

# **HANDOUT #13**

**Brief Seeking Restitution in Federal Criminal  
Case for Future Counseling Costs for Child  
Exploitation Crime (2014)**

LAW OFFICES  
**SOLOFF & ZERVANOS**

A PROFESSIONAL CORPORATION

1525 LOCUST STREET

EIGHTH FLOOR

PHILADELPHIA, PA 19102

(215) 732-2260

FAX (215) 732-2289

[www.soloffandzervanos.com](http://www.soloffandzervanos.com)

JEFFREY P. FRITZ\*  
Email: [jfritz@lawsz.com](mailto:jfritz@lawsz.com)

PLEASE REPLY TO  
Philadelphia

\* MEMBER PA AND NJ BAR

July 7, 2014

**Via Fax 856-757-5295 & Regular Mail**

The Honorable Joseph E. Irenas  
U.S. Courthouse  
One John F. Gerry Plaza  
4<sup>th</sup> & Cooper Streets  
Camden, NJ 08101

Re: ***United States v. Michael Kulick***  
Case No.: 1:14-cd-00057-JEI

Dear Judge Irenas:

I am counsel for the minor victim, who is identified as "T.B.", and for her family. I am writing to you with regard to the limited issues of the award of restitution for: (1) future counseling/therapy costs for the victim; and (2) lost wages and travel expenses incurred by T.B.'s parents. I am enclosing information gathered in this case and from other precedent on this issue for Your Honor's consideration. Should the Court require a more formalized brief be filed, I will do so.

**Award of Restitution for Future Counseling Costs**

In this case, the United States Attorney, on behalf of the victim, requested that restitution be awarded for, *inter alia*, past and future counseling expenses. The victim's treating psychologist, John F. McInerney, Ph.D., prepared a report and statement summarizing the past costs incurred for T.B.'s counseling and the future costs to be incurred, submitted previously by the government. Dr. McInerney opined that T.B. suffers from Post traumatic Stress Disorder which is chronic and will require counseling sessions with a frequency of at least two times per month. *Id.* Specifically, Dr. McInerney stated that throughout her life, as a result of the impact of this crime, T.B. will require 150 visits at an average of \$200/session for a total future cost of \$30,000.00. In addition, Dr. McInerney set forth past counseling expenses (through March 26, 2014) of \$5,125.00 for which T.B.'s family paid \$3175.00 out of pocket, insurance paid \$497.02 and \$852.98 remained outstanding. *Id.*

Pursuant to the Mandatory Victim Restitution Act (“MVRA”), victims who are injured by a crime of violence have statutory rights to full restitution. See 18 U.S.C. § 3663A(a)(1)(requiring that “the court shall order . . . that the defendant make restitution to the victim of the offense”); 18 U.S.C. § 3771(a)(4) (affording crime victims “[t]he right to **full and timely** restitution as provided in law”) (emphasis added); *see also Dolan v. United States*, 560 U.S. 605, 612 (2010) (explaining that the purpose of the MVRA is “to assure that victims of a crime receive full restitution”). “The primary and overarching goal of the MVRA is to make victims of crime whole, to fully compensate these victims for their losses and to restore these victims to their original state of well-being.” *United States v. Balentine*, 569 F.3d 801, 806 (8th Cir. 2009).

Further, “[w]hen an offense causes bodily harm to a victim, restitution must be ordered for medical or psychological treatment.” *see, e.g., United States v. Oslund*, 453 F.3d 1048, 1062 (8th Cir. 2006)(emphasis added). 18 U.S.C. § 3663A(b)(2)(A)-(B) expressly provides for the recovery by way of restitution for “the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment.” Additionally, 18 U.S.C. § 3664(f)(1)(A) provides that “the court shall order restitution to each victim in the **full amount of each victim’s losses as determined by the court** and without consideration of the economic circumstances of the defendant”. 18 U.S.C.A. § 3664(f)(1)(A) (emphasis added). A defendant’s ability to pay is considered only when determining a payment schedule for ordered restitution.

18 U.S.C.A. § 2259 establishes a restitution scheme specific to victims of child exploitation sex crimes. Section 2259 incorporates by reference the requirements of the Mandatory Victims Restitution Act (MVRA), 18 U.S.C. § 3663A.

In this case, T.B. is within the definition of a victim of sexual abuse and exploitation of children, as defined by Section 2259 of the United States Code, which defines “victim” as an “individual harmed as a result of a commission of a crime [relating to the sexual abuse and exploitation of children] . . . .” 18 U.S.C. § 2259(c). Section 2259 requires that a victim be compensated for the “full amount of the victim’s losses”, 18 U.S.C. § 2259(b)(1), defined in § 2259(b)(3) as including the following:

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys’ fees, as well as other costs incurred; and
- (F) any other losses suffered by the victim as a proximate result of the offense.

18 U.S.C. § 2259(b)(3). Notably, the issuance of an order for restitution is mandatory, 18 U.S.C.A., § 2259(b)(4)(A), and “a **court may not decline to issue an order under this section**

**because of — (ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.**” (emphasis added).

Numerous courts throughout the United States have awarded or permitted the award of future treatment and counseling costs under § 2259, without reduction or the limitations proposed by Kulick. In *United States v. Laney*, 189 F.3d 954, 966 (9th Cir. 1999), the Ninth Circuit addressed restitution ordered for future medical expenses in child sexual exploitation cases, pursuant to 18 U.S.C.A. § 2259. In *Laney*, the Ninth Circuit Court of Appeals upheld the order of the district court ordering restitution for future counseling costs of sexual abuse victims even though the costs of counseling have not yet been incurred. *Id.* at 966-67. Specifically, in *Laney*, the Court ordered restitution in the amount of \$ 60,000 to cover future psychological treatment and counseling for both the child victim and her family. In so holding, the Court reasoned: “Congress intended to allow district courts to include future counseling costs in the amount of restitution under *section 2259*.” Specifically, the Court held that “*section 2259* is phrased in generous terms, in order to compensate the victims of sexual abuse for the care required to address long term affects of their abuse.” *Id.* at 966.

In another case, *United States v. Crandon*, 173 F.3d 122 (3rd Cir. 1999), the Third Circuit Court of Appeals upheld a district court’s order of restitution of \$57,050.96, to cover the child victim’s long term, in-patient hospitalization and related miscellaneous costs. In *United States v. Julian*, 242 F.3d 1245, 1248 (10th Cir. 2001), the Tenth Circuit Court of Appeals held that restitution can be ordered to cover costs incurred up to sentencing and future costs which might be incurred. The Julian court noted “...that a restitution order must be specific in a dollar amount that is supported by evidence in the record.” *Id.*

In *United States v. Danser*, 270 F.3d 451 (7th Cir. 2001), the Seventh Circuit Court of Appeals upheld a district court’s order for restitution of \$309,270, \$304,200 of which were specifically for future anticipated costs of therapy. In *Danser*, the defendant argued, as does Kulick similarly argues here, that the victim of abuse should be required to petition courts to recover the costs of treatment as those costs are incurred. However, the court rejected this argument, holding:

We do not believe that Congress sought to create such a cumbersome procedure for victims to receive restitution. In enacting *section 2259*, it is clear that Congress intended to provide victims of sexual abuse with expansive relief for “the full amount of... [their] losses” suffered as a result of § 2259(b)(3)(B) (emphasis added). Congress chose unambiguously to use unqualified language in prescribing full restitution for victims. Indeed, in the legislative history of the contested statute, Congress cited the United States Supreme Court’s landmark decision in *New York v. Ferber*, 458 U.S. 747, 102 S.Ct. 3348, 73 L.Ed.2d 1113(1982). In that case, the Court discussed, at great length, the devastating and long term effects that the sexual exploitation of children can have both upon the victims of that abuse and greater society. *Id.* In light of Congress’s intent to make whole those victims of sexual exploitation, we find that *section 2259* allows for restitutionary damages for the future costs of therapy.

*Id.*

Other district courts, in unreported cases, have also awarded restitution for future treatment and counseling without limitation, as Kulick seeks to impose here. See *United States v. Staples*, No. 09-14017-CR, 2009 WL 2827204, at \*4 (S.D. Fla. Sept. 2, 2009) (awarding \$475,800 for future treatment and counseling costs to a child sexual exploitation victim under § 2259); *United States v. Aumais*, 2010 WL 3033821, at \*9 (N.D.N.Y. August 3, 2010) (awarding \$48,483 for future counseling services under § 2259); *United States v. Brunner*, No. 5:08cr16, 2010 WL 148433, at \*4 (W.D. N.C. Jan. 12, 2010) (awarding \$5000 for future counseling services under § 2259). Michael Kulick has proposed and the Court is considering that any amount of restitution for future counseling costs required by T.B. be placed into escrow or trust and returned to Kulick if unused or paid by some other source, or otherwise overseen by him or the Court. However, there simply exists no authority or precedent for this request. Moreover, Kulick's request would violate the requirements of both the Crime Victims' Rights Act, 18 U.S.C. § 3771(a)(6), which provides that victims of crime have a "right to full and timely restitution as provided by law" and 18 U.S.C.A. § 2259(b) which requires that a victim of child sexual abuse or exploitation be compensated for the "full amount of the victim's losses" and without regard to "the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source." (emphasis added).

The only information before the court regarding the anticipated future treatment costs is that set forth by T.B.'s treating psychologist, Dr. McInerney. The defendant has set forth no contrary estimate of future costs and there is no basis to challenge Dr. McInerney's opinions.

Kulick's proposed plan would also improperly prolong the victim's need to interact (actually or mentally) with her abuser for the remainder of her life in what one court described as a "cumbersome process" not intended by Congress. Further, it would logically lead to extending Kulick's psychological control of the victim, which could cause further harm in addition to requiring the Court's continued involvement in the supervision of this case for the remainder of T.B.'s life. What if there is a dispute regarding the payment or necessity of psychological care or treatment? Must the minor victim then continue to dispute with Kulick the necessity or propriety of treatment for the rest of her life? Will the victim need to continually return to this Court to resolve any future dispute? Moreover, certainly if it were determined in the future that an award of restitution turned out to be insufficient to cover future costs and losses, there exists no provision in the law for the victim to return to Court to seek additional restitution.

Victim T.B. respectfully submits that the Crime Victims' Rights Act requires "full and timely" restitution and Section 2259 requires victims of exploitation be compensated for the "full amount of the victim's losses" for good reason — to avoid the piecemeal litigation of disputes regarding restitution and permit the victims to move forward in their lives without the need to return to the convicted defendant or to the Court for permission for treatment or for compensation for other losses covered by restitution. The award of the "full amount of the victim's losses" also promotes efficiency in the court system by not requiring the parties to return to court at some later date to resolve any restitution payment disputes.

#### **Expenses Incurred by T.B.'s Parents**

Kulick has also objected to costs incurred and sought by T.B.'s parents for lost wages and travel to and from court. T.B. and her parents submit that these expenses are also clearly recoverable pursuant to Section 2259. 18 U.S.C.A. § 2259(c) defines "victim", to include the legal guardian of the victim or other family member of the victim. T.B.'s parents are within the definition of

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victim entitled to restitution under § 2259(b)(3) (C), (D) & (F) for necessary transportation expenses and lost income.

Unfortunately, I cannot attend the hearing personally as I am out of the country on a previously scheduled vacation, but I remain available should the Court require additional information.

Thank you for your consideration.

Respectfully submitted,

*/S/ Jeffrey P. Fritz, Esquire*

Jeffrey P. Fritz

Counsel for T.B. and T.B.'s parents

JPF/ccm

cc: Diana Carrig, Esquire - *via email*  
Edward Jacobs, Esquire - *via fax 609-348-3774*