



*State of North Carolina
Department of Correction
Division of Prisons*

Chapter: E
Section: .1100
Title: **Restitution Program**
Issue Date: 09/18/07
Supersedes: 05/01/98

POLICY & PROCEDURES

.1101 GENERAL

- (a) It is the intent of this policy to establish appropriate rules and regulations to govern the Division of Prisons actions with regard to those inmates who receive a court sentence which either orders or recommends that the offender make restitution to such persons or entities as the court directs.
- (b) The sentencing court may order restitution in the following instances:
 - (1) As a condition of Probation;
 - (2) As a condition of Special Probation;
 - (3) Incident to an order of commitment to prison, as a condition of attaining work release privileges and as a condition of attaining parole, when such commitment order is an outgrowth of a plea arrangement.
- (c) The sentencing court may recommend restitution incident to an order of confinement to prison, as a condition of attaining work release privileges and as a condition of attaining parole, when such commitment order is not an outgrowth of a plea arrangement.
- (d) A restitution order shall be binding upon the Secretary of Correction and the Parole Commission, unless, due to the disability of the prisoner, or for other causes, such order cannot be reasonably implemented. In those instances, the Secretary and Parole Commission, or either of them, or their designee, shall notify the sentencing court in writing as to why the order cannot reasonably be implemented and the sentencing court shall issue such further orders as it may deem necessary.
- (e) A restitution Recommendation is not binding upon the Secretary and the Parole Commission, but if they, or either of them, elect not to implement the action, they, or either of them, or their designee, shall notify the sentencing court in writing as to the reason for not implementing the court issue further recommendations.
- (f) The following custodial and correctional considerations shall apply in considering restitution orders/Recommendations as they affect. Inmates in the custody of the Division of Prisons:
 - (1) A restitution order/Recommendation shall not supersede Division of Prisons policy and procedure as to work release, and those inmates with such

Orders/Recommendations shall still be required to satisfy work release policy requirements before being admitted to work release. The Act establishing the statutory scheme for restitution provides that the Parole Commission and the Secretary of Correction are empowered to impose as a condition of attaining work release privileges that the inmate make restitution, when such is Ordered/Recommended by the sentencing court. In those instances, it is contemplated that the Parole Commission and the Division of Prisons concur as to whether or not to implement a restitution order/Recommendation. It is, however, not contemplated that the liability of the Parole Commission and Division of Prisons to concur in the determination shall delay the placement of an inmate on work release if he is otherwise approved. The final determination as to whether or not to implement such an Order/Recommendation may be made by the Parole Commission and the Division of Prisons after the inmate has been admitted to work release, when necessary.

- (2) Inmates who have split sentences who are recommended for immediate work release, and who have a restitution Order, shall be processed as to work release and restitution in the same manner as though they were entitled under an ordinary active sentence. Inmates who have sentences of five years or less who cannot be placed on work release immediately will have the issue of restitution/reparation addressed in the diagnostic center, while those who are serving sentences over five years will be assigned in a normal manner with restitution/reparation being addressed at the time the inmate comes under consideration for work release. Inmates admitted to special probation after having served the active portion of a split sentence shall be governed by the policies and procedures of Adult Probation and Parole as they apply to restitution as an incident of special probation.
- (3) Unless otherwise clearly indicated on the Order/Recommendation of Restitution (incident to a commitment) (AOC-L-Form 153A), the Order/Recommendation shall apply as a condition of both work release and parole. If the sentencing court clearly indicates that the Order/Recommendation apply only as a condition of parole, the inmate may be allowed and encouraged to make restitution voluntarily out of work release earnings by consenting to the deductions as by law provided (G.S. 148-33,1 (f)(4)), to make restitution out of his own funds, thereby reducing his obligation if restitution be later imposed as a parole condition. Nothing in these policies and procedures shall prevent the implementation of a MAPP contract addressing restitution, when such is deemed proper by the contracting parties.
- (4) The decision to implement the restitution Order/Recommendation as it applies to work release is, as to inmates serving sentences of five years and less, a function of the Division of Prisons, and as to inmates serving sentences of greater than five years, a joint function of the Division of Prisons and the Parole Commission. While the policies and procedures afford the inmate the opportunity to be heard on the matter if he so chooses, his consent is not required and he may waive hearing in the matter. If the restitution Order/Recommendation is implemented as

a condition of work release, the restitution deduction will be made as in the case of other permitted deductions from work release earnings, by the Work Release Accounting Section of the Department of Correction, according to law. An inmate can refuse to accept work release privileges.

- (5) Inmates who are committed as the result of a probation revocation shall not be subject to restitution requirements unless the Order/Recommendation is made a part of the probation commitment order, even though restitution may have been a condition of probation. Only the revoking court can make a valid orders/recommendations as to restitution as a condition of work release or parole eligibility.
- (6) Restitution Orders/Recommendations are implemented "as a rehabilitative measure....," this being the sole statutory criteria. Thus, in arriving at its decision as to implementation, the Division of Prisons is not required to consider the distinction between an order and Recommendation beyond those statutory provisions which (1) make orders binding, unless, "...due to the disability of the prisoner, or for other causes, such order cannot be reasonably implemented..." and (2) "The Secretary shall not be bound by such (restitution) recommendation..." In making its decision to implement restitution recommendation, the Division of Prisons should consider that implementation of restitution measures will (1) serve to make the inmate aware of the victimless which his/her criminal conduct has caused, (2) will encourage the inmate to achieve a realistic sense of responsibility for the consequences of his/her conduct, and may consider additional other factors to determine that the implementation of a restitution or reparation recommendation will benefit the inmate as a rehabilitative measure.
- (7) Implementation of a restitution Order/Recommendation as it may pertain to an inmate serving a sentence of not less than 30 days nor as great as 18 months shall not supersede those provisions of law which entitle such inmates to automatic parole, in absence of finding, by the Parole Commission that parole should not be granted. Their right to consideration for such automatic parole shall be unaffected by the fact that they may be on work release with implementation of restitution measures.
- (8) The Act establishing the statutory scheme for restitution also provides that "reparation" may be ordered or recommended by sentencing courts. The Act defines "reparation" as including, but not limited to "...the performing of community services, volunteer work, or doing such other act or things as shall aid the defendant in his rehabilitation." While Division of Prisons' policy specifically addresses restitution, which will chiefly entail money payment, whenever reparation is ordered or recommended as a condition of attaining work release privileges, such reparation measures will be implemented procedurally as though it were a restitution order or Recommendation, taking into consideration whether or not correctional and custodial considerations permit the particular type of reparation ordered or recommended by the sentencing court.

.1102 PROCEDURES - ACTIVE SENTENCE OF FIVE YEARS OF LESS

- (a) The following procedures apply to all inmates with restitution Orders/Recommendations who have active sentences of five years and less.
- (1) The receiving diagnostic center shall, where there is an Order/Recommendation as to restitution, whether as a condition of work release or parole eligibility, conspicuously mark the inmate's unit jacket "Restitution," appropriately record restitution on the DC-134 with total amount due, and initiate Form DC-191, completing Sections A and G. When an inmate is committed with a restitution Order/Recommendation applicable to work release privileges or volunteers to make restitution from work release earnings to defray his obligation on parole, the diagnostic center case analyst will, during orientation, explain to the inmate the restitution/reparation law under which the inmate was sentenced. Also, at this time, the diagnostic center case analyst will advise the inmate that he has the right to be heard on the matter if he so desires, but that the decision to implement will be made independently of whether or not he consents to make restitution. The inmate's questions will be answered, and he will be asked whether or not he wishes to be heard. If he indicates his desire to be heard, this will be noted on Form DC-191, Section B. If he does not desire to be heard, he shall sign a waiver to that effect on Form DC-191, Section F.
 - (2) If the inmate has requested that he be heard, the diagnostic center case analyst will indicate this fact to the appropriate classification authority, and arrange for the inmate to be notified as to the date of such hearing. The inmate may have the assistance of a staff member, appointed by the Facility Superintendent, if the inmate so requests by completing Section C of Form DC-191. Notification, and appointment of a staff representative, if requested, should be at least 24 hours prior to the hearing by the committee.
 - (3) When the appropriate classification authority meets to determine whether or not to implement the Order/Recommendation, if the inmate has expressed a desire to be heard, he will at that time have an opportunity to make such statements to the committee as he deems fit. This statement may include any reason he thinks appropriate to convince the hearing committee that it should not implement the Order/Recommendation, which may include, but not be limited to such matters as: the inmate has previously satisfied the restitution requirements, the payee has died, in which case restitution will not be paid to the estate of the deceased, or if a corporate entity or other such entity, it no longer exists; or such other matters and things which bear upon the issue before the hearing committee. The inmate shall not be allowed to make statements which tend to show that the sentencing court should not have ordered/Recommended restitution measures, as he had an opportunity to make these statements at sentencing, and this matter is not properly before the committee. Further, the committee shall not take into consideration any

testimony which would tend to show that after other deductions are made out of the inmate's work release earnings as required by law, there may be no funds left out of which to make restitution. When making the decision on whether to implement or not implement a restitution Order/Recommendation, the ability of the inmate to earn sufficient funds to make restitution is not a proper consideration for the committee.

- (4) The staff assistant, if one has been requested by the inmate, will be present at all appropriate classification committee hearings wherein implementation of a restitution Order/Recommendation is under consideration. The committee may direct that the inmate, or appointed staff representative, verify any statement made. The committee shall keep a record of statements made by the inmate, or his representative, bearing upon the issue of restitution.
- (5) The appropriate classification committee will make the determination as to whether or not the restitution Order/Recommendation shall be implemented as a condition of the inmate's attaining work release privileges. The chief criteria will be whether or not such implementation would be a rehabilitative measure as to the inmate. If the inmate has been heard by the committee on the question, his statement will be taken into consideration.
- (6) When the committee has made its decision, it shall state the reasons for its decision, in writing, on Form DC-191, Section D, and the inmate will be informed by the Chairman of the committee as to its decision. If the committee has decided not to implement the Order/Recommendation, this also shall be noted in Section D of Form DC-191. The Facility Superintendent, or his designee, will then advise the sentencing court, stating in writing the reasons for the decision. If the decision was not to implement a restitution order, the sentencing court is empowered to issue further orders in the matter and the Department of Correction will be responsive to such further orders. If the decision was not to implement a restitution Order/Recommendation, the court may issue further recommendations which will be considered by the Department of Correction. If the committee has decided to implement the order/recommendation of the sentencing court, or the inmate has waived his right to a hearing, this shall be the final decision and it is not required that any approving authority review and take action as to the implementation of restitution measures.
- (7) Once the proceeding is completed by the committee, the inmate will be processed for unit assignment as provided by classification and work release regulations, and Form DC-191 will be distributed. This is done whether or not the committee has decided to implement the Order/Recommendation of the sentencing court. The implementation decision on Form DC-191 will be transmitted to the Work Release Accounting Office by the appropriate diagnostic center or classification authority in conjunction with Form DC-190, if an automatic work release case. Form DC-191, Section G, sent to Work

Release Accounting, will indicate the gross amount of restitution to be paid, along with the name and address of the payee. If the inmate is not placed on work release immediately, Work Release Accounting will file the DC-191 and pull this form when this inmate is considered for work release participation by virtue of their receiving a DC-190 indicating such. Facilities having inmates under consideration for work release should insure that the appropriate restitution/reparation block on the DC-190 is marked to alert Work Release Accounting. Upon confirmation of the inmate's work release salary, the Work Release Accounting office will fix the amount to be deducted from work release earnings for transmittal to the payee by way of restitution. The amount may be reduced or increased from time to time as the earnings and higher priority obligations of the inmate permit. Work Release Accounting will advise the payee with the first check what may be reasonably expected by way of restitution, and as to whether or not it appears that full restitution may be expected, taking into consideration the length of sentence, earnings of the inmate, and other factors.

.1103 PROCEDURES - ACTIVE SENTENCE MORE THAN FIVE YEARS

- (a) The following procedures apply to all inmates with restitution Orders/Recommendations serving sentences of greater than five years.
- (1) The receiving diagnostic center shall, where there is an Order/Recommendation as to restitution/reparation, whether as a condition of work release or parole eligibility, conspicuously mark the inmate's unit jacket "Restitution," appropriately record restitution/reparation on the DC-134 with total amount due, and explain the restitution/reparation program to the inmate, noting that at the time when he is considered for work release, that Form DC-191 would be completed, giving him an opportunity to waive his rights to a hearing on the matter of restitution or present facts relevant to why he should not be required to make restitution as a condition of his work release. The facility having under consideration the recommending of an inmate for work release privileges, for whom there is an Order/Recommendation for restitution by the sentencing court, shall first have the appropriate staff member initiate Form DC-191 consistent with the requirement of Section .1102, paragraphs 1-6, and submit that in conjunction with the DC-121 and DC-190, recommending work release to the appropriate classification authority. If the decision by the committee is not to implement, the court shall be notified consistent with Section .1102, section 6.
 - (2) Following the waiver by the inmate of a hearing or following the final decision to implement by the committee after the hearing, the committee shall attach the record of the proceeding, including a summary of evidence presented by the inmate if he has been heard, along with its written decision on DC-191, to the DC-190. This shall be transmitted to the appropriate work release approving authority, but such authority shall not be required to approve the action of the committee pertaining to restitution. If the image is approved for work release, the

approving authority shall transmit to the Parole Commission the DC-190 and DC-191. The original of the records so transmitted shall be retained by the approving authority, pending approval of work release by the Parole Commission, and pending consideration of the implementation of restitution measures by the Parole Commission.

- (3) If the Parole Commission approves the inmate for work release, and concurs with the decision of the Division of Prisons as to the implementation/ non-implementation of the restitution Order/Recommendation as a work release condition, upon receipt of Parole Commission notification establishing these facts, the inmate shall be processed for admittance to work release privileges as provided by procedures pertaining thereto. The Facility Superintendent, or his designee, shall notify the inmate as to whether or not the Parole Commission and the Division of Prisons have decided to impose restitution measures as a condition of attaining work release privileges. If the decision is not to implement the Order/Recommendation, the Facility Superintendent, or his designee, will advise the sentencing court that the Parole Commission and the Division of Prisons have decided not to implement the restitution/repairment the Order/Recommendation, stating in writing the reasons for the decision. If the decision of the Parole Commission and the Division of Prisons is to implement the Order/Recommendation of the sentencing court, the Region Director, or his designee, shall proceed in accordance with the provisions of this policy.
- (4) If after transmitting the Division of Prisons record as to restitution as provided in subparagraph (2) herein, the approving authority receives a request from the Parole Commission for additional investigation or fact finding to enable it to make its decision as to implementation of restitution measures, the approving authority shall transmit this request to the appropriate staff person, who shall take such action as is necessary to develop the requested facts. These actions may include an interview with the inmate, a request for a reconvening of the classification committee, with or without the presence of the inmate, depending upon whether or not he has waived hearing, or such actions as may be necessary to respond to the Parole Commission request. Upon completion, the appropriate staff person will transmit the report to the work release approving authority, who shall transmit a copy to the Parole Commission.
- (5) If, after transmittal of the record pertaining to restitution to the Parole Commission as provided in subsection (2), or if after transmittal of additional investigative reports to the Parole Commission as provided in sub-section (4), the approving authority receives notification that the Parole Commission cannot concur with the decision of the classification committee relating to implementation of the restitution Order/Recommendation, the approving authority shall appoint a representative of the Division of Prisons to meet with a representative of the Parole Commission for the purpose of resolving the differences between the Parole Commission and the Division of Prisons as to implementation of the restitution Order/Recommendation. These two

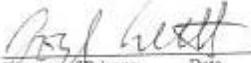
representatives shall concur in a joint recommendation to the Parole Commission and the Division of Prisons as to whether or not the Order/Recommendation as to restitution should be implemented. This recommendation shall be considered by the Parole Commission and classification committee, and if both elect to adopt the recommendation, the matter shall be resolved.

- (6) If the representatives are unable to concur in a recommendation, or if either the Parole Commission or Division of Prisons elects not to adopt the recommendation of the representatives, the matter shall be referred to the chairman of the Parole Commission and the Secretary of Correction for resolution.
- (7) When the Parole Commission and the Division of Prisons have concurred in an action pertaining to restitution, the matter shall be handled in accordance with sub-paragraph (3). The fact that the inmate may have been admitted to work release prior to the final decision as to whether or not to implement the restitution Order/Recommendation shall not prevent correctional authorities from implementing the final decision.
- (8) If the final action as to approval of work release has been non-approval, this fact shall not preclude the Parole Commission and the Division of Prisons from considering implementation of a restitution Order/Recommendation to be applied at such time as the inmate may be admitted to work release in the future. If this be the case, when the inmate is being considered for work release at some subsequent time, the Parole Commission and the Division of Prisons will review the decision it has made as to implementation of restitution measures, and either jointly affirm the decision, or request that the matter be re-opened. If either party requests that the restitution portion of the decision be re-opened, the matter will be reconsidered in accordance with this section.

.1104 PROCEDURES - NOTIFICATION OF COMPLETED RESTITUTION/REPARATION

- (a) The following procedures apply to the notification of the completion of Orders/Recommendations of restitution.
 - (1) If an inmate chooses to fulfill his restitution obligations through his own funds, the following procedures as to be followed:
 - (A) If the inmate's family pays off his restitution indebtedness to the court, they will supply to the unit a receipt from the sentencing court noting the full payment of the inmate's restitution obligation, along with the victims' names and docket number.
 - (B) If the inmate deposits sufficient funds in his Trust Fund account to pay in full his restitution indebtedness, the unit will forward a Trust Fund check to the victims, noting "full payment" on the check.

- (C) Following the completion of either one of the above requirements, Form DC-191-A will be sent to the clerk of the sentencing court by the Facility Superintendent of the facility to which the inmate is assigned, noting and verifying full payment of this inmate's restitution indebtedness.
- (2) If the inmate decides to pay his restitution indebtedness through his work release earnings, the following procedures are to be followed:
 - (A) Work Release Accounting will be responsible for making deductions from his work release earnings to make restitution payment or payments with the late payment to the victim noting "paid in full."
 - (B) Following this, Form DC-191-A will be completed by the Work Release Accounting Office and sent to the sentencing court, noting the completion of this inmate restitution indebtedness.

 9-18-07
Director of Prisons Date

e.1100_09_18_07.doc