

NOTICE & INSTRUCTIONS TO VICTIMS OF CRIME
collection of restitution through civil process
(Revised October 24, 2008)

Please read the following notice and instructions before filling out the “APPLICATION FOR ORDER FOR ENTRY AND CIVIL JUDGMENT (RESTITUTION)”. *The procedure outlined below simply identifies an alternative process to assist victims of crime to obtain court ordered restitution. This is not intended to legally direct or advise a victim of crime on what is best in their particular circumstance. If you are not certain on how to proceed or if this process will even benefit you personally, you are encouraged to consult an attorney before proceeding further.*

NOTICE

When a judgment entered in a criminal case orders the defendant to make restitution to a victim of crime, payments made by the defendant are collected by the Clerk of Court and paid to the victim as ordered. As an alternative to this process, under South Dakota law, a victim of crime may choose to enforce an order of restitution (from the criminal case) in the same manner as a judgment in a civil action. SDCL §§ 23A-27-25.6 & 23A-28-1. To do this, the victim must make application to the Court for a “civil judgment” ordering the defendant to pay restitution. Essentially, the victim becomes a “creditor” and the defendant a “debtor” in a civil action. Ultimately, this allows a victim of crime to pursue the collection of restitution through civil process rather than wait on restitution payments through the Clerk of Court as ordered in the original criminal proceeding. As the party in whose favor the civil judgment is given, you are required to serve the defendant with notice that a civil judgment has been entered against them for the outstanding restitution balance. A copy of the civil judgment should be attached to the notice when served on the defendant.

Once entered by the Court, the civil judgment is docketed (recorded) with the Clerk of Court and becomes a lien against the real property, except the homestead, of the defendant in the county where docketed. SDCL § 15-16-7. Civil judgments may also be docketed in other counties where the defendant owns real property. SDCL § 15-16-5. The lien will remain of record for a period of ten years from the time of docketing and may be renewed by affidavit for an additional ten years so long as the affidavit is docketed prior to the lapse of the original ten-year period. SDCL §§ 15-16-7, 15-16-33 & 15-16-35.

The victim (creditor) may also seek to enforce the civil judgment through the process of Sheriff’s levy on execution within twenty years after the entry of judgment. SDCL § 15-18-1. Upon request of the victim, the Clerk of Court will issue a writ of execution that may be presented to the Sheriff in the county where the defendant (debtor) owns any property not exempt by law. SDCL § 15-18-17. You should be aware that using the civil process of “execution of judgments” is not a guarantee that all restitution

amounts due and owing will be collected. Only that property of the defendant that is not exempt by law may be levied against on execution and sold for the purpose of satisfying the civil judgment for restitution. There is no guarantee the Sheriff will be able to locate and sell sufficient non-exempt property to satisfy the outstanding restitution balance. As a judgment creditor in a collection process, you are required to file with the Clerk of Court an acknowledgment of full or partial satisfaction of judgment, as the case may be, when payment is received on the outstanding restitution balance. SDCL §§ 15-16-14 & 15-16-16.

Please take further notice that if you choose to pursue the collection of restitution through the process stated above, the current restitution account (in the criminal case) on file with the Pennington County Clerk of Court's Office will be closed out and no further restitution payments will be received by that office on your behalf. You will be personally responsible for pursuing all further efforts to collect restitution due and owing from that point forward.

INSTRUCTIONS

To complete the application process, please follow steps 1 through 5 below:

1. Obtain a copy (from the Clerk of Court) of the judgment ordering the defendant to make restitution to you as a result of his/her sentence in the criminal case;
2. The judgment from the criminal case contains information that will be necessary to complete the application form. Using the judgment as a reference, fill in the complete name of the defendant on the application form exactly as it appears on the judgment. Fill in the court file number on the application exactly as it appears on the judgment;
3. Fill in your victim restitution (creditor name) along with your (creditor's) current address and phone number;
4. The application must be dated and signed in front of a notary. Your name must be legibly printed below your signature;
5. Once you have completed steps 1 thru 4 you must present the application to the Clerk of Courts Office for their review and approval;
6. Upon approval, the Clerk will present the matter to the Court for entry of a civil judgment (restitution). You can arrange to have a certified copy of the civil judgment sent to you in the mail or pick it up in person;
7. You are required by law to serve the defendant (debtor) with notice that a civil judgment has been entered against them for restitution. The Clerk can provide you with the notice of entry form and the last known address of the defendant. You are responsible for arranging legal service. A copy of the notice of entry of civil judgment must be served on the defendant along with a copy of the civil judgment itself. The original notice of entry of civil judgment along with proof of legal service on the defendant must be filed with the Clerk of Courts;

8. Once you have served the defendant with proper notice, you may obtain a writ of execution from the Clerk of Court. The writ may then be presented to the Sheriff's office for execution on the judgment;
9. If you receive any money toward satisfaction of the judgment for restitution, you are responsible for filing a full or partial satisfaction of judgment, as the case may be, with the Clerk of Court. The Clerk can provide you with the satisfaction of judgment form for this purpose.