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RECOMMENDED PRACTICES FOR ADMINISTERING
RESTITUTION
IN VIRGINIA'S CIRCUIT COURTS

NCJRS

FEB 19 1988

ACQUISITIONS

Report of the
Restitution Study Committee
Virginia Circuit Clerks' Association

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Department of Criminal Justice Services
May 1987

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CONTENTS

	<u>Page</u>
Foreword	i
Introduction	ii
Chapter I: The Basic Process . .	1
Chapter II: Managing Restitution Payments	18
Chapter III: Managing the Offender	28

Appendix of Forms:

- Form I - Victim Loss Statement
- Form II - Victim Impact Statement
- Form III - Offender Resource State-
ment
- Form IV - Restitution Directive

FOREWORD

In August 1985 the president of the Virginia Circuit Clerks' Association appointed a committee to study the problems associated with administering restitution. Membership on the committee included clerks Stuart Fallen, Shelby Marshall, William Hall, Elizabeth Stokes and Gerald Gibson. Clerk Charles E. King, Jr. of Gloucester was named committee chairman. Ken Montero of the Office of the Executive Secretary of the Virginia Supreme Court, and Dee Malcan of the Department of Corrections served as ex officio members, while staff assistance was provided by the Virginia Department of Criminal Justice Services.

The committee focused on developing practical solutions to the various problems of administering restitution within the framework of current legislation. To this end it adopted a "systems analysis" approach, which provides guidance toward efficiency and uniformity in results, while allowing each local court to adopt the system to its own practices.

The report of the Clerks' Restitution Committee was approved by the Virginia Circuit Clerks' Association at its annual meeting in October 1986. The Virginia Department of Criminal Justice Services is pleased to present this report as a service to the Clerks' Association. It is hoped that local courts will view this book as a guide in determining the efficacy of current restitution practices, and a planning guide for improvements in administering restitution payments.

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INTRODUCTION

This document is a proposal to make restitution to victims of crime a more effective sentencing tool through a systematic analysis and determination of basic procedures required to administer restitution in any given court system.

The Virginia Circuit Court Clerks' Association, through its Restitution Study Committee, has found that restitution practices vary widely across the Commonwealth; that confusion within the process leads to reluctance to use restitution, confused administration of restitution orders, and ineffective enforcement. As a result, the victim's expectations of assistance from the criminal justice system often go unmet, and the victim is not made whole.

We, as clerks, believe that the ends of justice would be served with a more efficient restitution process, and that simple fairness requires the victim's loss to be considered in every criminal case. We believe further that the efficiency of the restitution process can be improved within the framework of existing laws with no appreciable added cost or burden to judges, counsel, administrators or those charged with enforcing compliance upon the offenders.

Improved compensation of victims will lead to increased confidence in and respect for the criminal justice system through the perception by the public that both the offender and victim have had their day in court.

This is a systems manual, not a policy manual. We foresee that each court will need to adopt its own policies and procedures. We recognize that restitution decisions are the province of the judge. Our recommended practices are meant as a basic guideline to be used by local courts in developing a system of gathering the necessary information for the judge to make an informed decision concerning restitution and for the clerk to administer the court's order. It is also a guide for providing information to the court's designated enforcement officer to follow up and monitor restitution payments. The forms provided are samples of ways that information may be gathered and follow-up instructions given without unduly changing the nature of the court orders now used.

This manual is divided into three chapters, each followed by a short section of practical considerations in implementing the chapter. Chapter I deals with the basic process and with

the information gathering prior to sentencing. The second chapter discusses the management of restitution through the clerk's office. Chapter III addresses enforcement and monitoring functions. An appendix of suggested forms is included at the end.

Chapter I

The Basic Process

Restitution is ordered for two different reasons. One reason is to compensate victims for their losses. The other concerns the efficacy of defendants' sentences. Our interest here is limited to restitution ordered for the former reason.

For purposes of this document, "restitution" will be defined as the act of restoring, or the act of making good or giving equivalent for any loss, damage or injury. In practice, restitution is done on a money equivalent basis to be paid to the victim of the offense. "Reparation" is defined as the redress of an injury, or amends for a wrong inflicted. In practice, this is done by making the victim whole in kind. For example, an offender who vandalized property would be expected to make reparation to the victim by physically restoring the property to its previous condition. The definition of "community service" encompasses the above concepts of reparation and restitution, but recognizes that society is a victim of every crime, and that society can be compensated by the offender doing work which benefits the community at large. Community service work encompasses unpaid work or assistance to charitable, nonprofit, or government agencies which serve the needs of various elements of the community.

Sections 19.2-303, -303.2, -305, and -305.1 of the Code of Virginia provide the court with the basic authority to order restitution, reparation, and/or community service work. Section 19.2-354 provides a mechanism for restitution to be made in installment payments. The legislature has further expressed its desire for the availability of restitution as a portion of sentencing alternatives through the Community Diversion Incentive Act, §§ 53.1-180 et seq., as well as in the provision of work-release authority for persons confined to local jails at § 53.1-131.

The legislature has made it clear that if an offender is to benefit from an alternative to the confinement and/or fine imposed for his/her offense, there is still a price to pay. By using alternatively the terms "restitution," "reparation," or "community service," it has also made clear that the judge has ample authority to determine on a case-by-case basis what that price will be. These terms are not defined narrowly by the statutes as terms of art, but are rather broad, encompassing words allowing the court to address the equities of each case.

The "bottom line" on alternative sentencing is that the court must consider compensation to the victim(s) of the crime in every case in which alternative sentencing is considered, and in some cases must order such compensation as a condition of any

suspended sentence.

While these Recommended Restitution Practices are intended to provide a mechanism for administering and enforcing orders requiring monetary restitution only, the principles of the system outlined are equally valid for cases in which reparation or community service work are appropriate remedies. These principles are:

(i) all relevant and necessary information must be gathered by appropriate actors in the process prior to a sentencing hearing; (ii) the judge must spell out clearly in his order what is expected from the offender in terms of restitution; and (iii) the court must clearly designate the enforcement person (i.e., probation officer, CDI program, etc.) who will be responsible for follow-up on the court order.

The first issue to be addressed is the determination of those cases in which restitution is appropriate and the determination of eligibility of victims for restitution. Sections 19.2-303, -305, and -305.1, while not using language that is consistent throughout, authorize a court to require any defendant who receives a suspended sentence or is placed on probation to make at least partial restitution.

Indeed, § 19.2-305.1 requires that restitution be ordered in cases of property damage or loss if the convicted person is placed on probation or has his sentence suspended in whole or in part.

The second and most critical stage in the restitution process is the determination of the amount, terms, and conditions of restitution. The nature and extent of the issues and problems that will attend both the management of the payments and the management of the offender are in great measure determined by the completeness and appropriateness of the restitution order. It is important that the entry of the restitution order be seen as the culmination of a series of tasks, and that the court makes it clear from the beginning that it considers these tasks critical.

Efficient administration and effective enforcement of restitution orders require some attention to detail prior to, or in conjunction with, the court's entry of a restitution order. First, the nature and extent of the losses must be documented, the victims and/or persons entitled to receive payments must be identified, and the defendant's capacity to make restitution must be determined. Then the amount, the recipient and the specific terms and conditions of payment must

be fixed. Finally, the sentencing order or judgment, or a document incorporated into it, must include all of the information, terms and conditions, so all concerned know exactly what to expect. One additional task should be performed in conjunction with the sentencing. The victims should be informed concerning the order, and they should be told exactly what to expect and who to contact with questions.

At the outset, it is important for the court to make a concise, clear statement of its expectations and requirements. This can be done initially by adopting a policy on restitution generally, and then by insisting that this policy be adhered to on a case-by-case basis.

The following constitutes a reasonable and effective policy on restitution and is suggested for adoption by individual courts:

1. The court will consider restitution in conjunction with its sentence in every case in which there is an eligible victim;
2. All plea negotiations in cases in which there is an eligible victim must incorporate a

complete restitution plan; plea negotiations in cases which do not involve an eligible victim must so indicate;

3. In every case in which there is an eligible victim, defense attorneys are responsible for preparing a proposed restitution plan for submission first to the commonwealth's attorney (in conjunction with plea negotiations or, where a plea bargain is not reached, prior to sentencing), and then to the court;
4. Commonwealth's attorneys have an advocacy responsibility to victims to ensure that restitution plans submitted to the court address the issue of the victims' losses and, further, to provide information to the court about victims' losses in all cases in which alternative sentencing is considered by the court. In order to fulfill this responsibility, the commonwealth's attorneys must see that victim-witness coordinators, law enforcement officers, members of their own staffs, and others gather and provide the appropriate information concerning victims and their losses in a timely and efficient manner;

5. A restitution plan must be prepared and submitted on a court-approved form that is designed to be included in the court's sentencing or judgment order by attaching it as an exhibit and incorporating it by reference;
6. In cases where the amount of damages or the amount, terms or conditions of restitution are in dispute, the court should make it clear to both attorneys that it must have the evidence and information it needs to make a decision and should require counsel to come prepared to present such arguments or evidence as are needed to decide any disputed issue;
7. The court may wish to have restitution information submitted as a part of the presentence report and may wish a victim impact statement included; the court should make its needs and wishes clearly known to the probation officers so they can include all of the information; and
8. The commonwealth's attorney, victim-witness coordinator, probation officer, or other person designated by the court or determined by local practice, should inform the victims about the entry of any order of restitution.

The information should explain how the restitution is to be paid, who to contact in the event of non-payment; it should also candidly point out the possibilities of late or non-payments due to contingencies that may arise concerning the offender's status.

When it is understood that the court wishes to consider restitution in all appropriate cases, that the defense attorney has a responsibility to prepare the proposed restitution plan, and that the commonwealth's attorney has a responsibility relative to the victim, it then becomes easier to assign specific responsibilities.

A restitution plan must consider, or provide information concerning, the following:

1. Victims. Victims must be identified and current information must be provided so they can be easily contacted and so payments can be forwarded.
2. Damages or losses. The nature and extent of each victim's losses must be set out or estimated.
3. Defendant. The defendant's correct name, social security number, employer(s), addresses

and phone numbers must be set out.

4. Co-Defendants. Co-defendants must be identified and information should be provided relative to any charges or restitution orders on file or contemplated.
5. Defendant's ability to pay. The financial information needed to determine defendant's ability to pay must be set out, including assets, income, debts, and financial obligations.
6. Commitment. The defendant must make a commitment or statement of willingness to pay or abide by an order of restitution. This can take whatever form is appropriate so long as it is clear the defendant is making a knowing commitment to pay.
7. Subrogation Information. Since judges have to make decisions concerning restitution-related issues, an effort should be made to obtain information from victims concerning actual or potential insurance recoveries, and this information should be included in the description of victims' losses and/or special circumstances. It is important that

proposed restitution plans provide the information needed for decisionmaking on subrogation-related issues. Defendants' proposed plans should also deal with subrogation issues. While judges must decide these issues on a case-by-case basis or through use of a court policy, it is recommended that, for the sake of consistency, restitution normally be ordered in the amount of victims' actual losses less the amounts paid them by any insurance, that this amount be paid to the victims in-full before any restitution is made to an insurance carrier, and that, if it is otherwise appropriate and feasible, defendants, after satisfying all other restitution obligations, should make restitution to any insurance carriers.

8. Special considerations. The plan must set out any other special considerations. Examples might include: contingencies, such as defendant's promise to begin paying on a monthly basis as soon as he finds a job; an indication of the order in which victims should be paid--such as replacing elderly victim's TV first; or defendant's willingness (need) to make some of the restitution in the form of reparation.

When it becomes clear to defense counsel that a defendant will not be eligible for a suspended

sentence and probation unless a restitution plan is submitted, counsel should begin the process of preparing the proposed restitution plan. Obviously, the material relative to the defendant is uniquely in the control of the defendant and his counsel.

Since commonwealth's attorneys have instructed their staffs, local law enforcement officers, and any victim-witness coordinator concerning the need to collect it, the information concerning victims and their losses should be readily available from the commonwealth's attorney's file or in the victim-witness coordinator's file.

After defense attorneys have seen to the preparation of the portions of the proposed plan relating to victims and the defendant, they must then go over the plan with the defendant and prepare a proposal concerning the amount, terms and conditions of restitution for consideration by the commonwealth's attorney and submission to the court.

The proposed plan can then be the subject of plea negotiation between prosecution and defense, or used by defense counsel in

preparation for sentencing. Defense counsel could use the plan to argue for alternative sentencing, or in the alternative to oppose the size or imposition of a restitution order. In either event, restitution remains a portion of counsel's total advocacy strategy for his client.

The commonwealth's attorney should submit and explain the proposal to the victims and should indicate the results of that review to the court. At this point, the proposed plan is ready for submission to the court, either unilaterally or bilaterally, and the court can then conduct such further proceedings with regard to the proposal as it deems appropriate.

By virtue of having made its requirements relative to restitution known in advance, the court is now in a position, without any unnecessary or additional delay, to conduct any appropriate hearing relative to the proposal and, whether it receives any significant testimony or argument, promptly proceed to approve, reject or modify the proposed restitution plan. Thus restitution may be included as a part of the court's sentencing order or judgment, and this may be done simply and quickly, in most cases, by incorporating and attaching the restitution plan which includes all of the

necessary details.

The recommended restitution plan form is contained in the appendix of forms, Form 4. It is a single form to be used in all cases, whether negotiated by counsel prior to sentencing or raised on the judge's own action. The form is entitled a "Restitution Directive" indicating not just the mandatory restitution payable by the offender, but also the instructions for the clerk in implementing receipt and payment to the victim(s).

Practical Considerations in the Basic Process

1. **Victim Loss:** The commonwealth's attorney, or his designee, have the primary responsibility to gather the following information: Victim's name and address, the amount of economic loss suffered either directly by theft or property damage, or indirectly, such as medical or psychological expenses incurred or anticipated to be incurred; property restored or in the hands of law enforcement authorities; total out-of-pocket loss; and amounts reimbursed by the insurer, if any, or by the Industrial Commission's fund for compensating victims of crime.

If the victim has received or anticipates receiving compensation by an insurance company, the name and address of the insurer should be made available.

This information should be made available in standardized form to defense counsel prior to sentencing, and submitted to the court in all cases by the Commonwealth at time of sentencing. Many cases of property crime will require a simple Victim Loss Statement (Form 1, appendix of forms).

2. Offender Ability to Pay: Defense counsel will be responsible for reviewing the defendant's ability to pay. Counsel shall obtain on a standardized form the defendant's name, address, social security number, employment address (if any), and shall propose a schedule for full or partial restitution. A suggested form for defense counsel to utilize in determining defendant's economic ability to pay can be found in Form 3, appendix of forms.
3. In all cases of plea agreement, counsel should endorse and attach to the plea agreement a copy of a proposed restitution directive. Restitution directives will consist of a standard form,

containing the essential information for the clerks to process restitution payments.

Information contained thereon will identify the victim(s) by name, address, phone number, the amount and terms of restitution ordered, and any special terms desired by the judge.

In addition, there will be space for endorsement by counsel, approval by the judge, and a statement of commitment to pay according to the terms of the directive to be signed by the offender. A suggested form for a standardized restitution directive is attached as Form 4, appendix of forms. It is anticipated that a similar form could be printed on NCR paper with multiple copies to be distributed, with original to court file, and copies for the victim and the offender. Consideration should be given to the possibility that victims of crimes against persons will not want addresses and phone numbers to be placed in the hands of offenders. In designing the final form, the mechanics of eliminating such information from defendant's copy should be determined.

4. In all cases in which the court orders restitution, whether ordered on agreement or counsel,

or sua sponte by the sentencing judge, a restitution directive will be proposed on standardized form containing information admitted to record by respective counsel. Unless otherwise agreed and confirmed by the judge, the judge shall determine the amount of restitution to be made, and on a case-by-case basis either (i) determine a schedule for payment to be met as a term of probation, or (ii) order the restitution to be paid according to standardized policies adopted by the court for such purposes. All sentencing orders should reflect that restitution is to be paid into the court through its designee for disbursement according to the restitution directive incorporated by reference into the sentencing order. All sentencing orders should reflect that the offender is placed under an identified court-approved supervisor, e.g., probation officer, CDI program officer, other designated party.

5. In no event should the judge delegate the determination of the amount of restitution to the clerk, probation officer, or other party. Setting restitution is a discretionary function of sentencing. Both the amount of the victim-loss and offender's ability to pay are

matters of fact which due process requires to be left in the province of the judge. The orderly administration of a restitution process requires that each participant in the process have clearly defined tasks. For both practical and legal considerations, determining the amount of restitution to be paid must be determined or affirmed at the time of sentencing, and not left to some ill-defined later process.

Chapter II

Managing Restitution Payments

Central to these Recommended Restitution Practices is a system for managing the receipt and disbursement of restitution payments. Any system for tracking offender compliance will be dependent on an accountability system for receipt and disbursement. Following the signing of a sentencing order or judgment which requires restitution as a condition of defendant's probation, the order, which includes a copy of the restitution directive, becomes a part of the files in the clerk's office. The clerk will be responsible for managing the receipt and disbursement of restitution payments. Local practice may allow payment processing to be outside the clerk's office. Nevertheless, the official record of compliance to the court order, as in other cases, remains the responsibility of the clerk.

Some of the details of the restitution payments management system will vary from clerk's office to clerk's office, but certain fundamentals must be a part of each system.

In order for the payments to be managed efficiently, the order and directive must

provide the clerk with the necessary information. The victim-witness coordinator or the commonwealth's attorney should have advised the victims concerning their responsibility to keep the clerk advised of any change of address or phone number. The clerk's office should know from the order when it can expect to receive payments and in what amount.

The clerk will set up a ledger card for each case. It will include identifying information on the defendant, the total amount due, and the terms and conditions of the periodic payments. Identifying information concerning the victims must also be included, as well as the total amount due each victim. Finally, the provisions for disbursement of monies by the clerk should be shown. This will include such matters as the order of payment when there are multiple victims and frequency of disbursement. There is great potential for variation in the requirements of each case. However, most files will be routine. The disbursement pattern in routine cases may be established by court order or court policy worked out between judge and clerk. Disbursements in cases in which there is one offender making restitution to one victim may be made on one of the following

schedules: make a disbursement following receipt of each payment; disburse when the balance reaches a certain amount; disburse once every so many months; disburse only after the full amount is paid; etc. It is recommended that each court establish a general policy that reflects the constraints of that system, and that the policy thus established be followed in all cases unless a different disbursement pattern is specified in the restitution order. This provides consistency and facilitates the establishment of a routine, while providing flexibility in the handling of unusual situations.

Defendants should be allowed to make restitution payments in whatever forms are acceptable for making other payments to the clerk. They should be able to pay in person or by mail, using cash (in person only), money orders, cashier's checks, or certified checks. The question of whether payments may be made by personal check should be answered the same as for any other payment made by defendants. If the court accepts personal checks, time must be allowed for checks to clear and defendant is responsible for service charges on bad checks. It is

important that these policies be explained to victims and defendants in conjunction with the preparation of the proposed plan and the entry of the order. It seems unlikely that a defendant making periodic restitution payments would use a credit card, as one might to pay a fine. Unless the law is changed and a court policy adopted authorizing the use of credit cards, they should not be considered an acceptable form of payment.

In addition to the receipt, recording, and disbursement of payments, there is another responsibility of the payment management system. The clerk's records are the source of information used by the court-approved supervisor in monitoring the defendant and enforcing the order.

The manner in which this information is shared will vary depending on a variety of factors, such as location of other court offices, resources available to the various officers, custom, personal styles, etc. Whatever the variations, information must be communicated routinely, and there are certain minimum requirements. For probation officers or other court-designated supervisors to effectively

monitor defendants, they must know when payments are not being made on time. The most important thing is for court-approved supervisors to have a clear understanding with offenders concerning their monitoring process, especially the timing of basic monitoring activities, and then to obtain payment information in a timely fashion. As an example, if the defendant's restitution order requires an amount to be paid by a certain date, and the defendant's probation conditions require the defendant to visit his probation officer periodically, the officer must arrange to obtain payment information sometime between the payment due date and the next scheduled office visit. It may be as simple as a probation officer walking down the hall to the clerk's office to check the defendant's ledger card the day the defendant is due in, or it could involve a deputy clerk in a large, fully automated office mailing a summary of the restitution ledger sheets to the probation office every Friday. The important thing is for the court-approved supervisors to know their specific information needs, to acquaint themselves with how the clerks' offices operate, to explain their information needs to the clerk, and for the two of

them to work together to develop a simple routine whereby the needed information is regularly made available to probation officers.

On a smaller scale, prosecutors and judges also need information concerning payments. Some may want the same information probation officers receive, in which case copies of those reports can be made and sent on. Generally, prosecutors and judges will only be interested in the information when the probation officer has requested court review of the defendant's failure to pay. This information need is similar to that which is needed any time a clerk must provide a court and/or prosecutor with a record of payments (or non-payments). Here again, the important thing is to agree in advance what will be needed and when, so that the reporting process routinely provides the needed information in a way that avoids duplicated effort.

Practical Considerations in Managing Restitution Payments

1. Management and accounting for restitution payments by offenders should be integrated with

the accounting systems already in place in the clerks' offices for the management of fines and costs of court. Except in those rare instances where restitution may have been made before sentencing, or the offender has cash for a lump-sum settlement with the court, the court's management and accounting system should: (i) receive and receipt all monies paid by offender; (ii) provide an accurate record of monies received identified to the offender and then by victim; (iii) determine by policy of the court the order in which payments are applied to separate balances, i.e., first--costs of court, second--restitution, third--fines; (iv) disburse, according to the clerk's established schedule, funds to appropriate accounts or individuals. Note that the automated accounting systems in place in many clerks' offices already provide for this.

2. Special Situations: Code of Virginia leaves the definition of "restitution" to the common law. The issue in all restitution cases is that the victim be made whole. Restitution directives and/or sentencing orders must be made clear at the time of sentencing insofar as possible, both as to expectations from

the defendant and as to compensating the victim or victims in whole or in part. The paradigm case of one offender making restitution to one victim will ordinarily provide few problems for determination or administration. However, there are many real life variations from this situation that mandate careful consideration by the judge at the time of sentencing. Consequently, the information necessary to balance all the equities of a sentencing situation ideally needs to be before the court for the offender's sentencing, whether this occurs at a separate sentencing hearing after a presentence investigation, or immediately after trial.

Some variations for which policy considerations need to be particularly weighed are as follows:

- (a) Multiple offenders and one victim: Does the court order full restitution to the victim and make it joint and several, or does the court apportion restitution among the offenders?

- (b) One offender and multiple victims: Assuming the judge orders complete restitution to each victim, and the offender cannot pay in lump sum, which victim is paid first, or what basis

for apportionment between victims is used for regular periodic payments?

(c) Multiple offenders and multiple victims: The same issues occur as in 1 and 2 supra, compounded.

(d) Multiple offenders in the same jurisdiction facing multiple judges with either single or multiple victims: Each sentencing judge needs to be aware that there may be other potential payers of restitution.

(e) One offender charged in multiple jurisdictions: The judge needs to know the outcome in the other jurisdictions or, if the outcomes are unknown, needs to be aware of other pending charges. If the offender is already making restitution in jurisdiction "A," the judge in jurisdiction "B" may need to adjust the date for restitution to begin in order to make restitution achievable by offender.

Since the statutes allow considerable discretion in ordering restitution, reparation or community service work, issues of joint and several or individual liability, priority or

apportionment among victims to be paid, and consistency among sentencing judges need to be addressed at the policy level. The chief judge of each circuit needs to address these policy matters on the broad scale, and individually each judge must be aware of the variables which may impact the offender beyond the purview of his court. Most importantly, the judge must enter an order or restitution directive which results in clear boundaries at the time of sentencing so that the administrative role of the clerk and the enforcement role of the court-approved supervisor remain clear and nondiscretionary. In order to accomplish this, the judge should require information from both the Commonwealth and defense counsel as to the particular needs and circumstances of the victims and the nature and circumstances of other charges the defendant may be facing and whether co-defendants are involved.

Chapter III

Managing the Offender

The management of the offender is obviously critical to efforts by the justice system to increase the amount of restitution collected and disbursed to crime victims. There are two basic tasks involved in managing offenders—monitoring payments and enforcing the order when payments are not made as required.

It is clear that restitution enforcement will require in every circumstance that some court-approved supervisor be designated to monitor the offender's progress and compliance. The designated supervisor may be the court's probation officer; but, in some jurisdictions with additional or alternative resources, supervision may be accomplished through CDI, OAR, or some other person approved by and answerable to the court. For purposes of this chapter, all references to "probation officer" should be construed to include alternative court-approved supervisors, and all references to the "probationer" should be construed as reference to the offender under restraints of court sentencing order.

The monitoring of restitution payments is similar to monitoring most other conditions of

probation in that probation officers' initial responsibilities involve explaining to probationers exactly what is expected of them and arranging periodic review of their performance. The clerk's record of payments is the source of information about payments. Probation officers should arrange a convenient method of obtaining access to that information. When payments are being made as required, management of the offender is simple.

When clerks' records and conversations with probationers reveal payments are not being made as required, certain steps must be taken. One often overlooked step is notifying the victim. After the probation officer has learned of a failure to pay and has made an initial check of the probationer's situation, the victim should be advised as to what to expect (and not expect) in the way of restitution. This is done as a courtesy and also because failure to advise victims generally results in other justice system officials being required to respond to angry or inquiring calls. Because probation officers are the first to know enough facts, they should either contact the victim or pass the information along to someone else in the system who has accepted that responsibility,

such as a victim-witness coordinator.

In terms of managing the offender, the most important step is to evaluate the probationer's situation. Frequently officers will determine the situation requires no formal action by the justice system. In those cases, after the victim is advised what to expect, the monitoring process continues more or less as before.

When a probation officer decides some formal response is required as a result of probationer's failure to pay, the monitoring process becomes a matter of enforcement.

The matter of enforcement is another area where there will be great variation. There are, however, certain components of this enforcement process that must be included in every restitution management system. First, and most important, is commitment. Every court must make a commitment to enforce its restitution orders and require all of the officials involved in the enforcement process to do their parts. Defendants who do not know that consequences will certainly follow if they fail to make their

restitution payments are not likely to make them.

There must also be a clear understanding among the judge, prosecutor, probation officer, and clerk as to exactly how court review will be initiated. The probation officer must set the process in motion when it is determined probationer's failure to pay is not simply a matter to be worked out between the two of them.

Finally, it is important that this process be routinized in order to minimize the preparation time of court officials and so that, as much as possible, the paperwork and other preparation is handled clerically. For example, the probation officer and clerk should work out a system for copying, summarizing, or otherwise reproducing the pertinent information included in the clerk's ledger, and making it available to the commonwealth's attorney, defense attorney, and court in a timely fashion.

Again, the focus should be on making the enforcement of the order certain, as simple as possible, and using routine clerical procedures to minimize the time burdens on court officials.

Practical Considerations in Managing the Offender

1. Enforcement responsibility lies with the probation officer, CDI case manager, OAR counselor, or other court-approved supervisor as determined by the court.
2. The court-approved supervisor reviews the restitution account in the clerk's office on a regular periodic basis.
3. If payments are not adequately and timely met, the court-approved supervisor determines the cause, and uses discretion in remediation of the problem.

NOTE: If the probation officer knows of delinquency in payment and is working with the offender to remediate, the officer should so advise the victim as a courtesy.

4. Calls to the clerk's office by the victim about delayed restitution should be answered with facts of monies receipted, and then referred to probation officer, victim-witness program, or commonwealth's attorney for follow-up.

5. A show-cause enforcement hearing should be utilized for restitution as well as other traditional causes. If show-cause results in incarceration, or in some modification of restitution order, the victim should receive a courtesy notice of result of hearing as it may affect future receipt of restitution. This responsibility rests with the probation officer, victim-witness program, or commonwealth's attorney in appropriate jurisdiction. The court should denominate the notifying person by policy.

APPENDIX OF FORMS

FORM 1 . . . VICTIM LOSS STATEMENT

FORM 2 . . . VICTIM IMPACT STATEMENT

FORM 3 . . . OFFENDER RESOURCE STATEMENT

FORM 4 . . . RESTITUTION DIRECTIVE

VICTIM LOSS STATEMENT

CASE: COMMONWEALTH V. _____ CASE NO. _____

VICTIM: _____
(NAME)

(ADDRESS)

(PHONE)

CLAIMED LOSS:

DIRECT \$ _____
DAMAGES _____
TOTAL \$ _____

HAS LOSS BEEN RECOVERED BY INSURANCE? YES NO
IF YES, HAS RECOVERY BEEN TOTAL? _____ OR PARTIAL? _____

IF PARTIAL, WHAT IS VICTIM'S TOTAL OUT-OF-POCKET? _____

IF NO, IS INSURANCE RECOVERY EXPECTED? YES NO

NAME AND ADDRESS OF INSURER:

VICTIM'S COMPENSABLE LOSS: (TOTAL OUT-OF-POCKET) \$ _____

NOTE ON USAGE: VICTIM LOSS STATEMENT WOULD BE USED IN SITUATIONS OF PROPERTY
CRIMES WITH NO PHYSICAL OR PSYCHOLOGICAL DAMAGES. FORM TO BE
COMPLETED BY COMMONWEALTH'S ATTORNEY AND SUBMITTED TO COURT AS
EXHIBIT PRIOR TO SENTENCING.

VICTIM IMPACT STATEMENT

CASE: COMMONWEALTH V. _____

VICTIM'S NAME: _____

COURT CASE NO.: _____

I. ECONOMIC LOSS (IF ANY, FILL OUT A, B AND C BELOW)

A. DAMAGES SUFFERED

- 1. VALUE OF PROPERTY LOST OR DESTROYED \$ _____
- 2. HOSPITAL, MEDICAL EXPENSE(S) \$ _____
- 3. LOST INCOME OR WAGES \$ _____
- 4. MISCELLANEOUS EXPENSE(S) (LIST TYPE AND AMOUNT):
 - (A) _____ \$ _____
 - (B) _____ \$ _____

TOTAL LOSS \$ _____

B. REIMBURSEMENT RECEIVED

- 1. PROPERTY INSURANCE \$ _____
- 2. HOSPITAL/MEDICAL INSURANCE \$ _____
- 3. REIMBURSED INCOME OR WAGES \$ _____
- 4. OTHER (LIST SOURCE AND AMOUNT)
 - (A) _____ \$ _____
 - (B) _____ \$ _____

TOTAL REIMBURSEMENT \$ _____

(VICTIM IMPACT STATEMENT - CONTINUED)

- C. ECONOMIC LOSS NOT REIMBURSED (A MINUS B) \$ _____
- D. FUTURE PHYSIOLOGICAL OR-PSYCHOLOGICAL TREATMENT COSTS (ESTIMATED) \$ _____
- PERCENTAGE OF ANTICIPATED COSTS WHICH WILL BE REIMBURSED THROUGH INSURANCE _____ %

IN THE FOLLOWING, PLEASE CHECK ALL THE APPLICABLE BOXES:

II. PHYSICAL INJURY

1. WAS PHYSICAL INJURY THREATENED?

YES NO

2. WAS PHYSICAL INJURY SUFFERED?

YES NO

IF YES, THEN DISABILITY WAS:

_____ TOTAL
_____ PARTIAL (____%)
_____ PERMANENT
_____ TEMPORARY
_____ OTHER (SPECIFY _____)

3. DID RAPE OCCUR?

YES NO

4. DID DEATH OCCUR?

YES NO

III. PSYCHOLOGICAL IMPACT (IF ANY, FILL OUT 1, 2, 3 AND 4 BELOW)

1. DID VICTIM RECEIVE PSYCHOLOGICAL OR PSYCHIATRIC COUNSELING?

YES NO

2. IF YES, DESCRIBE COUNSELING:

OUTPATIENT SHORT-TERM (10 SESSIONS OR FEWER)?

OUTPATIENT LONG-TERM (MORE THAN 10 SESSIONS)?

3. ANY IN-PATIENT TREATMENT?

YES NO

IF YES, WHERE AND FOR HOW LONG? _____

4. DESCRIBE TREATMENT, IF APPROPRIATE _____

IV. INDICATE HERE ANY CHANGE IN THE VICTIM'S PERSONAL WELFARE, LIFESTYLE, FAMILIAL RELATIONSHIPS AS A RESULT OF THE OFFENSE.

V. PLEASE ADD ANY ADDITIONAL INFORMATION TO BE BROUGHT TO THE ATTENTION OF THE COURT.

DATED THIS _____ DAY OF _____, 19__.

(SIGNATURE)

• NOTE ON USAGE:

THE VICTIM IMPACT STATEMENT SHOULD BE USED WHERE ORDERED BY COURT, OR WHERE CRIME IS AGAINST PERSON, OR PHYSICAL OR PSYCHOLOGICAL INJURY MAY HAVE BEEN INCURRED ALONG WITH PROPERTY LOSS, IF ANY.

THE FORM IS TO BE COMPLETED BY/FOR VICTIM AND SIGNED BY VICTIM.

THE FORM IS TO BE SUBMITTED BY COMMONWEALTH'S ATTORNEY AS EXHIBIT UNLESS INCLUDED IN PSI. FORM INCLUDES INFORMATION AS AUTHORIZED BY §19.2-299.1 OF THE CODE.

OFFENDER RESOURCE STATEMENT

DEFENDANT'S SOCIAL SECURITY NUMBER _____

DEFENDANT'S ADDRESS _____

ZIP _____

DEFENDANT'S TELEPHONE NUMBERS: HOME (____) _____ WORK (____) _____

OTHER (SPECIFY) _____

DEFENDANT'S PLACE OF EMPLOYMENT _____

NAMES AND CASE NUMBERS OF OTHER DEFENDANTS INVOLVED IN THIS INCIDENT (INCLUDE INFORMATION CONCERNING ANY COURT-ORDERED RESTITUTION):

DEFENDANT'S INCOME, ASSETS, AND EARNING POTENTIAL:

DEFENDANT'S LIABILITIES AND FINANCIAL OBLIGATIONS:

DEFENDANT'S PLAN FOR RESTITUTION/REPARATION AND/OR COMMUNITY SERVICE:

NOTES ON USAGE OF FORM:

DEFENSE COUNSEL RESPONSIBLE TO COMPLETE AND SUBMIT TO COURT AS EXHIBIT. IN INDIGENT CASES WHERE COURT RECORD ALREADY HAS FORM QUALIFYING AS INDIGENT, COURT POLICY MAY SUGGEST USE ONLY OF RESTITUTION DIRECTIVE. SOME COURTS MAY ALSO CONSIDER USE OF FORM UNDER OATH AUTHORIZED AT SECTION 19.2-355 FOR USE IN PROCEDURE FOR PAYMENT OF COSTS, RESTITUTION AND FINES IN INSTALLMENTS. LOCAL COURT SHOULD DETERMINE ITS PREFERRED FORM, AND DEFENSE COUNSEL BE REQUIRED TO COMPLY IN EACH CASE.

COMMONWEALTH OF VIRGINIA

v.

CASE NO. _____

DEFENDANT _____

RESTITUTION DIRECTIVE

PURSUANT TO THE SENTENCING ORDER ENTERED _____ 19 ____

IN THE ABOVE-REFERENCED CASE, THE FOLLOWING SCHEME OF RESTITUTION SHALL BE FOLLOWED IN THIS CASE, AND INCORPORATED BY REFERENCE INTO THE SENTENCING ORDER.

1. THE DEFENDANT _____ RESIDES AT _____
_____. TELEPHONE NUMBER _____, SOCIAL SECURITY
NUMBER _____. DEFENDANT IS EMPLOYED BY _____.
ADDRESS AND PHONE _____

2. THE COURT HAS DETERMINED THE FOLLOWING TO BE COMPENSABLE VICTIMS:

(I) _____

AMOUNT OWED: _____

(II) _____

AMOUNT OWED: _____

CONTINGENT OR SUBROGATED VICTIMS:

3. THE COURT HAS ORDERED RESTITUTION TO THE FOLLOWING:

4. DEFENDANT HAS AGREED/BEEN ORDERED TO MAKE RESTITUTION ACCORDING TO THE FOLLOWING SCHEDULE OF PAYMENT AND/OR COMMUNITY SERVICE WORK.

ALL PAYMENTS SHALL BE BY CASH (IN PERSON ONLY), CERTIFIED CHECK OR MONEY ORDER, AND MADE PAYABLE TO CLERK OF CIRCUIT COURT. _____
(ADDRESS)

5. DEFENDANT BY HIS SIGNATURE HERETO ACKNOWLEDGES THAT THE RESTITUTION ORDERED IS A PRIORITY DEBT ITEM, AND IS CREATED AS A RESULT OF THE OFFENSE FOR WHICH HE/SHE HAS BEEN CONVICTED, AND IS IN CONSIDERATION OF THE TERMS OF PROBATION/PAROLE OF HIS SENTENCE. DEFENSE COUNSEL BY HIS SIGNATURE HEREON ACKNOWLEDGES THAT HE HAS FULLY EXPLAINED THE TERMS CONTAINED HEREIN TO THE DEFENDANT, AND THE CONSEQUENCES OF FAILURE TO PERFORM.

6. THE COURT SHALL DISBURSE RESTITUTION PAYMENTS AS FOLLOWS:

- TO THE NAMED VICTIM ACCORDING TO TERMS NOTED ABOVE.
- TO THE NAMED VICTIMS ACCORDING TO THE GENERAL STANDARDS AND POLICIES ADOPTED BY THE COURT FOR PAYMENT OF RESTITUTION.

_____ DEFENDANT
_____ ATTORNEY FOR DEFENDANT
_____ ATTORNEY FOR
COMMONWEALTH

APPROVED:

(JUDGE)

/ps