

REFERENCE TITLE: **victim restitution; stipulated amount; hearings**

State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

# **HB 2376**

Introduced by  
Representative Farnsworth E

**AN ACT**

**AMENDING SECTIONS 13-603, 13-804 AND 13-4437, ARIZONA REVISED STATUTES;  
RELATING TO VICTIM RESTITUTION.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-603, Arizona Revised Statutes, is amended to  
3 read:

4 13-603. Authorized disposition of offenders

5 A. Every person convicted of any offense defined in this title or  
6 defined outside this title shall be sentenced in accordance with this chapter  
7 and chapters 7, 8 and 9 of this title unless otherwise provided by law.

8 B. If a person is convicted of an offense, the court, if authorized by  
9 chapter 9 of this title, may suspend the imposition or execution of sentence  
10 and grant such person a period of probation except as otherwise provided by  
11 law. The sentence is tentative to the extent that it may be altered or  
12 revoked in accordance with chapter 9 of this title, but for all other  
13 purposes it is a final judgment of conviction.

14 C. If a person is convicted of an offense, the court shall require the  
15 convicted person to make restitution to the person who is the victim of the  
16 crime or to the immediate family of the victim if the victim has died, in the  
17 full amount of the economic loss as determined by the court and in the manner  
18 as determined by the court or the court's designee pursuant to chapter 8 of  
19 this title. **IF AN AMOUNT CERTAIN FOR RESTITUTION IS STIPULATED TO IN A PLEA  
20 AGREEMENT AND THE PLEA AGREEMENT IS ENTERED AND ACCEPTED BY THE COURT, THE  
21 COURT SHALL ORDER THE STIPULATED RESTITUTION AMOUNT TO BE PAID.** Restitution  
22 ordered pursuant to this subsection shall be paid to the clerk of the court  
23 for disbursement to the victim and is a criminal penalty for the purposes of  
24 a federal bankruptcy involving the person convicted of an offense.

25 D. If the court imposes probation it may also impose a fine as  
26 authorized by chapter 8 of this title.

27 E. If a person is convicted of an offense and not granted a period of  
28 probation, or when probation is revoked, any of the following sentences may  
29 be imposed:

30 1. A term of imprisonment authorized by this chapter or chapter 7 of  
31 this title.

32 2. A fine authorized by chapter 8 of this title. The sentence is  
33 tentative to the extent it may be modified or revoked in accordance with  
34 chapter 8 of this title, but for all other purposes it is a final judgment of  
35 conviction. If the conviction is of a class 2, 3 or 4 felony, the sentence  
36 cannot consist solely of a fine.

37 3. Both imprisonment and a fine.

38 4. Intensive probation, subject to the provisions of chapter 9 of this  
39 title.

40 5. Intensive probation, subject to the provisions of chapter 9 of this  
41 title, and a fine.

42 6. A new term of probation or intensive probation.

43 F. If an enterprise is convicted of any offense, a fine may be imposed  
44 as authorized by chapter 8 of this title.

1 G. If a person or an enterprise is convicted of any felony, the court  
2 ~~may~~, in addition to any other sentence authorized by law, MAY order the  
3 forfeiture, suspension or revocation of any charter, license, permit or prior  
4 approval granted to the person or enterprise by any department or agency of  
5 the state or of any political subdivision.

6 H. A court authorized to pass sentence ~~upon~~ ON a person convicted of  
7 any offense defined within or without this title shall have a duty to  
8 determine and impose the punishment prescribed for such offense.

9 I. If a person is convicted of a felony offense and the court  
10 sentences the person to a term of imprisonment, the court at the time of  
11 sentencing shall impose on the convicted person a term of community  
12 supervision. The term of community supervision shall be served consecutively  
13 to the actual period of imprisonment if the person signs and agrees to abide  
14 by conditions of supervision established by the state department of  
15 corrections. Except pursuant to subsection J OF THIS SECTION, the term of  
16 community supervision imposed by the court shall be for a period equal to one  
17 day for every seven days of the sentence or sentences imposed.

18 J. In calculating the term of community supervision, all fractions  
19 shall be decreased to the nearest month, except for a class 5 or 6 felony  
20 which shall not be less than one month.

21 K. Notwithstanding subsection I OF THIS SECTION, if the court  
22 sentences a person to serve a consecutive term of probation immediately after  
23 the person serves a term of imprisonment, the court may waive community  
24 supervision and order that the person begin serving the term of probation  
25 ~~upon~~ ON the person's release from confinement. The court may retroactively  
26 waive the term of community supervision or that part remaining to be served  
27 if the community supervision was imposed before July 21, 1997. If the court  
28 waives community supervision, the term of probation imposed shall be equal to  
29 or greater than the term of community supervision that would have been  
30 imposed. If the court does not waive community supervision, the person shall  
31 begin serving the term of probation after the person serves the term of  
32 community supervision. The state department of corrections shall provide  
33 reasonable notice to the probation department of the scheduled release of the  
34 inmate from confinement by the department.

35 L. If at the time of sentencing the court is of the opinion that a  
36 sentence that the law requires the court to impose is clearly excessive, the  
37 court may enter a special order allowing the person sentenced to petition the  
38 board of executive clemency for a commutation of sentence within ninety days  
39 after the person is committed to the custody of the state department of  
40 corrections. If the court enters a special order regarding commutation, the  
41 court shall set forth in writing its specific reasons for concluding that the  
42 sentence is clearly excessive. The court shall allow both the state and the  
43 victim to submit a written statement on the matter. The court's order, and  
44 reasons for its order, and the statements of the state and the victim shall  
45 be sent to the board of executive clemency.

1           Sec. 2. Section 13-804, Arizona Revised Statutes, is amended to read:  
2           13-804. Restitution for offense causing economic loss; fine for  
3           reimbursement of public monies

4           A. On a defendant's conviction for an offense causing economic loss to  
5 any person, the court, in its sole discretion, may order that all or any  
6 portion of the fine imposed be allocated as restitution to be paid by the  
7 defendant to any person who suffered an economic loss caused by the  
8 defendant's conduct.

9           B. In ordering restitution for economic loss pursuant to section  
10 13-603, subsection C or subsection A of this section, the court shall  
11 consider all losses caused by the criminal offense or offenses for which the  
12 defendant has been convicted. **IF AN AMOUNT CERTAIN FOR RESTITUTION IS**  
13 **STIPULATED TO IN A PLEA AGREEMENT AND THE PLEA AGREEMENT IS ENTERED AND**  
14 **ACCEPTED BY THE COURT, THE COURT SHALL ORDER THE STIPULATED RESTITUTION**  
15 **AMOUNT TO BE PAID.**

16           C. The court shall not consider the economic circumstances of the  
17 defendant in determining the amount of restitution.

18           D. Restitution payments that are ordered pursuant to section  
19 13-603 and this section shall not be stayed if the defendant files a notice  
20 of appeal, and the payments may be held by the court pending the outcome of  
21 an appeal.

22           E. After the court determines the amount of restitution, the court or  
23 a staff member designated by the court, including a probation officer, shall  
24 specify the manner in which the restitution is to be paid. In deciding the  
25 manner in which the restitution is to be paid, the court or a staff member  
26 designated by the court, including a probation officer, shall make reasonable  
27 efforts to contact any victim who has requested notice pursuant to sections  
28 13-4415 and 13-4417, shall take into account the views of the victim and  
29 shall consider the economic circumstances of the defendant. In considering  
30 the economic circumstances of the defendant, the court shall consider all of  
31 the defendant's assets and income, including workers' compensation and social  
32 security benefits. The court shall make all reasonable efforts to ensure  
33 that all persons **WHO ARE** entitled to restitution pursuant to a court order  
34 promptly receive full restitution. The court may enter any reasonable order  
35 necessary to accomplish this. If a victim has received reimbursement for the  
36 victim's economic loss from an insurance company, a crime victim compensation  
37 program funded pursuant to section 41-2407 or any other entity, the court  
38 shall order the defendant to pay the restitution to that entity. If a victim  
39 has received only partial reimbursement for the victim's economic loss, the  
40 court shall order the defendant to pay restitution first to the victim and  
41 then to the entity that partially reimbursed the victim. If a probation,  
42 parole or community supervision officer has reason to believe that court  
43 ordered restitution is not being made, the officer shall report to the court  
44 supervising the probationer or the board of executive clemency that the  
45 defendant has failed to make restitution in a timely manner and the court or

1 the board of executive clemency may revoke the defendant's probation, parole  
2 or community supervision.

3 F. If more than one defendant is convicted of the offense that caused  
4 the loss, the defendants are jointly and severally liable for the  
5 restitution.

6 G. If the court does not have sufficient evidence to support a finding  
7 of the amount of restitution or the manner in which the restitution should be  
8 paid, it may conduct a hearing on the issue according to procedures  
9 established by court rule. The court may call the defendant to testify and  
10 to produce information or evidence. The state does not represent persons who  
11 have suffered economic loss at the hearing but may present evidence or  
12 information AND MAKE AN ARGUMENT TO THE COURT THAT IS relevant to the issue  
13 of restitution.

14 H. After making the determinations in subsection B of this section the  
15 trial court shall enter a restitution order for each defendant that sets  
16 forth all of the following:

- 17 1. The total amount of restitution the defendant owes all persons.
- 18 2. The total amount of restitution owed to each person.
- 19 3. The manner in which the restitution is to be paid.

20 I. The restitution order under subsection H of this section may be  
21 supported by evidence or information introduced or submitted to the court  
22 before sentencing or any evidence previously heard by the judge during the  
23 proceedings.

24 J. A restitution lien shall be created in favor of the state for the  
25 total amount of the restitution.

26 K. A restitution lien shall be created in favor of the state for the  
27 total amount of the fine, surcharges, assessments, costs, incarceration costs  
28 and fees ordered, if any, except that a lien may not be perfected against a  
29 titled motor vehicle.

30 L. Notwithstanding any other law, a restitution lien is created in  
31 favor of a victim of the defendant ordered to make restitution. Monies  
32 received monthly from the defendant shall be applied first to satisfy the  
33 restitution order entered by the court and the payment of any restitution in  
34 arrears. Any monies that are owed by this state to a person who is under a  
35 restitution order shall be assigned first to discharge the restitution order,  
36 including any tax refund that is owed to the defendant.

37 M. If the defendant, the state or persons entitled to restitution  
38 pursuant to a court order disagree with the manner of payment established in  
39 subsection E of this section, the defendant, court or person entitled to  
40 restitution may petition the court at any time to change the manner in which  
41 the restitution is paid. Before modifying the order pertaining to the manner  
42 in which the restitution is paid, the court shall give notice and an  
43 opportunity to be heard to the defendant, the state and, on request, ANY  
44 persons entitled to restitution pursuant to a court order.

