

Directive 502.04 Restitution

**STATE OF VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF CORRECTIONS**

Directive: 502.04

Subject: Restitution

Effective Date: November 10, 1993 **Review and Re-Issue Date:**

Supersedes: NEW **APA Rule Number:**

Recommended for approval by:		Authorized By:	
_____	_____	_____	_____
Signature	Date	Signature	Date

1. Authority:

1.1. Pursuant to Title 28 VSA, Chapters 5, 21, and 23; Title 13 VSA, Chapters 165 and 221; Department of Corrections Policy 111.

2. Purpose:

2.1. To functionalize responsibility and provide direction to the employees of the Department of Corrections concerning all aspects of restitution.

3. Applicability/Accessibility

3.1. Anyone may have a copy of this directive.

4. Directive

4.1. Restitution Determination:

4.1.1 Restitution orders may be enforced as conditions of probation, supervised community sentence, or parole. When restitution or reparation is a condition of the sentence, the court, by statute, shall fix the amount thereof and shall fix the manner of performance. Restitution may include return of property wrongfully taken from the victim. It may also include cash or installment payments to the victim to compensate for damages to the victim's property or person or payments in kind if acceptable to the victim. Verified claims for associated costs are acceptable, i.e., cab fare to and from work when a damaged car is being repaired. Reparation claims, i.e., "pain and suffering" are matters of civil court. If the court does not order restitution, nothing precludes a victim from pursuing an independent civil action. Victims who are insured are

Directive 502.04 Restitution

eligible for the deductible amount and any appropriate associated costs for which they were not reimbursed. When the court orders a presentence investigation, the assigned officer will describe the offender's current ability to earn money as well as his/her potential for earning. Assets and liabilities should also be discussed so that the judge will have as much information as possible to determine restitution at sentencing.

4.2. Restitution/payment schedule not determined at sentencing:

4.2.1 In cases where restitution/payment schedule has not been determined, the court shall be notified utilizing the sample letter as illustrated in Appendix I. We will also advise the court that the Department will not be responsible for determining restitution, setting a payment schedule or collecting funds until such determination is made.

4.2.2 Copies will be furnished to the State's Attorney, Victim's Advocate, Department's legal counsel, and the victim.

4.2.3 The notice will include a statement that we will request discharge after all other conditions have been satisfied and not recognize the restitution as a legal order, unless the court has determined the ability to pay, set the amount of restitution, and set the payment schedule.

4.3. Payment guidelines:

4.3.1 The money will be collected and distributed in accordance to the administration procedures.

4.4. Interstate Compact:

4.4.1 The officer should attempt to collect restitution before the offender leaves the state. Receiving states have no legal authority to administer the collection of funds on behalf of sending states. All monies which the sending state desires to collect from parolees or probationers for family support, support of children, restitution, reparation, costs of court, or fines are to be sent directly to the sending state by the parolee or probationer. The receiving state agrees to use its best endeavors to see that the individual sends such money as requested.

4.5. Violation of Probation:

4.5.1 When restitution or reparation has been ordered by the court and the offender has failed to comply with the order, the state's attorney, after receiving an affidavit from the victim or the probation officer asserting noncompliance, may initiate a proceeding for revocation of probation. In the event of any violation of probation brought for any reason, if restitution remains unpaid, the officer should make a recommendation to the court that restitution become a condition of incarceration and ensure that this is included on the mittimus.

Directive 502.04 Restitution

4.6. Striking Restitution:

4.6.1 An officer must, in order to recommend striking restitution, petition the court/Parole Board to relieve an offender of the requirement to pay restitution when extenuating circumstances exist; e.g. lost wages, medical disability, etc. The officer must provide the victim an opportunity to contest such an action by notifying the victim advocate or the victim before probation/parole may be modified. A restitution order is dischargeable in a Chapter : 13, Bankruptcy.

5. Training Method

5.1.

6. Quality Assurance Processes

6.1.

7. Financial Impact:

8. References

Title 28 VSA, Chapter 5, Section 252(b), 253 (c).

Title 13 VSA, Chapter 165, Section 5301, 5304, 5307.

Title 13 VSA, Chapter 167, Section 5351.

Title 13 VSA, Chapter 221, Section 7043.

Interstate Compact, Section 4-105.

Department of Corrections' Policy 111.

9. Responsible Director and Draft Participants