim’s labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA). In addition, the judge may order any other amount of loss identified, including the gross income or value to the defendant of the victim’s labor or services and any costs reasonably certain to be incurred by or on behalf of the victim for medical care, psychological treatment, temporary housing, transportation, funeral services, and any other services designed to assist a victim recover from any injuries or loss resulting from an offense committed under G.S. 14-43.11, 14-43.12, or 14-43.13.

(c) Trafficking Victim Services. – Subject to the availability of funds, the Department of Health and Human Services may provide or fund emergency services and assistance to individuals who are victims of one or more offenses under G.S. 14-43.11, 14-43.12, or 14-43.13.

(d) Certification. – The Attorney General, a district attorney, or any law enforcement official shall certify in writing to the United States Department of Justice or other federal agency, such as the United States Department of Homeland Security, that an investigation or prosecution under this Article for a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 has begun and the individual who is a likely victim of one of those crimes is willing to cooperate or is cooperating with the investigation to enable the individual, if eligible under federal law, to qualify for an appropriate special immigrant visa and to access available federal benefits. Cooperation with law enforcement shall not be required of victims who are under 18 years of age. This certification shall be made available to the victim and the victim’s designated legal representative.

(e) Forfeiture. – A person who commits a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 is subject to the property forfeiture provisions set forth in G.S. 14-2.3.

(f) Escheat. – If a judge finds that the victim to whom restitution is due under this Article is unavailable to claim the restitution award, then the judge shall order the restitution be made payable to the clerk of superior court in the county in which the conviction for the offense requiring restitution occurred. If the victim fails to claim the restitution award within two years of the date of the restitution order issued by the judge, the clerk shall remit the restitution proceeds to the Crime Victims Compensation Fund established pursuant to G.S. 15B-23. Notwithstanding any provision of G.S. 15B-23 to the contrary, funds remitted to the Crime Victims Compensation Fund shall be used only to provide aid to victims who are (i) worthy and needy as determined by the Crime Victims Compensation Commission and (ii) enrolled in public institutions of higher education of this State. (2013-368, s. 17; 2018-75, s. 4(a); 2018-145, s. 11(c).)

www.TraffickingInstitute.org

