

ADULT RESTITUTION

AUTHORITY: PC§§ 288, 293.5, 841.5, 1191.1, 1191.2, 1192.3(a)(b), 1202.4, 1202.46, 1203a, 1203.1g, h, j & k, and 1214; Administrative Directive and Board of Supervisors' Ordinance dated 12/17/85. CGC§6254(f)(2), People v. Cervantes (1984) 154 Cal. App.3d 353, 201 Cal.Rptr. 187, People v. William (1989), 207 Cal. App. 3d. 1520 - Reaffirmed in People v. Birkett (1999) 21 Cal.4th 226, 87 Cal.Rptr.2d 205; 980 P.2d 912; People v. Harvey (1979) 25 Cal.3d 754; People v. Hamilton (2003)114 Cal.App.4th 932

RESCINDS: Procedure Manual Item 2-1-101, dated 02/03/12

FORMS:

Statement of Cost	(Electronic Report)
Restitution Letter to Victim - Pre-Dispo.	(F0502-9121)
Victim Impact Statement	(Electronic Report)
Victim Restitution Claim	(F057-1189AF)
Victim Information Letter	(F057-1320AF)
Victim Rights Notification Letter	(F057-10049)
Restitution Letter to Victim - Post-Dispo.	(F0502-9120)
Pay Agreement	(F0502-9247)
Information Request	(F0502-9204)
Advisement of Restitution Ordered	(F0502-9222)
Letter to Victim/Suspension of Payments	(F0502-9123)
Instructions for Supervision	(F057-1117.2(A)AF)
Information on Crime Victim's Compensation	(F0502-9231)
Adult Financial Statement	(F0502-1115)
Notice of Right to a Financial Hearing	(F057-9309)
Waiver of Right to a Financial Hearing	(F057-9353AF)
Stipulation (Restitution Only)	(F057-9251AF)
Restitution Order and Abstract of Judgment	(F057-9351AF)
Defendant's Waiver of Appearance	(F0502-1186B)
Nonappearance Restitution Report	(F0502-1186A)
Award Judgment Letter (Victim)	(F057-9355.2)

PURPOSE: To outline the procedure for establishing and collecting restitution funds, and administrative fees authorized by the Board of Supervisors, when restitution is ordered by the Court.

I. GENERAL INFORMATION

- A. The purpose of restitution is to compensate victims, who suffer economic losses as a result of crime; enforce the orders of the Court to **deter future criminality**; rehabilitate offenders by holding them accountable and requiring them to reimburse victims.
- B. Harvey Waiver

PC§ 1192.3(a)(b) If restitution is imposed which is attributable to a count dismissed pursuant to a plea bargain, as described in this section, the court shall obtain a waiver pursuant to People v. Harvey (1979) 25 Cal. 3d 754 from the defendant as to the dismissed count.

Civil Enforcement:

PC§1202.4 (f)(10)(C)(i) "A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment."

PC§1202.4 (m) "In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to PC§1214 until the obligation is satisfied."

Enforcement *like* a civil judgment should not be confused with the actual entry of a civil judgment. Civil remedies may be used to enforce the criminal order.

Restitution is generally not discharged through Bankruptcy.

- C. Determination of restitution requires careful examination of all cases involving property loss or personal injury in order to make recommendations to the court concerning restitution as required. Emphasize obtaining the maximum amount of restitution possible which is reasonable and fair.
- D. Probation Department involvement in the issue of adult restitution encompasses three different roles. Those roles are:
 - 1. Determining restitution amounts;
 - 2. Enforcing orders to pay restitution;
 - 3. Collection of restitution.

The roles differ depending on whether the Probation Department is conducting an investigation on a pre-dispositional (pre-plea or pre-sentence report) case or providing supervision on a post-dispositional case that has been granted formal probation.

- E. Restitution determination must include each loss, specifically identifying each victim and dollar amount. Restitution for economic loss as a result of the defendant's criminal conduct will be considered as a means of payment for:
 - 1. The value of stolen or damaged property, replacement costs of like property, or the actual cost of repair, when repair is possible.
 - 2. Medical/dental out-of-pocket expenses, which may include ongoing treatment.
 - 3. Mental health counseling expenses.

4. Wages or profits lost due to injury, time spent as a witness, or assisting police or prosecution.
 5. Non-economic losses including psychological harm for felony violations of PC§288, as determined by the court.
 6. Interest, accrues at 10% annual rate from the date of sentencing or loss, as determined by the court.
 7. Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.
 8. Relocation expenses including deposits for utilities, telephone, and rental housing; temporary lodging and food expenses; clothing; and personal items.
 9. Expenses to increase or install residential security related to a crime.
 10. Expenses to retrofit a residence or vehicle, or both, if the victim is permanently disabled, whether partially or totally, as a direct result of the crime.
 11. Costs of medical or psychological treatment of a minor victim of sexual assault. (PC§1203.1g)
 12. Reimburse law enforcement, county or local government agency for the costs of any medical exam for a minor victim of child abuse, neglect, or sexual assault. (PC§1203.1h)
 13. Cost of medical or psychological treatment of an elderly victim, over age 65, if defendant convicted of assault, battery, or assault with a deadly weapon. (PC§1203.1j)
 14. Funeral/burial expenses.
 15. Support loss for dependent of a decease or disabled victim.
 16. Payment is not made for property recovered by a victim. Payment may be authorized for verified costs of repair or restoration or property returned to the victim in a damaged condition.
- F. The Court will order restitution in the Minute Order in one of the following ways:
1. The Minute Order will contain each victim name and specify the amount of restitution owed to each victim, or
 2. If the Court has not ordered a specific amount per specific victim, the Minute Order will state "RESTITUTION TO BE DETERMINED BY THE PROBATION **DEPARTMENT**" (TBD). For these cases, the Collection Officer will conduct the restitution investigation.
- G. A "To Be Determined" restitution order is valid, but not enforceable until a specific amount is entered on record. Hence a Restitution Order (RO) is to be obtained upon

the probationer's waiver of rights to a contested restitution hearing and stipulation to the amount determined.

PC§1202.4 (m) "...Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied."

- H. Upon the probationer's stipulation to the amount of restitution determined, an RO will be submitted to the court by the Collection Officer to notify the court of the Probation Department's restitution determination. One RO per victim is prepared and submitted to court for the Judge's signature and inclusion in the court record.
- I. Victims will be advised that all reasonable efforts will be made to collect restitution in compliance with a Court order (taking violation action when appropriate), but that a restitution order does not guarantee payment.
- J. Extreme care is to be exercised when communicating about restitution with the victim.
 - 1. Do not give legal advice.
 - 2. Inform victims that if they desire to proceed civilly, they may wish to consult with an attorney. The option must be with the victim.
 - 3. Avoid suggesting that the victim bring suit and do not interpret the Statute of Limitations.
- K. PC§ 1203.1 states that if the Court orders restitution to be made to the victim, the Board of Supervisors may add a fee to cover the actual administrative cost of collecting restitution, not to exceed ten percent of the total amount ordered to be paid.
 - 1. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.
 - 2. The Board of Supervisors adopted ordinances on April 6, 1982 and December 17, 1985, authorizing the Probation Department to collect the administrative fee.
 - 3. The Department's administrative costs for collecting restitution are determined by the Board of Supervisors and reevaluated periodically.
- L. Restitution should be paid in full as soon as possible. Give Restitution payments priority in a supervision/financial plan and review for possible increases in the level of payments during the probation period.
- M. PC§ 1202.4 states that a defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.
- N. Joint and several liability: (definition) adj. referring to a debt or a judgment in which each debtor (one who owes) or each defendant is responsible (liable) for the entire amount of the debt or judgment. In the Probation Department, if two or more

defendants are convicted on the same crime, they are each 100% responsible for the payment of restitution. This ensures that the victim will be paid as soon as possible even in the event that one or more of the Probationers do not pay.

In California, joint and several liability applies only to economic losses or expenses (medical expenses, lost wages) not non-economic losses (pain & suffering), with rare exceptions (psychological harm in PC§ 288 offenses).

- O. The indemnification or subrogation rights of any third party shall not affect the determination of the amount of restitution. (PC§ 1202.4(f)(2)).
 - 1. A victim shall be entitled to the full amount of restitution from the defendant(s) convicted of the crime. Insurance payments to victims cannot be used to offset or reduce the defendant's obligation to pay the full amount of restitution to the victim. (People v. Hamilton (2003) Cal.App.4th)
 - 2. An insurance company is not a victim unless their loss is a direct consequence of the defendant's criminal actions. The Birkett decision held that insurers do not become a "direct victim" by reimbursing insured victims for crime losses under the terms of their insurance policies. (People v. William (1989), 207 Cal. App. 3d. 1520) (Reaffirmed in People v. Birkett (1999) 21 Cal.4th 226, 87 Cal.Rptr.2d 205; 980 P.2d 912)
- P. To the extent that a victim has received assistance from the Victims of Crime Program, the restitution that is ordered shall be deposited into the Restitution Fund. (1203.1k PC)
- Q. If a victim has received any compensation from the defendant prior to sentencing, the full amount of restitution shall be determined and reported to the Court, as well as any prior amounts paid by the defendant.

II. PROCEDURES

A. Pre-disposition – Deputy Probation Officer

In pre-dispositional cases where the Probation Department is ordered to conduct an investigation and provide a report for the Court, the assigned deputy's responsibility is to contact victims and solicit information regarding losses and requests for restitution. The assigned deputy is responsible for making an effort to determine the total amount of restitution owed and including a recommendation for such in the report to the Court.

- 1. Review case file, police reports, and other Court documents (in a check fraud case review Orange County Check Index).
- 2. If any codefendant received informal probation, contact the Victim/Witness Assistance Program office located in Court building where case was heard to obtain any restitution information they may have gathered on the case.
- 3. In all felony cases involving a victim, send Information on Crime Victim's Compensation. This pamphlet may also be sent in those misdemeanor cases wherein the victim suffers physical or emotional injury.

4. In all cases involving a victim, send a Victim Impact Statement and a Victim Restitution Claim form. If a written response is not received, every effort is to be made to contact the victim by other means prior to the filing of the report. Upon receipt of a response, evaluate the amount of loss and substantiating documentation.
5. If an exact amount can be determined and is substantiated, recommend that the defendant be ordered to pay the exact amount to the victim through the Department of Corrections (State Prison cases) or through the Probation Department (probation cases).
6. If no contact is made with the victim or an exact amount is not known at the time the report is filed, recommend that the court retain jurisdiction until the amount of restitution can be determined and ordered pursuant to PC§ 1202.46, set amount of restitution to be payable to the victim through the Department of Corrections (State Prison cases) pursuant to PC§ 1202.4(f) or in an amount and manner as determined by the Probation Officer (probation cases).
7. Restitution fines
 - a. A recommendation for a Restitution fine will be made in all cases. A fine schedule is included as Attachment B to Manual Item 2-2-001 (Regular Superior and Municipal Court Reports). This schedule should be used as a guideline.
 - b. Restitution fine recommendation (Probation cases): "Pay a restitution fine in the amount of \$AMOUNT pursuant to PC§ 1202.4 (b)(1), as directed by the probation officer."
 - c. Restitution fine recommendation (Informal Probation cases): "In view of the foregoing, it is respectfully recommended that probation be denied and (conditional) sentence imposed. It is further recommended the defendant be ordered to pay a restitution fine pursuant to PC§1202.4 (b)(1) in the amount of \$AMOUNT and a probation revocation fine in the amount of \$SAME AMOUNT AS ABOVE pursuant to PC§1202.44, which shall be stayed unless probation is revoked."
 - d. Restitution fine recommendation (State Prison) "In view of the foregoing, it is respectfully recommended that probation be denied and sentence imposed. It is further recommended the defendant be ordered to pay a restitution fine pursuant to PC§1202.4 (b) in the amount of \$AMOUNT as well as a parole revocation fine in the amount of \$SAME AMOUNT AS ABOVE pursuant to PC§1202.45, which shall be stayed unless parole is revoked."
8. Victim Restitution
 - a. A recommendation for victim restitution will be made in all cases wherein a victim incurred a loss.

- b. Victim restitution recommendation (Probation cases – amount not known): “The probation officer is to conduct a financial investigation to determine the amount of restitution owed and the defendant’s ability to pay. The defendant is ordered to pay restitution in an amount and manner as determined by the probation officer and ordered by the court. If the defendant disagrees with the probation officer’s determination, the probation officer is to refer the matter to the Court for resolution.”
- c. Victim restitution recommendation (Probation cases – amount known): “Pay restitution in the amount of \$AMOUNT payable at the rate determined by the Probation Department, payments to commence no later than 60 days after release from jail (or hearing date).”
- d. Victim restitution recommendation (State Prison cases – amount not known): “It is respectfully recommended that if the court cannot set the amount of restitution at sentencing, the court retain jurisdiction over the defendant as to the amount of restitution owed to the victim until such time as the losses may be determined and ordered pursuant to PC§ 1202.46, set the amount of restitution to be payable to NAME through the California Department of Corrections pursuant to PC§ 1202.4(f).”
- e. Victim restitution recommendation (State Prison cases – amount known): “It is respectfully recommended the court order \$AMOUNT restitution payable to NAME through the California Department of Corrections pursuant to PC§ 1202.4(f).”
- f. Victim restitution recommendation (State Prison cases – victim name shielded): “In order to protect the identity of the victim, the court, on its letterhead, may wish to notify the California Department of Corrections as to the restitution amount owed, name and address of the victim.”

B. Post Disposition Investigation - Collection Officer

- 1. The Court generally delegates to the Probation Department the responsibility for determining the amount of restitution to be paid and the manner of payment.
 - a. The Court might specify an amount of restitution and/or manner of payment. All Court orders will be enforced as written.
 - b. The Cervantes decision held that it is a judicial function to determine, "the appropriateness, the amount, if any, and the terms of payment of restitution" and that, "although probation officers must make recommendations regarding restitution, the court shall impose any requirement that restitution be made." The Court depends on the probation officer to provide verified information regarding victim losses, defendant's financial circumstances and ability to pay restitution, however; the matter of restitution is not within the sole discretion of the probation officer. Pursuant PC§

1202.4 (f), "...the court shall require that the defendant make restitution to the victim or victims in an amount established by court order..." (People v. Cervantes (1984) 154 Cal.App.3d 353, 201 Cal.Rptr. 187)

- c. All cases with "To Be Determined" (TBD) Court-ordered restitution are assigned to Collections staff for investigation and enforcement.
2. Review case file documents such as Probation Referral Memo, police reports and Court documents.
3. Send #1 Victim Letter to all identified victims, giving them 30 days to respond with a claim for restitution. Complete the Account Set-up to the extent possible, noting the restitution obligations as "To Be Determined". If no response to #1 Victim letter yet received, send #2 Victim Letter. Make every diligent effort to locate victims including but not limited to telephone calls, postal tracers, DMV search, EDD, Lexis/Nexis and the Internet.
4. If a victim has not responded to either Victim Letter after 45 days from date of #1 letter or 15 days from date of #2 letter, whichever occurs last, restitution for that victim is to be set at zero in the Probation Financial System. (The court is not notified as the victim may respond at any time during the term of probation.)
5. Review any responses to victim letter to validate declaration of monetary loss. Contact victim to request additional documentation to substantiate any claims, as necessary.
6. Set restitution at the full, verified amount, regardless of probationer's financial ability. Probationer will be assessed a fee to cover the actual administrative costs of collecting restitution, up to a maximum of ten percent of the total amount of restitution or the Board of Supervisors' approved rate, whichever is lower.
7. Complete the Statement of Costs (SOC) including the amount of restitution determined and all other financial obligations. Submit the SOC to the Accounting Unit via the Supervising Collection Officer.
8. Thoroughly document the basis for setting any restitution even if zero in the probationer's case file.
9. Generate the Advisement of Restitution Ordered form to each victim confirming the amount of restitution determined on their behalf. A copy of the letter to be retained in the probationer's case file.
10. Upon determination of restitution the probationer will be notified of their right to a Financial Hearing and will be asked to waive their rights to the hearing and sign a stipulation or request a Contested Restitution Hearing through the Deputy Probation Officer.
11. When there is disagreement by the probationer or victim regarding the amount of restitution determined or the manner of payment, request that the assigned Deputy Probation Officer coordinates a Contested Restitution

Hearing. Collection Officer to assist DPO with providing financial information.

12. If the probationer stipulates to the amount of restitution determined prepare and submit to court one Restitution Order per victim.
13. Conduct a financial evaluation with the probationer to determine the ability to pay. Based on the probationer's ability to pay, set up and collect as much money as possible on behalf of the victim(s) within the probationer's probation period.
14. Collection Officer will process the Income Deduction Order for the Court to sign. The order for income deduction will be stayed by the court until such time as the probationer fails to pay as directed.
15. Recommend to the assigned Deputy Probation Officer the filing of a Probation Violation whenever the probationer demonstrates the ability, but willfully fails to cooperate in the payment of restitution.
16. Criminal Restitution obligations are non-dischargeable in all Bankruptcy proceedings. The Automatic Stay, a provision of the Bankruptcy Code, does not apply to Restitution obligations because arises from the commencement or continuation of a criminal action.

C. Post Disposition – Assigned Deputy Probation Officer

1. Review the file and court orders and determine if:
 - a. Restitution and/or fines have been ordered.
 - b. Ensure the Collection Officer has initiated financial setup in the Probation Financial System.
 - c. No restitution or Fines are involved in the case.
 - d. Be mindful and consider victim confidentiality issues in accordance with PC§§ 293.5 and 841.5 and CGC§6254(f)(2).
2. Compliance
 - a. The assigned deputy will routinely monitor probationer compliance with regards to financial matters on a monthly basis. This includes but is not limited to Restitution, Fines, Penalty Assessments, Fees, and Cost of Probation.
 - b. Compliance is based upon the probationer's ability to pay in conjunction with his/her willful failure to pay and/or cooperate with Probation and the Collection Officer. Consider the following:
 - (1) Ability to pay as determined by the Collection Officer.
 - (2) Incarceration and/or residential treatment/counseling issues affecting little to no ability to pay.

- (3) Medical/Psychological/Psychiatric **issues affecting** employment or ability to pay.
 - (4) Prior progress on probation and previous payment patterns.
 - (5) Previous job experience, physical or mental health issues and/or education.
 - (6) Situational financial hardship or difficulty such as unemployment, homelessness or transient status are factors to be considered but do not preclude a formal violation or excuse the probationer with regards to his/her financial responsibilities.
 - c. Conduct an asset search as necessary in order to assist the Collection Officer in determining the probationer's true assets and ability to pay as well as holding the probationer accountable.
 - d. Probation violations are filed for substantiated failure to pay Restitution and Restitution Fines.
 - e. For felony grants, if the DPO recommendation is revocation and imposition of a state prison sentence, recommend that the probationer be ordered to pay the balance of restitution, specifically identifying each victim and dollar amount, through the Department of Corrections. If victim's name is shielded, use the appropriate recommendation below.
 - f. For misdemeanor grants, if restitution has not been stated on the Court record and the DPO recommendation is revocation and imposition of sentence, recommend that the probationer be ordered to pay the balance of restitution to the victim, specifying the dollar amount. The restitution order will ensure that the victim can pursue collection of restitution by civil enforcement after probation has been terminated.
 - g. In all cases where the probationer has absconded supervision and owes a balance on restitution or restitution fine, the DPO will include such as a technical violation as well as include all outstanding balance and victim information as necessary in the Warrant Declaration or Warrant Petition.
3. Examples for Prison Recommendations
 - a. Victim restitution recommendation (State Prison cases – amount not known): "It is respectfully recommended that if the court cannot set the amount of restitution at sentencing, the court retain jurisdiction over the defendant as to the amount of restitution owed to the victim until such time as the losses may be determined and ordered pursuant to PC§ 1202.46, set the amount of restitution to be payable to NAME through the California Department of Corrections pursuant to PC§ 1202.4(f)."

- b. Victim restitution recommendation (State Prison cases – amount known): “It is respectfully recommended that court order payment of restitution in the amount of \$AMOUNT payable to NAME through the California Department of Corrections pursuant to PC§ 1202.4(f).”
 - c. Victim restitution recommendations (State Prison cases – victim name shielded): “In order to protect the identity of the victim, the court, on its letterhead, may wish to notify the California Department of Corrections as to the restitution amount owed, name and address of the victim(s).”
 4. Always consult with Collection Officer before filing violation petitions or warrants and include restitution and restitution fine balance information to include the name and specific amount owed to each victim.
 6. Be mindful and consider victim confidentiality issues in accordance with Sections PC§§293.5 and 841.5 and CGC§ 6254(f)(2).
 7. Contested Restitution Reports
 - a. Whenever there is a dispute by the defendant and/or victim regarding the amount of restitution or the manner of payment, the assigned Deputy Probation Officer will calendar a Contested Restitution Hearing, and prepare a report with Collection Officer assistance under the previous guidelines using a modified Progress Report format.
 - b. Use the modified format containing the following sections:
 - (1) Court Status
 - (2) Notification (The defendant, victim, District Attorney’s office and Public Defender or Attorney are to be advised by letter, telephone or in person that the hearing was set for date and time.)
 - (3) Victim’(s) Statement(s) (Do not attach restitution claim document unless subpoenaed due to the victim’s right to confidentiality)
 - (4) Defendants Statement
 - (5) Evaluation
 - (6) Recommendation
 - c. Submit an original and three copies of the report and attachments to the Court via the R.P.O. one-week prior to the hearing date. Retain a fourth copy in the "A" file until a copy of an Order is received and chrono'd.
 - d. Once the Court settles the matter, incorporate the new Order into the terms and conditions of probation signed by the probationer.

- e. Be mindful and consider victim confidentiality issues in accordance with Sections PC§§293.5 and 841.5 and CGC§ 6254(f)(2).

8. Terminations with Unpaid Restitution

Per PC§1202.4(m), Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

- a. Upon termination of probation when there is an unpaid restitution balance, the Collection Officer will notify the victim of the termination in writing.
- b. The Collection Officer will amend the abstract in favor of the victim (as opposed to the County of Orange), should the victim request it, so that they may continue to pursue the collection of restitution on their own.
- c. In the event of a prison sentence, the Collection Officer will provide the victim with the form CDCR 1707 required by the state in order to request that the CDCR pursue the collection of restitution on their behalf.

REFERENCES:

Procedures:	2-2-001	Pre-Plea & Sentencing Reports
	2-2-002	County Parole
	2-1-105	Bankruptcy Claims
	2-3-002	Probation Violations - Adult
	2-3-004	Adult Modification Petition
	2-3-011	Adult Indoctrination General and Mandatory Supervision
	2-3-019	Preparing Probation Violation and Warrant Petitions Adult (Allegations)
Policies:	B-1	Case Confidentiality - Client's Right to Privacy
	E-7	Restitution
	G-11	Receipt for Funds

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APPROVED BY: