

JUVENILE RESTITUTION & OTHER FINANCIAL OBLIGATIONS

AUTHORITY: Welfare & Institutions Code (WIC) Sections 207.2, 376, 634, 652.5, 654, 654.6, 656, 656.2, 659, 700, 729.7, 729.9, 729.10, 730.5, 730.6, 730.7, 738, 871, 900, 902, 903, 903.1, 903.15, 903.2, 903.25, 903.4, 903.45, 903.5, and 904
 Penal Code (PC) 293.5, 841.5, 1202.4(b), 1203.016, 1203.1ab, 1203.1(a)(4)(b), 1208.2, 1214, and 1464
 Government Code 27757
 Civil Code (CC) 1714.1 and 1714.3
 Senate Bill (SB) 190, published October 12, 2017
 California Government Code (GC) 6254 (f)(2) and 27757
 California Constitution, Article I, Section 28 – Victim Rights
 Victim’s Bill of Rights Act 2008 (Marsy’s Law)
 California Judges Bench Guide 83

RESCINDS: Procedure Manual Item 2-1-207, dated 11/20/19

FORMS:

Victim/Witness Referral Form	(Form kept by Intake Clerk)
Letter to Victims regarding Disposition Hearing	(F057-4204AF)
Terms and Conditions of Probation	(F057-5030)
Waiver of Appearance - General	(F057-5053)
Notice of Hearing - Victim	(F057-5054)
Terms and Conditions of Probation (WIC 654)	(F057-5118)
Pay Agreement	(F057-9247.7)
Petition for Modification	(F057-5120A)
Post-Dispositional Letter to Victim	(F057-9120.12)
Advisement of Restitution Ordered	(F057-9222)
Crime Victims' Compensation Leaflet	(State Printed)
Restitution Pay Agreement (Parents)	(F057-9431.1AF)
Request for Contested Restitution Hearing	(Computer Generated)
Financial Form – DPO Advise Form	(Computer Generated)
Financial Form – Judicial Restitution Orders and Abstract	(CR110/JV-790)
Victim Letter	(Computer Generated CFV 25)
Victim Restitution Advisement Letter	(F057-9369.1AF)
Account Set Up/Modification Request (ASMR)	(F057-9207.1)

PURPOSE: To outline philosophy and procedure for the investigation, establishment and collection of restitution, fines, penalty assessment, and restitution fine by the Probation Department.

I. GENERAL INFORMATION

A. Restitution WIC 730.6

1. Purpose

The purpose of restitution is to require youth to accept responsibility for their own actions and to compensate victims for their losses, making victims whole whenever possible.

2. Responsibility

Parents or legal guardians are held jointly and severally liable, with the youth, for the payment of restitution, fines, penalty assessments, and restitution fines.

3. Amount of Restitution

Per WIC 730.6, the Court shall order restitution to fully reimburse economic losses incurred by the victim as a result of the ward's conduct for which the allegations have been sustained. A youth's inability to pay shall not be a consideration in determining the amount of a restitution order.

WIC 730.6(i) states, in part, that restitution imposed shall be ordered to be made to the Restitution Fund to the extent that the victim has received assistance from the Victims of Crime Program. When notice is received by the Probation Department that the Victim's Compensation and Government Claims Board has paid out monies on behalf of the victim, that amount will be added to the account(s). The amount may change at any time during probation supervision.

4. Restitution Order

WIC 730.6(h)(2) states, in part, that the Restitution Order, to the extent possible, shall identify each victim, unless the Court for good cause finds that the order should not identify a victim or victims, and the amount of each victim's loss to which it pertains.

There are cases where it is considered appropriate to shield the victim's name on a restitution order, such as PC 288 cases or violent crimes where the victim's name is unknown to the offender. Also see PC 293.5, PC 841.5 PC, and GC 6254(f)(2) regarding victim confidentiality.

5. Collection

It is important for victims to understand that we will make every reasonable effort to collect restitution, including making a recommendation to the Court for violating the ward's probation when appropriate, but that this does not guarantee payment.

6. "Civil" Enforcement

Exercise extreme care when communicating about restitution with victims. Do not give legal advice; inform victims that if they wish to proceed civilly, they may wish to consult with an attorney. The option must be with the victim. If the victim brings civil action, continue to collect restitution.

However, payments collected by the victim will be credited toward the restitution order.

Civil enforcement of a victim restitution order should not be confused with the actual entry of a civil judgment.

Do not suggest that the victim bring suit and do not interpret the statute of limitations.

Once probation is terminated, the department no longer **has the authority to** continue to collect restitution. If the victim wishes to pursue restitution, they may pursue a civil judgment.

7. Stipulations

Pursue the collection of restitution only on those allegations filed and sustained. Restitution does not extend to allegations dismissed or allegations not filed, unless a stipulation to pay on them has been accepted by the Court (e.g. Harvey Waiver).

8. Joint and Several Liability

Joint and several liability means that each entity ordered to pay restitution is liable for the full amount of the restitution. This applies to youth and their parents/legal guardians, as well as co-defendants and their parents/legal guardians unless otherwise ordered by the Court.

B. Restitution Fine (WIC 730.6)

1. Purpose

The purpose of the restitution fine is to make state funds available to victims who suffer emotional and/or physical injury and who are not otherwise compensated for their loss. The minimum restitution fine shall be ordered regardless of the youth's ability to pay.

2. Destination

All restitution fine monies are disbursed to the Victims Compensation and Government Claims Board in Sacramento, California, to replenish the State Restitution Fund.

3. Mandate

Per WIC 730.6 (2) (b), a restitution fine shall be imposed in every case in which the youth is found to be a person described in WIC 602 even if restitution is not a consideration. A larger restitution fine is imposed if the youth committed a felony offense.

4. No Penalty Assessment

Penalty Assessments as described in PC 1464 are not applied to restitution fines.

5. Restitution Fine Surcharge

The Court may impose a fee of 10% on the restitution fine.

C. "Other" Fines (WIC 730.5)

1. Purpose

The purpose of requiring payment of a fine is to impose a meaningful sanction and enhance rehabilitation.

2. Penalty Assessments (PC 1464 and GC 76301)

A penalty assessment in the amount of \$17 for every \$10 of the fine will be added to the fine. This will approximately triple the amount of the fine. For example, a \$390.00 fine plus penalty assessments will total \$1,053.00.

II. GUIDELINES FOR THE DETERMINATION AND PAYMENT OF RESTITUTION

A. Definition (WIC 730.6)

Restitution means payment for the value of stolen or damaged property, medical expenses, wages, or profits lost due to injury or to time spent as a witness or in assisting the police or prosecution. The value of the stolen or damaged property is the cost of replacement or repair of that property, whichever is less.

Juvenile restitution law under WIC 730.6 WIC parallels PC 1202.4. The more extensive case law on adult restitution can therefore be used by a juvenile Court for guidance on most restitution issues as indicated in the California Judges Bench Guide 83.

B. Harvey Waiver

Per Court policy and department practice, allegations dismissed in the process of the negotiation of a plea are not subject to restitution unless the youth agrees to repay the victim voluntarily or a stipulation to pay restitution on dismissed allegations is included in the Court order (e.g. a Harvey Waiver).

C. WIC 654 and 652.5/Deferred Entry of Judgment (DEJ)

Although restitution will not be collected for offenses which have not been sustained, the exception applies when restitution is made a part of a WIC 654 or a **WIC 652.5** DEJ agreement.

D. Ability to Pay

WIC 730.6(h) states that the Court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so and states them on the record. A youth's inability to pay shall not be considered a compelling or extraordinary reason.

E. Multiple Offenders

Co-offenders are jointly and severally liable for victim restitution. Specifically, each youth will be held responsible for the full amount of the restitution unless otherwise ordered by the Court.

F. Recommendation

Recommend restitution in the full amount due the victim. Only the Court may modify the amount if appropriate.

G. Insurance Companies

Insurance companies are not considered victims for purposes of reimbursement for payments made by them to their insured. For this purpose, they must exercise their subrogation rights. Insurance companies are, on occasion, the direct victims of crime. In such cases, restitution to them is appropriate.

H. Recovery/Repair of Property

Payment is generally not made for property recovered by the victim. Restitution may be authorized for verified reasonable costs of repair or restoration of property returned to the victim in a damaged condition.

I. Payment

Restitution should be paid in full as soon as possible. Once probation is terminated, the department will no longer continue to collect restitution. If the victim wishes to pursue restitution, they may pursue a civil judgment.

J. Service Contract (WIC 729.7)

Pursuant to WIC 729.7, at the request of the victim, the **deputy probation officer (DPO)** will assist in **mediating** a service contract between the victim and the youth, so that restitution may be paid by the performance of specified services. The contract must be approved by the Court and made a condition of probation, via Minute Order or Petition for Modification. Successful performance of services is credited as payment in full.

K. California Department of Corrections and Rehabilitation-Division of Juvenile Justice (DJJ) Commitments

DJJ will collect restitution and/or restitution fines from youth committed to them. The DPO will use current sample recommendations for orders that the youth make restitution on both new and previously ordered restitution matters.

The victim's name and address, the amount of restitution and the youth's name and J/DL# should be put into a sealed envelope marked "DJJ" so it can be included in the packet for DJJ.

III. PROCEDURE

A. Restitution

1. Intake DPO

a. Victim Losses

Review police reports to obtain victim injury and/or loss information.

b. Victim Information

Professional staff input the information into the Victim Information section of the Integrated Case Management System (ICMS). Include the victim's name, address, and telephone number, as well as the nature and amount of loss if the information is available.

c. Victim Reimbursement (Cases Handled Informally)

When handling informal cases, the Non-Custody Intake DPO will attempt to make the victim whole by arranging the collection of restitution. In cases not filed, attempt to arrange for reimbursement to the victim by the youth, except when the District Attorney declines to file based on legal insufficiency.

d. Pretrial Reports

In completing Pretrial Reports, review police reports, intake notes, and other file information. Include a summary of this information review in the report. If restitution is a likely factor, recommend that the youth pay restitution as ordered by the Court and as directed by the DPO.

e. Sample Recommendations

(1) Restitution – amount verified. Pay restitution in the amount of (\$_____) to (victim's name) as ordered by the Court and as directed by the Probation Officer.

(2) Restitution – amount not verified. Pay restitution in an amount to be set by the Court and as directed by the Probation Officer.

f. Victim's Attendance at Hearing

Intake DPO/Contested DPO will inform victim(s) of the time and place of the Detention Hearing and their right to be present in Court. If the victim is a minor, the DPO will advise the parent. When a victim indicates the desire to attend hearings, that victim is referred to the Victim/Witness Assistance Program at the Lamoreaux Justice Center (714-935-7074). Further, the DPO will make an Electronic Contact Report (ECR) note in ICMS noting the victim's desire to attend Court. Additionally, notify the Victim Services

Coordinator to ensure the victim is able to attend Court per their request.

g. Victim Inquiries

The Victim Services Coordinator answers victim inquiries regarding Marsy's Law, whether written or verbal, and provides victims with information concerning the procedures of the Court and the Probation Department. Also, guidance is frequently provided to victims concerning the appropriate types of responses in written form or in person. The option of court appearance by the victim at hearing(s) is explained. (Refer to the General Information, Restitution, Civil section.)

h. Post Disposition Assistance

If the victim requests to be informed of the disposition of the case, the Victim Services Coordinator or the assigned DPO will send a letter to the victim informing them of the findings and whether or not restitution was ordered, as well as document the notification in ICMS. On cases that have been transferred to other counties, the DPO obtains that county's case number and gives it to the victim. This will assist the victim in locating the correct DPO in the other county for assistance.

2. Investigation DPO

a. Restitution Investigation

Review case file, police reports and other documents, pertinent to restitution. Check with the Victim/Witness Assistance Program (714-935-7074), in appropriate cases, to obtain any restitution information they may have gathered. Review any information which may have been received by the Custody Intake DPO, Contested DPO, or Victim Services Coordinator.

b. Victim Impact Statement

The DPO shall inform the victim of the right to present a Victim Impact Statement. The Victim Impact Statement shall be included in the Social History Report in all felony offenses. If the victim is a minor, contact **their** parents. This is mandatory (WIC 656.2).

c. Victim Contact

In cases of "crimes against persons," contact the victim or family of the victim by phone, letter, or personal visit. This is mandatory.

d. Victim Right to Appear

Advise victims of all offenses, of the time and place of the Disposition Hearing, and their right to appear. If the victim is a minor, advise **their** parent.

e. Court Report

Briefly outline efforts and contacts made regarding restitution in the Court report, but do not list identifying information such as victim names, addresses, or phone numbers in Court reports.

f. Restitution Recommendation

If possible, determine the full amount of restitution and include it in the Court report. Recommend the full amount be paid **as directed by** the DPO, using sample recommendation #1 below. If the restitution amount has not been determined prior to the Court date, use sample recommendation #2 below.

g. Sample Recommendations

- (1) Restitution – amount verified. Pay restitution in the amount of (\$ _____) to (victim's name) as ordered by the Court and as directed by the Probation Officer.
- (2) Restitution – amount not verified. Pay restitution in an amount to be set by the Court and as directed by the Probation Officer.

h. Restitution – DJJ Cases

When DJJ is recommended, include the recommendation that the ward be ordered to pay restitution, when applicable. Note: Record the mailing address of each victim on a sheet marked "Confidential" for transmittal with commitment documents to DJJ.

When the DJJ commitment is completed, and if the Court has already not terminated DJJ status and probation, then the DPO must file a Modification Petition with the Court requesting termination of probation. Before the ward is discharged and is between 18 years of age and 23, the Department will file and record an Abstract of Judgment ("Abstract" or "AOJ") naming the ward as the debtor. Abstracts will not be filed or recorded on wards that are under the age of eighteen (18).

i. DJJ Sample Recommendations

- (1) The ward pay (\$ _____) restitution to victim (victim's name), to be collected by the California Department of Corrections and Rehabilitation-Division of Juvenile Justice as provided by law.
- (2) The ward pay all restitution previously ordered by the Court, to be collected by the California Department of Corrections and Rehabilitation-Division of Juvenile Justice as provided by law.

- (3) The ward pay (\$_____) restitution to victim (victim's name) and pay all restitution previously ordered by the Court, to be collected by the California Department of Corrections and Rehabilitation-Division of Juvenile Justice as provided by law.

3. Supervision DPO

a. Financial Unit

The Financial Unit is comprised of two functions, the Collections and the Accounting Units.

After the Court declares the youth to be a ward and orders financial obligations be paid by the youth, the juvenile case file is sent to AfterCourt at MOB5 for imaging and the entering of chronological information into ICMS from the Minute Order. Accounting Unit staff preliminarily set the case up in the Probation Financial System (PFS). All cases with a restitution order are referred to the collection officer (CO) for investigation.

The CO will begin the restitution investigation if the amount has not already been determined by the Court. A DPO Advisement form is sent to the assigned DPO informing him/her of the status of the investigation and confirming that the case has been received by the CO. (NOTE: Should the assigned DPO not receive this form, the DPO should call the CO to verify that the unit has, in fact, received the case. Not doing so can result in the restitution process not being initiated.)

b. Restitution Order and Abstract of Judgment

The CO must report the amount of restitution determined by the Department to the Juvenile Court within fifty (50) days of the Court's order for restitution. Once the report is signed by the judicial officer, the collection process begins. This form is called a "Restitution Order and Abstract of Judgment."

A confirmed copy of the Restitution Order is sent to the assigned DPO, along with redacted copies for the DPO to serve on the youth and **their** parent(s), either in person or by mail.

The DPO will review the order and supporting documents for accuracy and appropriateness prior to serving those parties liable for the payment of restitution. If there is any question about the amount determined, the DPO should discuss the matter with the CO or supervising collection officer (SCO).

The DPO will then note the details of the service of the Restitution Order(s) in ICMS.

If the legally liable parties agree to the amount of the Restitution Order, obtain their signatures via the Proof of Service form (form is

not listed on the first page); otherwise, the matter becomes contested and is set for a Contested Restitution Hearing by the assigned DPO.

c. Accounting Unit – Restitution Payment Posting

The youth and parent(s)/guardian(s) will each have their own account set up in PFS. However, any payment from any party will be credited to all accounts (thus, an accurate and current running total due is maintained in each account).

d. Supervision and Payments

Once the amount of restitution has been determined, the **CO** will establish a payment schedule for the youth. The CO will evaluate the parents' ability to pay and establish a payment agreement with them.

Once the proposed payment schedule is established, the DPO will advise the youth and their parents. If they agree with the payment schedule, add the terms of payment to the Terms and Conditions of Probation Form (F057-5030 or F057-5118), and have the youth and parents sign the Pay Agreement (F057-9247.7).

If the youth and/or parents disagree with the amount of restitution ordered or the payment schedule, the supervision DPO will try to mediate the disagreement. Discuss the victim's claims with the objecting party or parties and the CO or SCO, as needed. Any adjustments to the payment schedule must allow for payment in full by the youth's 21st birthday. If there is still a disagreement with the amount of restitution, the matter becomes contested and is set for a Contested Restitution Hearing.

e. Contested Restitution

The youth, parents, and victim have the right to a Contested Restitution Hearing. The party requesting the hearing bears the burden of showing that the restitution recommendation made by the Probation Department is inaccurate.

(1) Whenever there is a dispute by the youth, victim and/or parent(s)/guardian(s) regarding the amount of restitution or the manner of payment, the assigned DPO will calendar a Contested Restitution Hearing and prepare a report with the CO's assistance, as required.

(2) The DPO prepares the Notice of Contested Restitution Hearing form, selects a hearing date thirty (30) days out, ensuring that it is a valid Court day. The heading of the form includes identifying information, as well as the location of the Court making the restitution order being contested, and the name or the office of the attorney who represented the youth when the order was made. The form will include a

brief summary of the reason for the hearing-limited to either (a) the victim disagrees with the amount determined by probation or (b) the youth/parent disagrees with the amount determined by the Probation Department. Under no circumstances should this form include the victim's personal information. The DPO will sign the form and have the youth and/or parent(s) also sign and date the form. The DPO will send the Notice of Contested Restitution Hearing and three (3) photocopied packets of the victim claim documents (receipts) to the Court Officer Unit Supervising Probation Officer (SPO) at the Lamoreaux Justice Center, LJC/5, at least fifteen (15) judicial days prior to the hearing. A copy of the second page of the Notice entitled "Certificate of Service by Mail and/or In Person" should be provided to all parties including the Clerk of the Court, District Attorney, Public Defender, private attorney, victim, as well as the youth and their parents/guardian.

- (3) The DPO will prepare the Contested Restitution Hearing Report. The form should include information about the circumstances of the offense; reason for the hearing; efforts to settle the dispute and the reason for the youth, victim, and/or parent(s)/guardian(s) objection; victim's statement and the recommendation. Do not attach the victim's claim documents.
- (4) WIC 430.6(h)(4) mandates that the victim be notified of the hearing at least ten (10) days prior to the hearing.
- (5) The DPO will prepare a packet consisting of the original, plus three (3) copies of the report. Submit the packet to the Court Officer Unit SPO at the Lamoreaux Justice Center, LJC/5, five (5) judicial days prior to the hearing date.

Retain a fourth copy of the report, along with the original victim claim documents in the probation file.

The Court Officer Unit SPO will distribute one copy of the packet and victim claim documents to the District Attorney (DA) upon receipt.

Should the Court order that the victim claim documents be shared with youth's counsel, the **assigned** court officer will request that the documents be reviewed in chambers and request that the envelope/documents be sealed.

In the event that the Court persists beyond an in chambers review of the documents, the Court officer will ask the Court if it would like to redact the documents prior to sharing them with counsel or offenders.

- (6) The assigned DPO will notify the CO to suspend disbursement pending the hearing disposition.

- (7) Once the Court settles the matter, incorporate the new order into the terms and conditions of probation signed by the youth.

f. Mandatory Restitution Hearings for Vandalism Cases

Pursuant to WIC 742.16 and 742.18, Restitution Hearings are mandatory for vandalism cases.

g. Victim Advisement-Amount DPO Responsibility

(1) Restitution Ordered

The DPO will advise the victim of the amount of restitution ordered via the Advisement of Restitution Ordered form (F057-9222). (In some cases, the Court Clerk will notify victims per WIC 730.7.)

(2) Service Contract

If the victim requests a service contract in lieu of monetary restitution, seek Court approval via Petition for Modification (F057-5120A). Upon Court approval, and completion of the contract, submit an Account Set-Up/Modification Request (ASMR) form (F057-9207.1) to Accounting (via the unit supervisor), setting restitution at zero.

(3) Restitution Not Ordered

The Court must order payment of restitution when the crime of which the youth was adjudicated resulted in economic loss to the victim. Per the California Constitution Article I, Section 28 and WIC 730.6., a sentence without a restitution award to a victim is invalid.

In cases where the Court does not order restitution, the CO or DPO should seek clarification/correction from the Court.

If the Court finds that there should be no restitution order, and the victim has already submitted a statement of losses, a letter will be sent to the victim informing **them** of such finding. This type of letter is in the "Disposition Letters" Folder.

h. Payment of Restitution, Restitution Fines, Other Fines and Fees

Enforcement of restitution, restitution fine, other fines and fees against the youth will be the responsibility of the assigned DPO.

Enforcement of restitution and restitution fine will be the responsibility of the assigned CO. Pursuant to SB 190, other fines and fees, including penalty assessments, drug testing, facility care and support, and Public Defender and Bar Panel fees against the

custodial parent(s) guardian(s) incurred by youth under that age to twenty-one (21) prior to January 1, 2018, will be the responsibility of the assigned CO. Other fees such as testing fees, legal fees, and support and care incurred after January 1, 2018 will no longer be collected on youth under the age of twenty-one (21).

The DPO should encourage the youth to pay restitution, and restitution fines and fees promptly and in full.

The CO will seek payment from the parent(s)/guardian(s).

Where appropriate, incentives may be offered such as prospective termination of probation supervision.

Uncooperative and unmotivated youth can be reminded of possible consequences **ranging from sanctions up to and including** a return to Court on a probation violation for failure to pay.

i. Payment Instructions

(1) All assessments may be paid by cash, check, cashier's check, or money order. All checks should be made payable to Orange County Probation Department and the youth's J/DL# should be noted on the face of the check. Payment will be accepted at all Probation offices or by mail. Checks, cashier's checks, or money orders may be mailed to Orange County Probation Department, P.O. Box 10260, Santa Ana, CA 92711-0260. Parents may make payments with credit or debit cards via the internet at www.ocgov.com/gov/probation or by calling 1-800-533-0943.

(2) The DPO should track the progress of restitution collection in ICMS.

j. Disbursements

Disbursements are sent to the victim pursuant to PC 1203.1(a)(4)(b) which states in part that any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within thirty (30) days from the date the payment is received. Any restitution payment in the form of a check or draft shall be forwarded to the victim within forty-five (45) days from the date the payment is received. Payment need not be forwarded to the victim until one hundred eighty (180) days from the date the first payment is received if the payments total less than \$50.00.

k. Probation Violation

(1) Pursuant to WIC 730.6(m) – Probation shall not be revoked for failure of a person to make restitution pursuant to this section as a condition of probation unless the Court

determines that the person has willfully failed to pay or failed to make sufficient bona fide efforts to legally acquire the resources to pay.

- (2) If deemed appropriate by the unit SPO, and the youth is current on **their** financial obligations, eighteen (18) year olds may be transferred to the Juvenile Admin Unit.
- (3) If the youth has the ability to pay restitution and/or restitution fine but simply refuses, return them to Court via Probation Violation. Document the youth's ability to pay and the youth's refusal to obtain employment.

I. Termination

- (1) Pursuant to WIC 730.6(l), any portion of a restitution order that remains unsatisfied after a youth is no longer on probation continue to be enforceable by a victim pursuant to subdivision (r) until the obligation is paid in full. If the judgment is for a restitution order or restitution fine, the judgment may be enforced in the manner provided in PC 1214.
- (2) Any case that is terminated by the Court on a youth that is eighteen (18) years of age or older will have an Abstract of Judgment filed and recorded naming the youth as the judgment debtor.
- (3) Any unpaid portion of the restitution fine will be reported to the Victim's Compensation and Government Claims Board for continued collection.

B. "Other" Fines (WIC §730.5)

1. Pretrial DPO/Investigation DPO

In situations in which the preparer of a report feels the imposition of a fine would serve as a meaningful consequence, the recommendation should include the amount of the fine being recommended and the phrase "plus penalty assessment". Remember that the penalty assessment is \$17 for every \$10 of the fine. The recommendation should also include that it be paid "as directed by the probation officer."

2. Sample Recommendation

Fine – up to the amount that could be imposed on an adult for the same offense.

Pay a fine in the amount of (\$), plus penalty assessment, (as directed by the probation officer, per 730.5 WIC.

3. Supervision DPO's Duties

- a. Indoctrination
At the probation indoctrination, advise the youth of the requirement to pay a fine, the amount due, and the dates on which payments are to be made.
- b. Penalty Assessment
Penalty Assessments are mandated by PC 1464 and will be added to all fines except the state restitution fine.
- c. Terms and Conditions
Include the fine on the signed Terms and Conditions of Probation (F057-5030).
- d. Information Request - Accounting
Respond to requests for information from the Financial or Accounting Units, via email or voice mail, in a timely manner.
- e. Payment of Restitution, Restitution Fines, Other Fines and Fees
The DPO should encourage the youth to pay restitution promptly and in full. Where appropriate, incentives may be offered such as prospective termination of probation supervision. Uncooperative and unmotivated youth can be reminded of possible consequences entailed in a return to Court on a probation violation for failure to pay.
- f. Payment Instructions
All assessments may be paid by cash, check, cashier's check or money order. All checks should be made out to Orange County Probation Department and the youth's J/DL# should be noted on the face of the check. Payment will be accepted at all probation area offices or by mail. Checks, cashier's checks, or money orders may be mailed to Orange County Probation Department, P.O. Box 10260, Santa Ana, CA 92711-0260. Parents may make payments with credit or debit cards via the internet at www.ocgov.com/probation or by calling 1-800-533-0943.
- g. Collection Unit-Fine Enforcement
 - (1) The CO enforces the payment of restitution, fines, and penalty assessments ordered by the juvenile court on the parent(s)/legal guardian(s).
 - (2) The DPO enforces the payment on the youth.
 - (3) The Accounting Unit will bill the youth and parents.
 - (4) Include the payment of the fine in the Terms and Conditions of Probation.

(5) The DPO may track the progress of fine via the ICMS-Profile Screen, under the financial section or may seek assistance from the CO.

h. Failure to Pay

Failure to pay a fine as ordered by the Court constitutes a probation violation. Efforts to collect should be documented and included with the probation violation packet.

i. Termination

To verify that all fines have been paid or are otherwise satisfied, verify payment in full with the Accounting Unit or via the Probation Financial Systems (PFS) 20-13 screen.

C. Restitution Fine (WIC 730.6)

1. Pretrial DPO/Investigation DPO

a. Recommendation

In every case involving a law violation, recommend a restitution fine-whether or not there is a victim.

b. Amount

In determining the restitution fine amounts, consider the seriousness of the offense, the circumstances of its commission, any economic gain derived by the youth, the extent to which others have suffered losses, limits set by WIC 730.6, and any other relevant factors (up to \$100-misdemeanor, not less than \$100, and up to \$1,000-felony).

c. No Penalty Assessment

Do not add penalty assessments to the restitution fine.

d. Sample Recommendation

Restitution Fine-mandatory in all 602 WIC cases. Pay a restitution fine in the amount of (up to \$100-misdemeanor/not less than \$100 and up to \$1,000-felony) and an administrative fee not to exceed 10% of the fine.

e. Restitution Fine-DJJ Cases

When DJJ is recommended, include the recommendation that the ward be ordered to pay a restitution fine. It should be noted that DJJ is responsible for collection of such payment. Recommend payment of a restitution fine in the amount of (up to \$100 for a misdemeanor and between \$100 and \$1,000 for a felony), per WIC 730.6.

2. Supervision DPO

Restitution Fine-mandatory in all WIC 602 cases.

a. Indoctrination

At the probation indoctrination, advise the youth of the restitution fine order and **their** responsibility regarding payment.

b. Payment Imposed

- (1) After the restitution fine is ordered, the Accounting Unit will bill the youth and parents.
- (2) Include payment of the restitution fine in the Terms and Conditions of Probation (F057-5030).
- (3) All assessments may be paid by cash, check, cashier's check, or money order. All checks should be made payable to Orange County Probation Department and the youth's J/DL number should be noted on the face of the check. Payment is accepted at all probation area offices or may be made by mail. Checks, cashier's checks, or money orders may be mailed to Orange County Probation Department, P.O. Box 10260, Santa Ana, CA 92711-0260. Parents may make payments with credit or debit cards via the internet at www.ocgov.com/probation or by calling 1-800-533-0943.
- (4) If modification is necessary, notify the Accounting Unit via AMR.
- (5) The DPO may track the progress of fine collection via ICMS-Profile Screen, under the financial section or may seek assistance from the CO.

c. Failure to Pay

Failure to pay the restitution fine constitutes a probation violation. Efforts to collect should be documented and included with the probation violation packet.

- d. Any portion of a restitution fine that remains unpaid when wardship is terminated will be reported to the California Victim Compensation Board (CALVCB) for continued collection per WIC 730.6(l), WIC 730.6(r), and PC 1214.

D. Summary of Juvenile and Parental Financial Obligations:

1. Victim Restitution

Authority: WIC 730.6

Responsible for payment: Joint and several – Youth and parents or legal guardians, as well as any companions and their parents or legal guardians.

Amount: As ordered by the Court for the actual amount of loss.

Term and condition of probation.

2. State Restitution Fine

Authority: WIC 730.7(b)

Responsible for payment: Joint and several – Youth and parents or legal guardians.

Amount: Felony – no less than \$100, no more than \$1,000
Misdemeanor – no more than \$100, (no minimum amount stated).

Not subject to penalty assessments.

Term and condition of probation.

3. Other Fines (Example: DUI)

Authority: WIC 730.5

Responsible for payment: Joint and several – Youth and parents or legal guardians.

Amount: As ordered by the Court.

Subject to penalty assessments.

Term and condition of probation.

4. Testing Fees (AKA Urinalysis fees)

Parents will not be charged for testing services incurred.

5. Legal Fees (Public Defender, Juvenile Defender, Bar Panel, out of pocket expenses)

Parents will not be charged for legal services incurred.

6. Support and Care Fees: (facility fees, transportation fees, medical fees, etc.)

Parents will not be charged for support and care fees incurred.

E. Relevant Case Law

1. People v. Harvey (1979) (AKA Harvey Waiver): Summary - "If restitution is imposed which is attributable to a count dismissed pursuant to a plea bargain, the Court shall obtain a waiver pursuant to People v. Harvey from

the defendant as to the dismissed count.” This means that the youth may be ordered to pay restitution even if the count is dismissed.

2. People v. William (1989) reaffirmed in People v. Birkett (1999): Summary - 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.
3. People v. Hamilton (2003): Summary - Restitution is not reduced by insurance payments (if those payments were made by anyone's insurance other than that of the offender). The restitution order is meant to serve as a deterrent and thus the offender is not entitled to benefit from the fact that the victim (or any other party) has insurance.
4. People v. Bernal (2002): Summary - Restitution is reduced if the offender's insurance pays.
5. People v. Cervantes (1984): Summary - The Probation Department's determination of the amount of restitution must be Court ordered – which is the reason that the Department submits the restitution order to Court for the Judge's signature and filing.
6. People v. Jeffrey M. (2006): Summary - The parents are still liable for payment of restitution even after the youth reaches the age of 18, if the youth was under the age of 18 at the time he or she violated the law.
7. People v. Foster (1993) & People v. Hartley (1984): Summary - The burden of proof in a Contested Restitution Hearing is on the offender-not the victim.

REFERENCES:

Procedures:	2-1-101	Adult Restitution
Policy:	E-7	Restitution

C. Ronald

APPROVED BY: