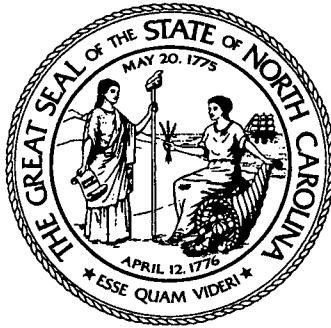


**2004-2005**

**HOUSE SELECT  
COMMITTEE ON  
RESTITUTION**

**MINUTES**



## House Select Committee on Restitution

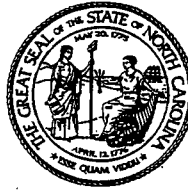
<u>Member</u>	<u>Legislative Assistant</u>	<u>Office phone</u>
Rep. Rick Eddins, Chair	Cindy Hobbs	733-5828
Rep. Hugh Holliman, Chair	Carol Bowers	715-0873
Rep. Bernard Allen	Mildred Alston	733-5772
Rep. Beverly Earle	Ann Raeford	715-2530
Rep. Mitch Gillespie	Cindy Hobbs	733-5862
Rep. James Harrell	Beth LeGrande	715-1883
Rep. Carolyn Justus	Glenda Jones	733-5956
Rep. Louis Pate	Edna Pearce	733-5755
Rep. Arthur Williams	Linda Uzzle	733-5906
Rep. Keith Williams	Martha Hoover	715-3009
Staff:	Trina Griffin	733-2578

## ATTENDANCE

**HOUSE SELECT COMMITTEE ON RESTITUTION**

[illegible]

**James B. Black**  
**Speaker**



**Richard T. Morgan**  
**Speaker**

Office of the Speaker  
North Carolina House of Representatives  
Raleigh, North Carolina 27601-1096

---

**TO THE HONORABLE MEMBERS OF THE  
NORTH CAROLINA HOUSE OF REPRESENTATIVES**

**WHEREAS**, a significant amount of restitution remains unclaimed and unpaid due to a variety of reasons that include the defendant's inability to pay, the clerk of court's inability to locate victims, victims' inability to identify and locate assets of a defendant, and the difficulty victims face in navigating the legal system to enforce restitution orders; and

**WHEREAS**, the prior House Select Study Committee on Preventing Unjust Profiteering from Crime began to review the methods by which crime victims are compensated for injuries sustained as the result of the crimes committed against them and determined that further review is needed;

**NOW, THEREFORE:**

**Section 1.** The **House Select Committee on Restitution** is established by the Speakers, effective September 14, 2004, as a select committee of the House pursuant to G.S. 120-19.6(a) and Rule 26(a) of the Rules of the House of Representatives of the 2003 General Assembly.

**Section 2.** The Select Committee consists of 10 members. The individuals listed below are appointed as members of the Select Committee. Members serve at the pleasure of the Speakers of the House of Representatives.

Rep. Rick Eddins, Co-Chair  
Rep. Hugh Holliman, Co-Chair  
Rep. Bernard Allen  
Rep. Beverly Earle  
Rep. Mitch Gillespie  
Rep. James Harrell  
Rep. Carolyn Justus  
Rep. Louis Pate  
Rep. Arthur Williams  
Rep. Keith Williams

**Section 3.** The Select Committee shall study the processes for the collection and payment of restitution in this State, and shall determine the methods for reducing the number of restitution payments that go unclaimed. The Select Committee shall incorporate the work to be conducted under Section 26.1 of Senate Bill 1152, S.L. 04-161, into its study and produce one report that contains the recommendations of the Committee, the Administrative Office of the Courts, and the Department of Correction on this subject.

**Section 4.** The Select Committee may meet during the interim period between regular sessions upon the call of its cochairs.


**Section 5.** The Select Committee shall report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before the convening of the of the 2005 General Assembly by filing a copy of the report with the Speakers' offices and the Legislative Library. The Committee terminates upon the convening of the 2005 General Assembly, or upon the filing of its final report, whichever occurs first.

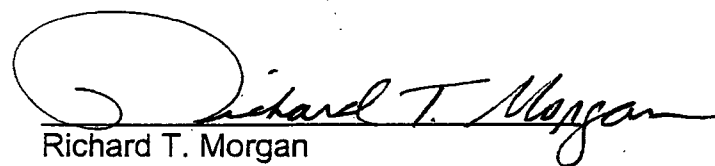
**Section 6.** The Select Committee is vested with the authority contained in Article 5A of Chapter 120 of the General Statutes.

**Section 7.** Members of the Select Committee shall receive per diem, subsistence, and travel allowance at the rate established in G.S. 120-3.1.

**Section 8.** The expenses of the Select Committee are considered expenses incurred for the operation of the House of Representatives and shall be paid pursuant to G.S. 120-35 from funds available to the House for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of a co-chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speakers of the House of Representatives.

Effective this 14th day of September, 2004.

  
James B. Black  
Speaker

  
Richard T. Morgan  
Speaker

STATE OF NORTH CAROLINA  
**NORTH CAROLINA GENERAL ASSEMBLY**  
STATE LEGISLATIVE BUILDING  
RALEIGH, NORTH CAROLINA 27601



October 11, 2004

**MEMORANDUM**

**TO:** Rep. Bernard Allen, Rep. Mitch Gillespie, Rep. James Harrell, Rep. Carolyn Justus, Rep. Louis Pate, ~~Rep. Deborah Ross~~, *Rep. Beverly Earle*, Rep. Arthur Williams, Rep. Keith Williams

**FROM:** Rep. Rick Eddins, Co-Chair, Rep. Hugh Holliman, Co-Chair

**SUBJECT:** Committee Meeting Notice

There will be a meeting of the **House Select Committee on Restitution:**

DAY: Thursday TIME: 9:30 AM

DATE: October 21, 2004

LOCATION: 1228 Legislative Building

Please advise Carol Bowers, Committee Assistant, at (919) 715-0873, or by e-mail [hollimanla@ncleg.net](mailto:hollimanla@ncleg.net) if you will be unable to attend.

Posted: October 11, 2004

cc: Committee  
Record \_\_\_\_\_  
Interested \_\_\_\_\_  
Parties \_\_\_\_\_

# **AGENDA**

## ***House Select Committee on Restitution***

**Thursday, October 21, 2004  
9:30 am**

**Room 1228 Legislative Building**

---

**1. Welcome & Introductions**

**2. <sup>Director</sup> Mel Chilton, NC Victims Assistance Network**

**3. Frank Parrish, District Attorney for the 1<sup>st</sup> District,  
President of the Conference of District Attorneys**

**4. Tracy Little, Deputy Secretary, Department of Correction**

**5. Karen Jones, Senior Research & Policy Associate, NC  
Sentencing and Policy Advisory Commission**

**6. <sup>Gen. Council</sup> Tom Andrews, Administrative Office of the Courts**

**7. Gregg Stahl, Administrative Office of the Courts**

**8. Whit Gibson, Clerk of Superior Court, Scotland County**

## MINUTES

### HOUSE SELECT COMMITTEE ON RESTITUTION

October 21, 2004

9:30 AM

Room 1228 Legislative Building

The House Select Committee on Restitution met on Thursday, October 21, 2004 at 9:30 AM in Room 1228 of the Legislative Building. Committee Members in attendance were: Representatives B. Allen, J. Harrell, B. Earle, M. Gillespie, A. Williams, L. Pate, R. Eddins H. Holliman and Staff Attorney Trina Griffin.

Rep. Holliman presided and called the meeting to order at 9:35 AM. He welcomed everyone and thanked the committee for serving, recognized the staff and visitors. See Attachment #1. He explained that this study commission is a carry over from the House Select Committee on Preventing Unjust Profiteering from Crime, which met last interim.

#### Presentations:

Mel Chilton, Director of NC Victims Assistance Network. Ms. Chilton spoke on the importance of restitution for victims that are suffering financially and mentally. She suggested some proposals for the committee to consider, including the enhancement of work programs within the prison system, requiring the consideration of future earning potential when ordering restitution, and making restitution mandatory in cases involving loss of life or serious injury. Ms. Chilton concluded her remarks by noting that restitution is an obligation that should never be waived. See Attachment #2.

Frank Parrish, District Attorney for the 1<sup>st</sup> District and President of the Conference of District Attorneys, was recognized. Mr. Parrish addressed the duties of a district attorney with regard to restitution and identified areas for improvement. He explained that district attorneys are required to collect and present accurate information regarding a victim's damages to the presiding judge. He also explained that the problems with restitution are different in superior court compared to district court. Mr. Parrish noted that the distribution of restitution could be improved if victims were required to provide their social security numbers for identification, although he acknowledged that victims are often reluctant to do so because of privacy concerns. A second recommendation was to have magistrates gather restitution information from the victims or make the restitution worksheets available to save time. See Attachment #3.

Tracy Little, Deputy Secretary with the Department of Correction, provided the committee with an overview of the work-release program and the distribution of those earnings. She also explained how restitution payments are monitored and collected for those offenders on probation. North Carolina was the first state to establish a work-release program, which began in 1957. Currently, there are



1,100 inmates out of 36, 000 on work release. She identified the minimum requirements that inmates must meet for work-release eligibility. See Attachment #4. Of particular interest to the committee members, Ms. Little pointed out that an inmate's legal obligation to the state is complete when he or she is released without supervision. Therefore, for low-level felons (Class F-I under structured sentencing) the obligation to pay restitution ends once the offender is released. Class B1-E felons, who are generally released under post-release supervision, may be ordered by the court to make restitution payments while on supervised probation. A community corrections officer will monitor those payments. Ms. Little explained that probationers make restitution payments directly to the clerk of court, who is responsible for distributing those payments. The failure to pay is considered a nonemergency technical violation, for which there is a continuum of sanctions. She further explained that the goal of the probation officer is to keep the offender working, staying in compliance with the law, and making payments. Therefore, it is rare for an offender to have his probation revoked and sentence activated for failure to pay. If the offender's probation is revoked and his sentence activated, the obligation to pay restitution ends. Ms. Little cited that in FY 03-4, probationers paid \$17.8 million in restitution.

Karen Jones, Senior Research and Policy Associate, NC Sentencing and Policy Advisory Commission explained that, in 1993, the General Assembly directed the Commission to study restitution policy. Although the recommendations were not adopted at that time, the Courts Commission later studied the same issue and made many of the same recommendations, which were ultimately enacted. See Attachment #5.

Tom Andrews, General Counsel with Administrative Office of the Courts, discussed distribution priorities and welcomed clarification on disbursing monies. Specifically, he pointed out that the statutes do not address the priority of the community service and the supervision fees. Thus, the AOC has followed generally accepted accounting principles that require current ongoing obligations to be paid before past due obligations are paid. See Attachment #6.

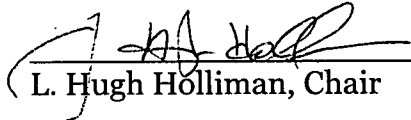
Next, Rep. Holliman introduced Whit Gibson, Clerk of Superior Court in Scotland County. Mr. Gibson explained how Scotland County disburses monies as soon as possible. He spoke to how victims perceive how the system works and the conflicts. They follow judge's orders and feel victims should be considered first in allocation of restitution payments. As for specific recommendations, he indicated that the system of joint and several liability of defendants needs to be overhauled and suggested consideration of an income tax intercept or debt setoff system. See his notes in Attachment #7.


At this time, Rep. Holliman to excused himself from the meeting to attend a previous planned function in his district.


Rep. Rick Eddins introduced Gregg Stahl with the Administrative Office of the Courts. Mr. Stahl spoke on how the collection rate of offender fees could be improved and shared recommendations. See Attachment #8.

After much discussion, it was evident that all parties on the agenda were in agreement and support of this issue. Chairman Eddins thanked everyone for attending and spoke to the importance of this committee and the legislation, and how everyone's input is valued.

Adjourned at 11:40 AM

  
L. Hugh Holliman, Chair

  
Rick Eddins, Chair

  
Carol Bowers, Committee Assistant

AH I

# VISITOR REGISTRATION SHEET

House Select Committee on Restitution

Thursday, October 21, 2004

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Whit Gibson	Clerk of Superior Court - Scotland County
Tamara Flinchum	NC Sentencing Commission
Tacey Little	DOC
Mel L. Custer	NCVAN
Emily Garrett	AOC
Tom Andrews	AOC
Karen Jones	NC Sentencing Commission
A.A. Adams	Victim Advocate
Katie Myers	NC Bar Association
John McHenry	COO Office



Attachment II

October 21, 2004

**To: House Select Committee on Restitution**

**From: Mel L. Chilton, Executive Director of NC Victim Assistance Network**

**Issues of Concern:**

- **The Administrative Office of the Courts reported to this Committee last session a rate of only 24% of all restitution ordered was actually collected in the 100 counties across the state of North Carolina.**
- **Judgments ordered by the court do not always include restitution even when there is loss of life or serious physical injury resulting in financial burdens for victims.**
- **Accountability: Judgments/Orders of Restitution do not always follow the inmate to prison and the system does not monitor the payment of this restitution. Many victims complain that orders of restitution are "written off" when the probationer absconds (leaves the state). After the case is closed he can return and commit his crime again without being held responsible for his/her crime.**

**Recommendation:**

- **Require funeral expenses be paid by the offender in all convictions involving loss of life. (Death by vehicle, Manslaughter, 2<sup>nd</sup> Degree, etc.) This should be required regardless of prison sentence and should not be waived until obligation is fulfilled.**
- **Require restitution in all cases involving physical injury. Obligation should not be waived with active sentence.**
- **Review work release income percentage and increase to the Federal maximum**
- **Work programs within the prison system**
- **Create Restitution Work Programs with Criminal Justice Partnership Programs**
- **Future earning potential should be taken into consideration and the obligation should never be waived.**

Bringing Balance To The System.

**STATUS REPORT**

**VICTIM RESTITUTION RECOMMENDATIONS**

**November, 1995**

**Prepared by Sandy C. Pearce  
and  
John Madler**

# STATUS OF N. C. SENTENCING COMMISSION'S VICTIM RESTITUTION RECOMMENDATIONS

## Mandate from the General Assembly

In August 1993, the General Assembly directed the Sentencing and Policy Advisory Commission to "study restitution policy and its place as a part of North Carolina's criminal justice system." The Commission was required to make a report of its findings and recommendations, including any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly.

In June 1994, the Sentencing Commission submitted Victim Restitution in North Carolina: A Report to the 1994 Session of the General Assembly. The report contained a description of the Sentencing Commission's study process, a summary of victim restitution procedures and practices in North Carolina, a statement of purpose and policy principles, and fifteen recommendations for enhancing the system for ordering, collecting, monitoring, and enforcing victim restitution. Four of the recommendations included legislation and eleven of the recommendations involved administrative agency action. During the 1995 Regular Session of the General Assembly, the Commission's legislative recommendations were presented in House Bill 155 and Senate Bill 210.

This report summarizes the status of both the legislative and administrative recommendations as of November 1, 1995.

## Status of Sentencing Commission Recommendations

### **Ordering Victim Restitution**

Recommendation 1: The Commission recommends that the Administrative Office of the Courts develop and adopt a standard form or standard information to address victim impact. The Commission further recommends that this be done in consultation with the Conference of District Attorneys and the Victim Assistance Network.

**STATUS:** In January 1995, the Conference of District Attorneys voted to revise their series of standardized Victim Impact Statements and patterned them after models produced by the National Office of Victims of Crime. The use of these forms is currently voluntary. Subject to legislation requiring the use of a Victim Impact Statement, the Administrative Office of the Court will ask the Judicial Forms Committee to consider adoption of a series of standard victim impact forms covering major crime categories.

Recommendation 2: The Commission recommends legislation to require the district attorney to seek to obtain a Victim Impact Statement in all felony cases and serious misdemeanor cases and to present it to the court.

STATUS: House Bill 155 was referred to the House Judiciary II Committee but was not taken up in the 1995 Regular Session of the General Assembly. Senate Bill 210 was referred to the Senate Judiciary II Committee. A fiscal note was prepared. The bill was given a favorable report by the Committee. The bill was re-referred to the Appropriations Committee, but the Session ended before further action was taken.

Recommendation 3: The Commission recommends that the Division of Adult Probation and Parole develop explicit policies and procedures for assessing the defendant's ability to pay restitution. These policies and procedures should describe pertinent financial information to be collected, verification of information procedures, staff responsible for collecting the information, point(s) in the process when the information is collected, process for relaying information to the court, and specification of the payment schedule by the court. The D.A.P.P. should develop agreements to obtain and share information about offenders' financial status with other components of the justice system, including Indigency Screening staff, Pretrial Services staff, Community Penalties staff, and TASC staff.

STATUS: The Division of Adult Probation and Parole created an internal task force to examine and revise existing intake and case management procedures. A new client database (OPUS) went on line October 30, 1995. It includes victim restitution information and a financial/employment statement which indicates the offender's monthly income and monthly expenses.

Recommendation 4: The Commission recommends further study of mandatory presentence reports after representatives of the Administrative Office of the Courts (Community Penalties), the Division of Adult Probation and Parole, and staff of the Sentencing Commission have conferred and developed cost estimates for preparing presentence reports for selected offender categories.

STATUS: The Administrative Office of the Courts and the Division of Adult Probation and Parole created an interagency task force to examine mutual policy issues. The agencies signed a joint agreement which establishes a formal working relationship between the agencies. The Division of Adult Probation and Parole and the Community Penalties Program Division are both examining methods for providing presentence information to judges. The Division of Adult Probation and Parole has created a new position, an administrative officer. In addition to providing limited supervision to offenders, when requested, these officers will provide information to judges for sentencing purposes. The Community Penalties Division is conducting a pilot study in four districts to determine how best to respond to requests from judges for community penalty plans.

Recommendation 5: The Commission recommends legislation to make the ordering of restitution a priority in all cases where it is appropriate.

STATUS: House Bill 155 was referred to the House Judiciary II Committee but was not taken up in the 1995 Regular Session of the General Assembly. Senate Bill 210 was referred to the Senate Judiciary II Committee. A fiscal note was prepared. The bill was given a favorable report by the Committee. The bill was re-referred to the Appropriations Committee, but the Session ended before further action was taken.

Recommendation 6: The Commission recommends legislation to make restitution the first priority among funds disbursed by the clerk of court.

STATUS: House Bill 155 was referred to the House Judiciary II Committee but was not taken up in the 1995 Regular Session of the General Assembly. Senate Bill 210 was referred to the Senate Judiciary II Committee. A fiscal note was prepared. The bill was given a favorable report by the Committee. The bill was re-referred to the Appropriations Committee, but the Session ended before further action was taken.

### **Collecting, Monitoring, and Disbursing Victim Restitution**

Recommendation 7: The Commission recommends that the Administrative Office of the Courts develop procedures to share automated information with the Division of Adult Probation and Parole in order to facilitate documentation and monitoring of restitution payments in cases of supervised probation.

STATUS: The AOC's new automated Financial Management System (FMS) has been installed in over half of the counties in the State. In each of these counties, AOC provides on-line access to restitution information for probation officers. The FMS will be available in 80 counties by the end of 1996.

Recommendation 8: The Commission recommends that the Administrative Office of the Courts expand its Financial Management System to include generation of monthly reports and issuance of bills, unless the Administrative Office of the Courts determines that such expansion is legally, administratively, or financially not feasible.

STATUS: No action has been taken.

Recommendation 9: The Commission recommends that defendants be permitted to use debit/credit cards to pay restitution, unless the Administrative Office of the Courts determines that the use of such cards is legally, administratively, or financially not feasible.

STATUS: The AOC has been advised by the Conference of Chief Justices and State Court Administrators that there is a problem with using debit/credit cards for payment of



court costs, fines and restitution. Debit/credit cards are regulated and the State is not allowed to pass along the cost of debit/credit card transactions to the debit/credit card holder. Normally, the business which processes the use of the debit/credit card pays the debit/credit card company for transactions. Since there is currently no distinction in the regulations between business and government, the government would have to pay a transaction fee to the debit/credit card company. Until there is a change in these regulations, the State Controller has issued policies prohibiting the use of general fund and highway fund money to pay the debit/credit card transaction fee.

Recommendation 10: The Commission recommends that the Division of Adult Probation and Parole continue efforts to establish a crime victim advocate program. Furthermore, the Commission supports the Department of Correction's efforts to secure grant funds to provide restitution monitoring information to victims in cases involving supervised probation and to provide post-sentencing victim advocacy services.

STATUS: The DAPP has received a grant from the Governor's Crime Commission for a victim services project. The goal of the grant is to provide direct services to crime victims of offenders on probation and parole. The grant provides funds for a Victim Services Coordinator and two Assistant Victim Services Coordinators. The Victim Services Coordinator will function as an advocate representing the needs of victims as they relate to correctional issues. This position will report directly to the Secretary of the Department of Correction. The Assistant Victim Services Coordinator positions will be located in two judicial districts - District 3B and District 10. The Assistant Victim Services Coordinator, under the supervision of the Judicial District Manager, will provide information and assistance to victims.

### **Enforcing Victim Restitution**

Recommendation 11: The Commission recommends that the Administrative Office of the Courts and the Division of Adult Probation and Parole jointly develop written policies to enforce compliance with victim restitution in unsupervised and supervised probation cases. The agencies should indicate staff monitoring and enforcement responsibilities and procedures including a series of increasingly negative consequences to be used routinely in response to default on the restitution payment plan (e.g. automatic docketing, billing, wage withholding, privatization of collection, withholding state-granted privileges).

STATUS: The DAPP created an internal task force to review and revise probation violation procedures. The new policies went into effect in October, 1994. The new policies provide guidance to field staff to use when considering options for specific violations, including failure to pay restitution. The foundation of the new policies is to graduate the intensity of community and intermediate sanctions prior to revocation.

Under current law, the authority to enforce orders or bring actions for failure to pay

restitution in unsupervised probation cases is the responsibility of the victim. No court official or agency has been assigned this responsibility. Consequently, the Administrative Office of the Courts has not developed policies to enforce compliance with victim restitution in unsupervised probation cases beyond the existing rules that pertain to recording and maintaining the judgement record.

Recommendation 12: The Commission recommends legislation to permit the court to extend a period of probation up to five years, for a total period of ten years, if the defendant was convicted of an offense, and to extend a period of probation up to three years, for a total of five years, if the defendant was under deferred prosecution, primarily for the purpose of allowing the defendant to complete a program of restitution.

STATUS: House Bill 155 was referred to the House Judiciary II Committee but was not taken up in the 1995 Regular Session of the General Assembly. Senate Bill 210 was referred to the Senate Judiciary II Committee. A fiscal note was prepared. The bill was given a favorable report by the Committee. The bill was re-referred to the Appropriations Committee, but the Session ended before further action was taken.

Recommendation 13: The Commission recommends that the court should have the authority to garnish a defendant's wages for default on a restitution obligation, unless the Administrative Office of the Courts determines that such garnishment is legally, administratively, or financially not feasible.

STATUS: The garnishment of wages is a widely used practice in the collection of child support in North Carolina. The AOC reports that the garnishment of wages to pay restitution requires statutory authorization by the General Assembly. They report that garnishment is a limited remedy due to the defendant's ability to pay. Since the top priority for garnishment of wages is child support, adding another category will create competition for the funds. It will be difficult locally to determine payments when multiple garnishments exist.

Recommendation 14: The Commission recommends that the Division of Adult Probation and Parole establish written policies and procedures to graduate the intensity of sanctions against probationers who default on restitution payments and study the use of restitution centers as a component of a continuum of sanctions against restitution payment violators.

STATUS: The DAPP created an internal task force to review and revise probation violation procedures. The new policies went into effect in October 1994. The new policies provide guidance to field staff to use when considering options for specific violations, including failure to pay restitution. The foundation of the new policies is to graduate the intensity of community and intermediate sanctions prior to revocation. The Task Force recommended seeking funds from the General Assembly to initiate a restitution residential center for offenders sentenced by the courts and a community work camp for probation violators. The DAPP will request funds from the General Assembly

for these pilot programs.

### **Victims Compensation Fund**

Recommendation 15: The Commission recommends to the General Assembly that the Victims Compensation Fund be maintained at a fully funded level.

STATUS: For Fiscal Year 94-95, the General Assembly allocated to the Victims Compensation Fund \$800,000 in recurring operating funds and \$3,000,000 in non-recurring funds to handle the backlog of compensation cases. During the 1995 Session, the General Assembly increased the annual funding from \$1,200,000 to \$2,000,000.

**DISTRIBUTION PRIORITIES**  
Thomas J. Andrews  
General Counsel  
North Carolina Administrative Office of the Courts

Attachment  
agenda  
6  
III

CONTENTS

I. WHAT DOES DISTRIBUTION PRIORITY MEAN, WHEN DOES IT MATTER, HOW DOES IT WORK

II. DISTRIBUTION PRIORITIES UNDER G.S. 7A-304(D).

A. Generally

B. Restitution

1. *Before the Victims Rights Act*

2. *Victim's Rights Act Amendment*

III. THE COMMUNITY SERVICE AND PROBATION SUPERVISION FEES IN RELATION TO THE SUBSECTION (D) CATEGORIES

1. *Community Service Fee and Probation Supervision Fee Have Highest Distribution Priority*

2. *Judge's Option to Order Restitution Paid Ahead of these Fees*

IV. SUMMARY EXAMPLE

V. LEGISLATIVE CLARIFICATION WOULD BE WELCOME

DISCUSSION

I. WHAT DOES DISTRIBUTION PRIORITY MEAN, WHEN DOES IT MATTER, HOW DOES IT WORK

In criminal cases, the idea of distribution priority means that all the money paid into court by a defendant on probation is distributed to the persons entitled to receive payments in a set order of priority.

Distribution priority matters only when the defendant has made some, but not all, of the payments due as a condition of probation. Priority does not matter if the defendant pays nothing. No one receives anything. Priority does not matter if the defendant pays everything. Everyone is paid in full.

When the defendant pay only part of what s/he owes, the concept of distribution priorities means that persons entitled to the first priority receive all money paid by the defendant until they are paid in full. When the first priority is paid in full, the next money received from the defendant goes to persons entitled to the second priority, and so forth.

This idea is illustrated by analogy to a set of bowls on a hill. Water is poured from a bucket into the highest bowl on the hill. The water keeps pouring until the highest bowl is full. When highest bowl is full the water overflows into the second highest bowl on the hill until that bowl is full, and so forth. When the bucket is empty one of the bowls will be only partly full and all the lower bowls lower will remain empty.

Priority is a common idea in our legal system. For example, it applies in:

- Bankruptcy and receivership, where claims against the debtor are paid in a set order of priority, and
- Decedent's estates, where claims against the decedent's estate are also paid in a set order of priority.

## II. DISTRIBUTION PRIORITIES UNDER G.S. 7A-304(D).

### A. Generally

G.S. 7A-304(d) currently reads as follows:

#### **"A-304. Costs in criminal actions.**

...

(d)(1) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

xb

- a. Sums in restitution to the victim entitled thereto;
- b. Costs due the county;
- c. costs due the city;
- d. fines to the county school fund;
- e. Sums in restitution prorated among the persons other than the victim entitled thereto;
- f. Costs due the State;
- g. Attorney's fees, including appointment fees assessed pursuant to G.S. 7A-455.1."

Under subsection (d), payments made by a defendant on probation are distributed first to the victim entitled to restitution until all the ordered restitution has been paid. Any further payments received from the defendant are then disbursed to the county until all costs due it are paid, and so forth. At some point, if the payments stop, some priority will be only partly paid and the lower priorities will not be paid at all.

Restitution will be discussed below. As to the other priorities:

“Costs due the county” include:

- The facilities fee (\$12.00 for district court and \$30.00 for superior court), if the case was disposed in a county facility; and
- a \$5.00 fee for each arrest or service of process in the case, other than those by a municipal law enforcement officer

“Costs due the city” include:

- the facilities fee, if the case was disposed in a municipal facility, and
- A \$5.00 fee for each arrest or service of process in the case by a city law enforcement officer.

“Fines due the county” are all fines assessed in the case.

“Costs due the State” include:

- contributions totaling \$7.00 to several law enforcement officer benefit funds, and
- a fee for the support of the General Court of Justice (\$76.00 in district court and \$83.00 in superior court), which is remitted to the State Treasurer.

“Attorney’s fees” include the fees and expenses of the defendant’s court-appointed attorney, if ordered repaid as a condition of probation.

Note that some priority categories contain two or more subcategories. Subsection (d) does not create priorities among these subcategories, nor does it specify that they be satisfied pro rata from the funds available for each priority category. If a priority category is only partially paid, the available money is disbursed to the person entitled to receive it (county, city, State Treasurer) who decides how to allocate it among the subcategories.

## B. Restitution

### 1. *Before the Victims Rights Act*

Before the enactment of the Crime Victims Rights Act in 1998, subsection (d) read as follows:

“(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- (1) Costs due the county;
- (2) Costs due the city;
- (3) Fines to the county school fund;
- (4) Sums in restitution prorated among the persons other entitled thereto;

- (5) Costs due the State;
- (6) Attorney's fees."

Under this statute, all restitution received the fourth distribution priority. The victim received no restitution until the costs due the county, the costs due the city and the fines due the county school fund were fully paid. Conversely, no money was distributed to pay the costs due the State or attorney's fees until restitution was paid in full.

Further, there was no distinction between types of restitution. The fourth priority included restitution due the victim, restitution ordered paid on behalf of the victim to satisfy debts for medical care, etc, and restitution ordered paid to an insurance company that had already compensated the victim for injuries suffered.

The fourth priority for restitution applied "unless otherwise ordered by the presiding judge." Therefore the presiding judge always had the option of moving restitution up to the first distribution priority under subsection (d). And long before the VRA was enacted, our sentencing forms contained an option that allowed the judge to order that the restitution be paid before any other subsection (d) priority.

## *2. Victim's Rights Act Amendment*

The Victim's Rights Act legislation amended subsection (d) to read:

"(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- (1) Sums in restitution to the victim entitled thereto;
- ~~(1)~~(2) Costs due the county;
- ~~(2)~~(3) Costs due the city;
- ~~(3)~~(4) Fines to the county school fund;
- (4)(5) Sums in restitution prorated among the persons other than the victim entitled thereto;
- ~~(5)~~(6) Costs due the State;
- ~~(6)~~(7) Attorney's fees."

As a result, there are now two distribution priorities for restitution. Restitution to the "victim entitled thereto" has the first distribution priority and is paid in full before any lower priorities receive anything. Restitution to persons other than the victim has the fifth distribution priority, and is paid only after all the higher priorities are paid in full.

There can be only one person in the first priority, since the word "victim" is singular. There could be more than one person in the fifth priority, since the word "persons" is plural and restitution is prorated among them.

Who is the "victim entitled thereto" and who are the "persons other than the victim?" The victim is a person who qualifies as a victim under the Victims Rights Act. Persons other than the victim are everyone else to whom restitution is ordered. Persons other than the victim include:

- All victims of offenses committed before December 1, 1998,
- Victims of crimes not listed in the definition of a victim in the Victims Rights Act,
- Persons who were not directly and proximately harmed as a result of the defendant's commission of the offense,
- Persons who provided assistance, medical care, insurance benefits or compensation to the victim.

(The reasoning that supports these conclusions is set out in a footnote<sup>1</sup>)

For restitution to victims who meet the VRA definitions, first priority distribution is mandatory. The court does not need to make any reference in the judgment to the distribution priority of that restitution. For restitution to persons other than the victim, fifth priority distribution is the default priority. Unless "otherwise ordered by the presiding judge" it remains in the fifth priority. The presiding judge may order otherwise, but restitution shall still "be made to the victim . . . before it is made to any other person, organization, corporation or association." G.S.15A-1340.37(b). Our sentencing forms continue to contain an option that allows the judge to order that all restitution be paid before any other subsection (d) priority. When this option is checked, restitution to the victim is paid first, restitution to persons other than the victim is paid second, and the other subsection (d) priorities are paid if any funds remain.

---

<sup>1</sup> The amendment to G.S. 7A-304(d) was enacted by S.L. 1998-212, §19.4(k). S.L. 1998-212 was that year's appropriations act. Section 19.4 was the vehicle by which the Crime Victim's Rights Act and related provisions were enacted. It has its own separate heading, which reads in part, "CREATE THE CRIME VICTIMS RIGHTS ACT/ . . . /CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES . . ." Section 19.4 is one coherent enactment. This section alone runs to 16 pages in the Ratified Bill published by the General Assembly when it was enacted. It has seventeen subsections. All of its subsections enact new laws or revise existing law to conform to the Crime Victims Rights Act. The subsection amending G.S. 7A-304(d) is one of those subsections. In this context the word "victim," which was introduced into subsection (d) by this amendment, has the same meaning in subsection (d) that it has in the Crime Victim's Rights Act. Victim is defined in the Victims Rights Act, in G.S. 15A-830(a)(7), as "a person against whom" one of the crimes listed in that section was committed. It is further defined in the restitution provisions of the Act, in G.S. 15A-1340.24(a), as a person directly and proximately harmed as a result of the defendant's commission of the offense."



### III. THE COMMUNITY SERVICE AND PROBATION SUPERVISION FEES IN RELATION TO THE SUBSECTION (D) CATEGORIES

A community service fee (currently a one time fee of \$200.00) must be paid by defendants who are ordered to perform community service in a DWI conviction or as a condition of probation or deferred prosecution in any other criminal case. G.S. 20-179.4(c), 143B-262.4(b). A probation supervision fee (currently \$30.00 per month for each month of supervision) must be paid by defendants who are placed on supervised probation. G.S. 15A-1343(c1). What is the distribution priority for these fees?

#### *1. Community Service Fee and Probation Supervision Fee Have Highest Distribution Priority*

Currently, payments received from the defendant are disbursed to satisfy the community service fee and the probation supervision fee before any moneys are disbursed to satisfy any of the subsection (d) priorities, unless the court orders otherwise. Here is why.

Subsection (d) prioritizes only the categories of obligation specified in that paragraph. It does not purport to prioritize any other monetary obligations imposed as a condition of probation. The community service fee and the probation supervision fee are not mentioned by name in subsection (d). They are not "costs due the State," because costs due that State are limited to the costs assessed under the provisions of Article 28 of Chapter 7A of the General Statutes, entitled "Uniform Costs and Fees in the Trial Divisions." This point is made clear by G.S. 7A-320, which provides, "The costs set forth in this Article are complete and exclusive, and in lieu of any other costs and fees."

There are only two choices for how to prioritize the community service fee and the probation service fee in relation to the obligations prioritized by subsection (d). These fees are either paid ahead of all the subsection (d) priorities or after all the subsection (d) priorities are fully paid in full. There is no statute or legal precedent that answers the question.

Highest priority distribution is most consistent with generally accepted bookkeeping and accounting principles. Current obligations are generally satisfied ahead of past due obligations. The community service fee and the probation supervision fee are current obligation, because they are fees for services currently being provided to the defendant. Subsection (d) obligations are all past due obligations, because they incurred as a consequence of the commission of the crime.

There is also a practical reason for giving these fees priority over the subsection (d) obligations. Highest priority classification is likely to produce more money for the subsection (d) priorities, especially restitution, than the lowest priority would. If these fees have the highest priority, and have been satisfied by whatever partial payments the defendant has made when the defendant's probation is being reviewed, these fees can be

waived or subordinated as an inducement to the defendant to complete the payment of his/her other obligations. If they have last priority this leverage is not available.

*X. Judge's Option to Order Restitution Paid Ahead of these Fees*

The presiding judge may order that restitution be paid ahead of even the community service fee and the probation supervision fee. If the presiding judge does not do so, limited funds will be disbursed to pay fees before being disbursed for any restitution, including restitution to the victim and restitution to persons other than the victim.

Merely ordering that restitution be paid first among the subsection (d) priorities does not accomplish this goal. The court must specifically order that restitution be paid ahead of the community service fee and the probation supervision fee. Our sentencing forms contain an second option that allows the judge to order that all restitution be paid before the community service and probation supervision fees

#### IV. SUMMARY EXAMPLE

Assume that the defendant is ordered to pay the following:

- \$200.00 community service fee
- \$30.00 probation supervision fee per month
- \$500.00 restitution to the victim
- \$30.00 superior court facilities fee
- \$5.00 arrest fee to the county
- \$200.00 fine
- \$500.00 to the Crime Victim's Compensation Fund, for benefits it has paid the victim
- \$7.00 in contributions to law enforcement office benefit funds
- \$83.00 superior court general court of justice fee
- \$500.00 attorney's fee.

Assume further that the defendant's probation is revoked or terminated after 5 months of supervision, and that the payments received through that date total \$900.00.

If no restitution related option is checked on the form, the \$900.00 will be distributed as follows

- \$200.00 to the community service program
- \$150.00 to the Division of Community Correction, for 5 months of probation supervision,
- \$500.00 to the victim
- \$35.00 to the county as costs due the county
- \$15 to the county as partial payment of the fine
- Nothing to the Crime Victims' Compensation Fund, for the restitution ordered to it
- Nothing to the State Treasurer for costs due the State
- Nothing to the Indigent Person's Attorney Fee Fund for the attorney's fee.

The first restitution option on the judgment forms reads, "All payments received by the Clerk shall be distributed pro rata among the persons entitled to restitution in this priority // first among all G.S. 7A-304(d) priorities." If only this option is checked on the judgment form, the \$900.00 will be distributed as follows:

- \$200.00 to the community service program
- \$150.00 to DCC
- \$500.00 to the victim
- \$150 to the Crime Victims' Compensation Fund
- Nothing to anyone else

The second restitution option on the judgment forms reads, "All payments received by the Clerk shall be distributed pro rata among the persons entitled to restitution in this priority // first among all G.S. 7A-304(d) priorities // and before payment of community service and probation supervision fees." If this option is also checked on the judgment form, the \$900.00 will be distributed as follows:

- \$500.00 to the victim
- \$400.00 to the Crime Victims' Compensation Fund
- Nothing to anyone else.

#### V. LEGISLATIVE CLARIFICATION WOULD BE WELCOME

AOC has no position on the merits of the current priorities. However we would welcome any legislative clarification, especially these two questions:

- What priority does the General Assembly believe restitution should have in relationship to the community service fee, the probation supervision fee and any other obligations not listed in subsection (d)?
- How should the subcategories in the same distribution priority be treated when there is not enough money to pay all the subcategories in full?

Attachment IV  
Little

**Work Release Numbers (FY 03-04)**

- Average Account Balance
- Amount paid to General Fund

\$2,078  
\$4,202,755

**Restitution Issues for Probationers/Parolees**

Statutory Authority: N.C.G.S. § 15A-1340.34 et seq.

- Sentencing court determines amount of fines, costs, fees and restitution
- Offenders make payments directly to the Clerk of Court — payment sched. — total obligation + time on superv.
- Officers access AOC's Financial Management System to see amount paid, how the Clerk's office applied the payment and the remaining balance
- Officers confirm payments based on level of supervision
  - Community Level 1 every month
  - Community Level 2 every 2 months
  - Community Level 3 every 3 months
  - Intermediate Level every month
- Failure to pay is considered a non-emergency technical violation
- Officers work with offenders to help them meet obligations
- Court may extend period of supervision to allow the offender to continue to pay outstanding indebtedness

**Restitution Numbers for Probation/Parole/Post-Release**

(FY 2003-04)

- Total Number of Offenders
- Offenders with Restitution Obligations
- Payments from DCC Offenders

178,789  
56,486  
\$17,778,616.93

Restitution

32% of all offenders have restitution obligations


Revocation #'s

44% of all revocations are technical only

9010 of 20,660

→ 7% WTR offenders who have not ordered + amt paid

Thank You, Mr. Chairman + Members

Attachment 

- In 1993, G.A. directed <sup>S.C.</sup> ~~ADPAA~~ to study restriction policy. This directive resulted in a report submitted by S.C. to G.A. in June 1994.
- This report contained 15 recomm. 4 of which included legis. proposals + 11 of which involved adminis. agency action - (legis. recomm. were introduced as bills during 95 Reg. Session but were not taken up)
- Report before you summarized status of these recomm. as of Nov. 1, 1995.
- [Courts Commission took up some of recomm. + subseq.
- ~~Ex~~ Comm. has not studied the issue of restriction since that time - <sup>panel</sup>
- <sup>sent</sup> Comm. certainly recognizes importance of victim restit. + rights and is willing to offer our assistance in any way to this Committee.

Karen Jones

**DISTRIBUTION PRIORITIES**  
Thomas J. Andrews  
General Counsel  
North Carolina Administrative Office of the Courts

CONTENTS

I. WHAT DOES DISTRIBUTION PRIORITY MEAN, WHEN DOES IT MATTER, HOW DOES IT WORK

II. DISTRIBUTION PRIORITIES UNDER G.S. 7A-304(D).

A. Generally

B. Restitution

1. *Before the Victims Rights Act*

2. *Victim's Rights Act Amendment*

III. THE COMMUNITY SERVICE AND PROBATION SUPERVISION FEES IN RELATION TO THE SUBSECTION (D) CATEGORIES

1. *Community Service Fee and Probation Supervision Fee Have Highest Distribution Priority*

2. *Judge's Option to Order Restitution Paid Ahead of these Fees*

IV. SUMMARY EXAMPLE

V. LEGISLATIVE CLARIFICATION WOULD BE WELCOME

DISCUSSION

I. WHAT DOES DISTRIBUTION PRIORITY MEAN, WHEN DOES IT MATTER, HOW DOES IT WORK

In criminal cases, the idea of distribution priority means that all the money paid into court by a defendant on probation is distributed to the persons entitled to receive payments in a set order of priority.

Distribution priority matters only when the defendant has made some, but not all, of the payments due as a condition of probation. Priority does not matter if the defendant pays nothing. No one receives anything. Priority does not matter if the defendant pays everything. Everyone is paid in full.

Attachment III

When the defendant pay only part of what s/he owes, the concept of distribution priorities means that persons entitled to the first priority receive all money paid by the defendant until they are paid in full. When the first priority is paid in full, the next money received from the defendant goes to persons entitled to the second priority, and so forth.

This idea is illustrated by analogy to a set of bowls on a hill. Water is poured from a bucket into the highest bowl on the hill. The water keeps pouring until the highest bowl is full. When highest bowl is full the water overflows into the second highest bowl on the hill until that bowl is full, and so forth. When the bucket is empty one of the bowls will be only partly full and all the lower bowls lower will remain empty.

Priority is a common idea in our legal system. For example, it applies in:

- Bankruptcy and receivership, where claims against the debtor are paid in a set order of priority, and
- Decedent's estates, where claims against the decedent's estate are also paid in a set order of priority.

## II. DISTRIBUTION PRIORITIES UNDER G.S. 7A-304(D).

### A. Generally

G.S. 7A-304(d) currently reads as follows:

#### **"A-304. Costs in criminal actions.**

...

(d)(1) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- a. Sums in restitution to the victim entitled thereto;
- b. Costs due the county;
- c. costs due the city;
- d. fines to the county school fund;
- e. Sums in restitution prorated among the persons other than the victim entitled thereto;
- f. Costs due the State;
- g. Attorney's fees, including appointment fees assessed pursuant to G.S. 7A-455.1."

Under subsection (d), payments made by a defendant on probation are distributed first to the victim entitled to restitution until all the ordered restitution has been paid. Any further payments received from the defendant are then disbursed to the county until all costs due it are paid, and so forth. At some point, if the payments stop, some priority will be only partly paid and the lower priorities will not be paid at all.

Restitution will be discussed below. As to the other priorities:

“Costs due the county” include:

- The facilities fee (\$12.00 for district court and \$30.00 for superior court), if the case was disposed in a county facility, and
- a \$5.00 fee for each arrest or service of process in the case, other than those by a municipal law enforcement officer

“Costs due the city” include:

- the facilities fee, if the case was disposed in a municipal facility, and
- A \$5.00 fee for each arrest or service of process in the case by a city law enforcement officer.

“Fines due the county” are all fines assessed in the case.

“Costs due the State” include:

- contributions totaling \$7.00 to several law enforcement officer benefit funds, and
- a fee for the support of the General Court of Justice (\$76.00 in district court and \$83.00 in superior court), which is remitted to the State Treasurer.

“Attorney’s fees” include the fees and expenses of the defendant’s court-appointed attorney, if ordered repaid as a condition of probation.

Note that some priority categories contain two or more subcategories. Subsection (d) does not create priorities among these subcategories, nor does it specify that they be satisfied pro rata from the funds available for each priority category. If a priority category is only partially paid, the available money is disbursed to the person entitled to receive it (county, city, State Treasurer) who decides how to allocate it among the subcategories.

## B. Restitution

### 1. *Before the Victims Rights Act*

Before the enactment of the Crime Victims Rights Act in 1998, subsection (d) read as follows:

“(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- (1) Costs due the county;
- (2) Costs due the city;
- (3) Fines to the county school fund;
- (4) Sums in restitution prorated among the persons other entitled thereto;



- (5) Costs due the State;
- (6) Attorney's fees."

Under this statute, all restitution received the fourth distribution priority. The victim received no restitution until the costs due the county, the costs due the city and the fines due the county school fund were fully paid. Conversely, no money was distributed to pay the costs due the State or attorney's fees until restitution was paid in full.

Further, there was no distinction between types of restitution. The fourth priority included restitution due the victim, restitution ordered paid on behalf of the victim to satisfy debts for medical care, etc, and restitution ordered paid to an insurance company that had already compensated the victim for injuries suffered.

The fourth priority for restitution applied "unless otherwise ordered by the presiding judge." Therefore the presiding judge always had the option of moving restitution up to the first distribution priority under subsection (d). And long before the VRA was enacted, our sentencing forms contained an option that allowed the judge to order that the restitution be paid before any other subsection (d) priority.

## *2. Victim's Rights Act Amendment*

The Victim's Rights Act legislation amended subsection (d) to read:

"(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- (1) Sums in restitution to the victim entitled thereto;
- ~~(1)~~(2) Costs due the county;
- ~~(2)~~(3) Costs due the city;
- ~~(3)~~(4) Fines to the county school fund;
- ~~(4)~~(5) Sums in restitution prorated among the persons other than the victim entitled thereto;
- ~~(5)~~(6) Costs due the State;
- ~~(6)~~(7) Attorney's fees."

As a result, there are now two distribution priorities for restitution. Restitution to the "victim entitled thereto" has the first distribution priority and is paid in full before any lower priorities receive anything. Restitution to persons other than the victim has the fifth distribution priority, and is paid only after all the higher priorities are paid in full.

There can be only one person in the first priority, since the word "victim" is singular. There could be more than one person in the fifth priority, since the word "persons" is plural and restitution is prorated among them.

Who is the "victim entitled thereto" and who are the "persons other than the victim?" The victim is a person who qualifies as a victim under the Victims Rights Act. Persons other than the victim are everyone else to whom restitution is ordered. Persons other than the victim include:

- All victims of offenses committed before December 1, 1998,
- Victims of crimes not listed in the definition of a victim in the Victims Rights Act,
- Persons who were not directly and proximately harmed as a result of the defendant's commission of the offense,
- Persons who provided assistance, medical care, insurance benefits or compensation to the victim.

(The reasoning that supports these conclusions is set out in a footnote<sup>1</sup>)

For restitution to victims who meet the VRA definitions, first priority distribution is mandatory. The court does not need to make any reference in the judgment to the distribution priority of that restitution. For restitution to persons other than the victim, fifth priority distribution is the default priority. Unless "otherwise ordered by the presiding judge" it remains in the fifth priority. The presiding judge may order otherwise, but restitution shall still "be made to the victim . . . before it is made to any other person, organization, corporation or association." G.S.15A-1340.37(b). Our sentencing forms continue to contain an option that allows the judge to order that all restitution be paid before any other subsection (d) priority. When this option is checked, restitution to the victim is paid first, restitution to persons other than the victim is paid second, and the other subsection (d) priorities are paid if any funds remain.

---

<sup>1</sup> The amendment to G.S. 7A-304(d) was enacted by S.L. 1998-212, §19.4(k). S.L. 1998-212 was that year's appropriations act. Section 19.4 was the vehicle by which the Crime Victim's Rights Act and related provisions were enacted. It has its own separate heading, which reads in part, "CREATE THE CRIME VICTIMS RIGHTS ACT/ . . . /CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES . . ." Section 19.4 is one coherent enactment. This section alone runs to 16 pages in the Ratified Bill published by the General Assembly when it was enacted. It has seventeen subsections. All of its subsections enact new laws or revise existing law to conform to the Crime Victims Rights Act. The subsection amending G.S. 7A-304(d) is one of those subsections. In this context the word "victim," which was introduced into subsection (d) by this amendment, has the same meaning in subsection (d) that it has in the Crime Victim's Rights Act. Victim is defined in the Victims Rights Act, in G.S. 15A-830(a)(7), as "a person against whom" one of the crimes listed in that section was committed. It is further defined in the restitution provisions of the Act, in G.S. 15A-1340.24(a), as a person directly and proximately harmed as a result of the defendant's commission of the offense."

### III. THE COMMUNITY SERVICE AND PROBATION SUPERVISION FEES IN RELATION TO THE SUBSECTION (D) CATEGORIES

A community service fee (currently a one time fee of \$200.00) must be paid by defendants who are ordered to perform community service in a DWI conviction or as a condition of probation or deferred prosecution in any other criminal case. G.S. 20-179.4(c), 143B-262.4(b). A probation supervision fee (currently \$30.00 per month for each month of supervision) must be paid by defendants who are placed on supervised probation. G.S. 15A-1343(c1). What is the distribution priority for these fees?

#### *1. Community Service Fee and Probation Supervision Fee Have Highest Distribution Priority*

Currently, payments received from the defendant are disbursed to satisfy the community service fee and the probation supervision fee before any moneys are disbursed to satisfy any of the subsection (d) priorities, unless the court orders otherwise. Here is why.

Subsection (d) prioritizes only the categories of obligation specified in that paragraph. It does not purport to prioritize any other monetary obligations imposed as a condition of probation. The community service fee and the probation supervision fee are not mentioned by name in subsection (d). They are not "costs due the State," because costs due that State are limited to the costs assessed under the provisions of Article 28 of Chapter 7A of the General Statutes, entitled "Uniform Costs and Fees in the Trial Divisions." This point is made clear by G.S. 7A-320, which provides, "The costs set forth in this Article are complete and exclusive, and in lieu of any other costs and fees."

There are only two choices for how to prioritize the community service fee and the probation service fee in relation to the obligations prioritized by subsection (d). These fees are either paid ahead of all the subsection (d) priorities or after all the subsection (d) priorities are fully paid in full. There is no statute or legal precedent that answers the question.

Highest priority distribution is most consistent with generally accepted bookkeeping and accounting principles. Current obligations are generally satisfied ahead of past due obligations. The community service fee and the probation supervision fee are current obligation, because they are fees for services currently being provided to the defendant. Subsection (d) obligations are all past due obligations, because they incurred as a consequence of the commission of the crime.

There is also a practical reason for giving these fees priority over the subsection (d) obligations. Highest priority classification is likely to produce more money for the subsection (d) priorities, especially restitution, than the lowest priority would. If these fees have the highest priority, and have been satisfied by whatever partial payments the defendant has made when the defendant's probation is being reviewed, these fees can be

waived or subordinated as an inducement to the defendant to complete the payment of his/her other obligations. If they have last priority this leverage is not available.

*2. Judge's Option to Order Restitution Paid Ahead of these Fees*

The presiding judge may order that restitution be paid ahead of even the community service fee and the probation supervision fee. If the presiding judge does not do so, limited funds will be disbursed to pay fees before being disbursed for any restitution, including restitution to the victim and restitution to persons other than the victim.

Merely ordering that restitution be paid first among the subsection (d) priorities does not accomplish this goal. The court must specifically order that restitution be paid ahead of the community service fee and the probation supervision fee. Our sentencing forms contain an second option that allows the judge to order that all restitution be paid before the community service and probation supervision fees

#### IV. SUMMARY EXAMPLE

Assume that the defendant is ordered to pay the following:

- \$200.00 community service fee
- \$30.00 probation supervision fee per month
- \$500.00 restitution to the victim
- \$30.00 superior court facilities fee
- \$5.00 arrest fee to the county
- \$200.00 fine
- \$500.00 to the Crime Victim's Compensation Fund, for benefits it has paid the victim
- \$7.00 in contributions to law enforcement office benefit funds
- \$83.00 superior court general court of justice fee
- \$500.00 attorney's fee.

Assume further that the defendant's probation is revoked or terminated after 5 months of supervision, and that the payments received through that date total \$900.00.

If no restitution related option is checked on the form, the \$900.00 will be distributed as follows

- \$200.00 to the community service program
- \$150.00 to the Division of Community Correction, for 5 months of probation supervision,
- \$500.00 to the victim
- \$35.00 to the county as costs due the county
- \$15 to the county as partial payment of the fine
- Nothing to the Crime Victims' Compensation Fund, for the restitution ordered to it
- Nothing to the State Treasurer for costs due the State
- Nothing to the Indigent Person's Attorney Fee Fund for the attorney's fee.

The first restitution option on the judgment forms reads, "All payments received by the Clerk shall be distributed pro rata among the persons entitled to restitution in this priority // first among all G.S. 7A-304(d) priorities." If only this option is checked on the judgment form, the \$900.00 will be distributed as follows:

- \$200.00 to the community service program
- \$150.00 to DCC
- \$500.00 to the victim
- \$150 to the Crime Victims' Compensation Fund
- Nothing to anyone else

The second restitution option on the judgment forms reads, "All payments received by the Clerk shall be distributed pro rata among the persons entitled to restitution in this priority // first among all G.S. 7A-304(d) priorities // and before payment of community service and probation supervision fees." If this option is also checked on the judgment form, the \$900.00 will be distributed as follows:

- \$500.00 to the victim
- \$400.00 to the Crime Victims' Compensation Fund
- Nothing to anyone else.

## V. LEGISLATIVE CLARIFICATION WOULD BE WELCOME

AOC has no position on the merits of the current priorities. However we would welcome any legislative clarification, especially these two questions:

- What priority does the General Assembly believe restitution should have in relationship to the community service fee, the probation supervision fee and any other obligations not listed in subsection (d)?
- How should the subcategories in the same distribution priority be treated when there is not enough money to pay all the subcategories in full?

- Sep

by Hollman  
Edwards

Gibson  
Attachment VII

### Thoughts and perceptions -

1. Victims believe (appropriately) that they should be compensated for their loss
2. Not all debts are capable of being paid
3. N.C. cannot afford to incur all debt that cannot or do not pay money owed.
4. We cannot satisfy all  
we can do all we can  
~~but can do better~~ Are we?

1. Deal with victim's perception and anger  
hard to educate + reason when they think  
we are incompetent or

insensitive

Collect all from those who can afford or be  
persuaded motivated to pay -

Collect from those who can pay some the  
most we can.

So

then the parameters of these <sup>public</sup> perceptions +  
shortcomings the @ debt limited ability to pay.

one one inadequacy of communication  
and consistency

and manually monitoring some things

What can we do!

State of North Carolina  
Scotland County

C. Whitfield Gibson  
Clerk of Superior Court

Telephone: 910-277-3243

P.O. Box 769  
Lenoir, NC 28353



# **RESTITUTION:**

*Gibson*

## **I. GENERALLY THE CLERK OF SUPERIOR COURT:**

- 1) RECORDS THE AMOUNT OF RESTITUTION TO BE PAID,**
- 2) COLLECTS THE MONIES THAT ARE PAID BY THE DEFENDANT, AND**
- 3) DISTRIBUTES THOSE MONIES ACCORDING TO THE JUDGE'S ORDER.**

## **II. PROBLEMS THAT OCCUR:**

- 1) INFORMATION NOT PROVIDED TO CLERK ABOUT THE AMOUNT OF RESTITUTION, RECIPIENT'S INFORMATION (ADDRESS, SOCIAL SECURITY NUMBER, ETC.).**
- 2) VICTIM'S DO NOT UNDERSTAND WHY THEIR MONETARY LOSS IS NOT A PRIORITY WITH THE COURT SYSTEM.**
- 3) DEFENDANTS DO NOT PAY MONIES AND PROBATION OFFICERS DO NOT TREAT "NON-PAYMENT" WITH SAME SEVERITY AS OTHER VIOLATIONS.**
- 4) CLERK'S OFFICES MUST MANUALLY MONITOR "UNSUPERVISED" PROBATION CASES IN ORDER TO BRING NON-COMPLIANT DEFENDANTS BACK TO COURT FOR NON-PAYMENT.**
- 5) "JOINTLY AND SEVERALLY" LIABLE IS A CONFUSING CONCEPT, BUT ULTIMATELY A RIGHT METHOD OF COLLECTING RESTITUTION.**
- 6) DEFENDANTS BEING GIVEN TIME TO PAY RESTITUTION WHEN THEY COULD PAY RESTITUTION IF THE CASE WAS "CONTINUED" FOR 30 TO 60 DAYS. MORE RESTITUTION WOULD BE PAID EARLY ELIMINATING THE NEED FOR PROBATIONARY SENTENCES.**
- 7) PROBATION IS SOMETIMES TERMINATED BEFORE ALL OF RESTITUTION IS COLLECTED.**

## **RECOMMENDATIONS ON RESTITUTION ISSUES:**

- 1. AUTOMATED SYSTEM BY WHICH CLERK OF COURT (AND POSSIBLY COMMUNITY CORRECTIONS) CAN MONITOR AND CITE BACK INTO COURT THOSE INDIVIDUALS ORDERED TO PAY RESTITUTION WHO HAVE FAILED TO DO SO OR FALLEN BEHIND IN THE ORDERED PAYMENTS.**
- 2. PROVIDE FOR "INCOME TAX RETURN" INTERCEPT TO RECOVER RESTITUTION ORDERED, BUT NOT COLLECTED, AFTER A JUDGEMENT HAS BEEN ENTERED AGAINST THE DEFENDANT.**
- 3. RE-PRIORITIZE THE ORDER OF DISTRIBUTION OF MONEY PAID INTO THE CLERK SO THAT THE PAYMENT AND DISTRIBUTION OF RESTITUTION TO VICTIMS IS THE "FIRST" (OR AT LEAST A MUCH HIGHER) PRIORITY.**
- 4. OVERHAUL AND MAKE LESS COMPLICATED AND CONFUSING THE PRACTICE OF ORDERING THAT DEFENDANTS BE MADE "JOINTLY AND SEVERALLY" LIABLE FOR RESTITUTION PAYMENTS.**
- 5. ENCOURAGE JUDGES TO BE MORE DEMANDING OF DEFENDANTS WHEN ORDDERING PAYMENT OF RESTITUTION, NOT GIVING SO MUCH TIME TO PAY. PERHAPS CONTINUING THE CASE FOR 30-60 DAYS SO THAT DEFENDANT MAY PAY RESTITUTION IN ORDER NOT TO HAVE A PROBATIONARY SENTENCE.**
- 6. ENCOURAGE PROBATION OFFICERS TO PLACE SAME EMPHASIS ON "MONETARY" ISSUES AS THEY DO ION OTHER CONDITIONS OF PROBATION.**



## **Improving the Collection Rate of Offender Fees**

**A Second Report to Appropriation Chairs**

**And**

**Subcommittee on Justice and Public Safety Chairs**

**Prepared by the Administrative Office of the Courts and the Department of Correction**

**April 1, 2004**

*Stable  
Attachment VII*

### **COLLECTION OF OFFENDER FEES**

**SECTION 16.15.** The Department of Correction and the Judicial Department shall report by April 1, 2004, to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the success of their efforts to improve the collection rate of offender fees for probationers and for nonprobationers sentenced to community service and on any recommendations for statutory or procedural changes that will improve the collection of financial obligations from offenders.

The report shall include a comparison of the percentage of offender fees collected in the most recent year compared to prior years, including the percentage of offenders who were ordered to pay fees and the percentage of offenders who actually paid those fees. The report shall also include the total offender fees collected, in dollars and as a percentage of the fees ordered, and the fees that could have been ordered based on the sentence and conditions imposed by the judge. If any of this information cannot be collected, the report shall include a description of the data collection issues and a plan for addressing those issues.

### **Overview**

Representatives of the Department of Correction, Division of Community Corrections and the Administrative Office of the Courts met on several occasions to re-review and discuss the system of collecting offender fees. The groups' primary goal was to review the recommendations from last year's report and to develop a reliable means of calculating a collection rate for offender fees and to make any additional recommendations for improving the collection rates.

Under the current process, offenders are assessed a supervision fee while on supervised probation and a community service fee if ordered to perform community service. Judges must, by statute, order probation supervision fees to offenders placed on supervised probation or assign the community service fee unless the offender is unable to pay. Supervision fees are assigned monthly and under the AOC's accounting system, are credited to DCC and the General Fund when paid. In practice, offenders not making payments to the clerk's office on a regular basis are not revoked for this violation of the condition of their probation but often judges will order modifications to the offender's probation and remit all supervision fees paid against other court imposed fees including victim restitution and attorney's fees. Thus, supervision fees actually paid by an offender are reposted as a victim restitution payment. It has also been the practice that offenders must pay the community service fee prior to performing their community service. There have been some recent changes in that practice, especially since the increase in the fee.

Collections of criminal court, probation, and community service fees have gone up each year since FY 2001-02. This fiscal year the AOC is projecting to collect \$75.7 million in criminal

court fees; \$16.9 million in probation supervision fees and \$8.2 million in community service fees. The total projected amount for FY2003-2004 is \$100,884,422 which is an 11% increase in fees collected over the \$91,133,010 collected in FY2002-2003. Fee collected and comparisons to previous years are illustrated on the following table.

### Three-Year Comparisons of Selected Fees

	Actual 2003 as a % of Projected	Current Fee as % of 01-02	Projected Full Year 2003-04	2003-04 Through April 2004	Actual 2002-03	Actual 2001-02
Criminal court fees	90%	117%	\$ 75,747,396	\$ 63,122,830	\$69,989,561	\$66,744,747
Probation fees	133%	150%	\$ 16,892,370	\$ 14,076,975	\$14,337,121	\$10,832,056
Community Service fees	133%	200%	\$ 8,244,656	\$ 6,870,547	\$ 6,806,328	\$ 5,280,879

### Collection Rates

There is some difficulty in calculating annual collection rates for offenders on supervised and unsupervised probation. The Financial Management System (FMS) is an accounts payable system used by AOC in the Clerks' of Superior Court Offices to disperse payments made by offenders as ordered by the court and outlined in the general statutes. There are two practices used by Clerks' offices to establish offender accounts in FMS. The first practice is to enter all offenders who are on probation and ordered by the court to pay fees and fines into the system. Approximately one fourth of all Clerks offices follow this practice. The remaining Clerks' offices establish the FMS account for an offender when the first payment is paid. Thus, if a payment is never paid, then the offender is never entered into FMS.

By comparing offenders who are in the AOC's Automated Criminal Information System (ACIS) to offenders in FMS and matching case numbers, the two practices become obvious. In cases in which offenders are currently on supervised probation, 80% of the over 99,000 cases were matched with an account in the FMS system. The matching ranged from a low of 40% to a high of 95% of all cases in the county. In about two thirds of the counties, 75% of active supervised probation cases were found in the FMS system. The numbers are quite different in unsupervised probation cases. Only 36% of the nearly 27,000 unsupervised probation cases were matched from ACIS to FMS. The matching ranged from low of only 1% to a high of 100%. In 51 of the counties, less than half of the unsupervised probation cases were found the FMS system. This is illustrated in the following table:

### Probation Cases Matched in FMS from ACIS

Active Probation Cases	ACIS	FMS	% In FMS
Supervised Probation cases	99,318	79,909	80%
Unsupervised Probation cases	26,847	9,793	36%

Actual annual collection rates cannot be accurately calculated, as it is not readily clear what is to be and what can be measured. It is common practice for some or all fees and costs in supervised probation cases to be waived before the termination of supervision if all other conditions of probation have been satisfied. Thus, looking at the number of offenders on active probation who have made no payment in cases where fees and costs have been ordered can give an indication of rate of non payment. By comparing offenders on active probation in ACIS matched with accounts found in FMS in which no payment had been made, there is a inverse correlation to the number of cases matched and the number of non payments. The fewer cases found in FMS the

lower the non-payment rate and conversely, the more cases found in FMS the higher the non-payment rate.

Thus, to look at true non-payment rates, the focus should be placed on counties that place all offenders owing fees and costs into FMS. In active supervised probation cases, there are 26 counties that have a 90% or greater rate of offenders entered into FMS. These counties have a no payment rate of 47% of all of their cases. The rate for these counties ranges from a low of 33% to a high of 53%. The other 74 counties, which have rates of cases entered into FMS of less than 90% have a no payment rate of 49%. The rate for these counties ranges from a low of 34% to a high of 69%.

In looking at non-payment rates for cases of unsupervised probation, the focus should also be placed on counties that place all offenders owing fees and costs into FMS. In active unsupervised probation cases, there are 25 counties that have a 90% or greater rate of offenders entered into FMS. These counties have a no payment rate of 69% of all of their cases. The rate for these counties ranges from a low of 29% to a high of 88%. The other 75 counties, which have rates of cases entered into FMS of less than 90% have a no payment rate of 89%. The rate for these counties ranges from a low of 33% to a high of 100%.

The following table illustrates the non-payment rates.

#### **Non-payment Rates in Supervised and Unsupervised Cases**

<b>Active Probation Cases</b>	<b>Number of Non-Payment Cases</b>	<b>Percent Non-Payment</b>	<b>Range</b>
Supervised Probation cases in which counties have a 90% or greater rate of offenders entered into FMS	12,071	47%	33% - 53%
Supervised Probation cases in which counties have a less than 90% of offenders entered into FMS	33,989	49%	34% - 69%
Unsupervised Probation cases in which counties have a 90% or greater rate of offenders entered into FMS	3,306	69%	29% - 88%
Unsupervised Probation cases in which counties have a less than 90% rate of offenders entered into FMS	19,247	89%	33% - 100%

The non-payment rate can be impacted by a number of factors that are not obvious or apparent through these rates. These factors range from local culture, to resource issues to the economic well being of the county. However, it is clear that those on supervised probation have a lower percentage of non-payment cases than unsupervised probation. It is important to note that the vast majority of supervised probation cases in which fees and costs are due are in FMS and the variance of non-payment rate between those counties, which enter all cases into FMS versus those that generally only enter cases as they make payments, is not very great. The difference in non-payment rates in unsupervised probation rates is greater between the two practices but is very high in both. This could be partially explained by this analysis being only a snapshot of payment history and some unsupervised cases may have a date certain future payment date.

#### **Recommendations**

This section contains an update of the recommendations that were contained in last year's report. Some of these recommendations require statutory changes while others could be accomplished through the administrative processes of the two agencies. However, it was agreed by both agencies that caution should be noted in the enactment of means and methods aimed at increasing collection rates that might adversely affect the collection of other court mandated fees and costs

including victim restitution or that might increase length of stay on probation or revocation rates. There was a feeling among the committee that offenders have finite resources and thus an increase in the collection rate of supervision fees may cause a decrease in the collection of victim restitution or attorneys' fees. There was also agreement that increasing the length of time on probation or revocation rates would be counterproductive in that these methods cost more than they return.

The following is a list of the recommendations:

- **Consider changing monthly supervision fee to flat fee and adding program participation fees such as electronic monitoring, drug testing, drug assessment and drug treatment.** This recommendation would take a statutory change but this would make the supervision fee consistent with the Community Service fee and as such would be a definitive cost identified for the offender. The flat fee could be set as a fee of \$300 paid regardless of the number of months under supervision or regardless of the number of cases for which the offender is being supervised. This would eliminate the duplicative collection of fees from offenders under probation in more than one county and the subsequent remittance of those fees. Requiring offenders to pay a \$90 fee for participation in electronic monitoring, and a \$50 - \$150 fee for drug testing, assessment and treatment would parallel costs assessed in DWI cases. The current accounting system (FMS) could handle this but there are a number of forms and practices that would have to be changed.

*Status: No action from last year.*

- **Supervision fee not to be remitted after payment.** This would take a statutory change to prohibit what is becoming a common practice. Judges would no longer be able to remit fees paid to supervision to be paid as other fees or costs. However, judges would retain the discretion to waive supervision fees at the time of conviction or remit fees not already paid in a modification order or a termination of probation order. This would require training for judges and probation officers.

*Status: No action from last year.*

- **Revoke driving privileges for non-payment.** This would require statutory change. Currently, an offender's driving privilege is revoked for non-payment of court-imposed fees and fines for cases in Chapter 20. This would extend the revocations to all felonies and serious misdemeanors in which probation is ordered.

*Status: No action from last year.*

- **Tax offsets, wage garnishments.** This would require statutory change. Currently tax offsets and wage garnishments are used in child support and other selected cases. Some research would need to be done to determine the overall efficiency of this recommendation, as researching tax records and contacting employers can be very time and labor intensive.

*Status: No action from last year.*

- **Automated dunning letters and show cause orders.** The Division of Community Corrections or the Administrative Office of the Courts could adapt their information systems to generate dunning letters following periods of non payment as well as an automated show cause order for offenders to return to court. This is being done manually with some success in Mecklenburg County.

*Status: After further review of the AOC's ACIS and FMS systems, it has been found to not be cost efficient nor readily feasible to adapt either system to an automated accounts receivable system with billing capabilities.*

- **Unsupervised probationers to have date specific pay dates.** Judges should be encouraged to set a specific date due for those sentenced to unsupervised probation who have substantial fees and fines assessed. The automated dunning letters and show cause orders outlined previously could be used to assist in collections.  
*Status: No action from last year.*
- **Cases continued until payment made.** Judges should be encouraged to continue cases in which offenders site a specific date in which they would be able to make a payment in full to satisfy their judgment.  
*Status: After further review of local court practices, this recommendation has been found to not be practical nor efficient.*
- **Expand the use of criminal contempt.** Judges should be encouraged to use criminal contempt in cases in which offenders do not meet fee payment schedules. This could be done in lieu of revocation.  
*Status: No action from last year.*
- **Training for probation officers on the use of the FMS system.** The ACO could conduct periodic training on the use of the FMS system for probation officers. Many officers have never received initial training and others could use refresher courses. The FMS system could then be used more efficiently by probation officers to monitor their caseloads. *Status: A train the trainer training session was planned and implemented with the AOC FMS staff training DCC training staff.*
- **Automate the origination of records in the FMS system.** Currently, all accounts in the FMS system must be manually entered which requires many hours of work. Bringing the information from judgments over from the criminal system would save the setup time and also provide for better monitoring of all cases. This would require funding for programming.  
*Status: After further review, it has been decided that it would be more cost efficient to build this feature into the replacement system that is currently under design.*
- **Provide management information to probation officers and managers.** The AOC should attempt to provide periodic management reports to probation officers and managers in an electronic form that would provide probation officers with specific payment information on the offenders they supervise.  
*Status: The two agencies are continuing to explore the best means of providing useful management reports for probation officers.*
- **Use of bankcards.** This was discussed and rejected as not a viable option for those offenders currently not paying.  
*Status: No action from last year.*

**Subject:** House Select Committee on Restitution Meeting Notice

October 26, 2004

**MEMORANDUM**

**TO:** Rep. Bernard Allen, Rep. Beverly Earle, Rep. Mitch Gillespie, Rep. James Harrell, Rep. Carolyn Justus, Rep. Louis Pate, Rep. Arthur Williams, Rep. Keith Williams

**FROM:** Rep. Rick Eddins, Co-Chair, Rep. Hugh Holliman, Co-Chair

**SUBJECT:** Committee Meeting Notice

There will be a meeting of the **House Select Committee on Restitution:**

**DAY: Tuesday TIME: 9:30 AM**

**DATE: November 30, 2004**

**LOCATION: 1228 Legislative Building**

Please advise Carol Bowers, Committee Assistant, at (919) 715-0873, or by e-mail [hollimanla@ncleg.net](mailto:hollimanla@ncleg.net) if you will be unable to attend.

Posted: October 25, 2004

cc: Committee  
Record \_\_\_\_\_  
Interested \_\_\_\_\_  
Parties \_\_\_\_\_

# **AGENDA**

## ***House Select Committee on Restitution***

**Tuesday, November 30, 2004**

**9:30 am**

**Room 1228 Legislative Building**

---

- 1. Approval of Minutes from October 21, 2004 Meeting**
- 2. Discussion of Proposals for Improving the Collection and Distribution of Restitution**
- 3. Adjourn**

Folder for Trina

## MINUTES

### HOUSE SELECT COMMITTEE ON RESTITUTION

November 30, 2004

9:30 AM

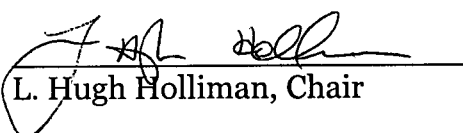
Room 1228 Legislative Building

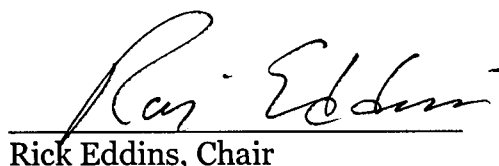
The House Select Committee on Restitution met on Tuesday, November 30, 2004 at 9:30 AM in Room 1228 of the Legislative Building. Committee Members in attendance were: Representatives B. Allen, J. Harrell, M. Gillespie, A. Williams, K. Williams, C. Justus, L. Pate, R. Eddins H. Holliman and Staff Attorney Trina Griffin.

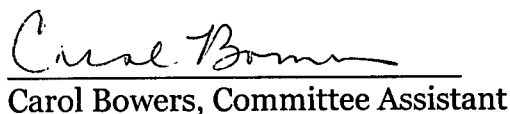
Rep. Holliman presided and called the meeting to order at 9:37 AM. He welcomed everyone for attending, recognized the staff and visitors. See Attachment #1. Rep. Holliman called on Trina Griffin, Staff Attorney to speak on the possible proposals she had compiled from the meeting of October 21, 2004. Mrs. Griffin explained the list (1-30) and the technical changes. See Attachment #2.

Rep. Holliman directed the committee to review each point. There was much discussion on items #1, #4, #8, #9, #16, #28 and #30. Ultimately, the Committee agreed that staff should focus on proposals #1, #8, #9, #16, and #27. The Committee was also interested in obtaining more information from Tracy Little with the Department of Correction regarding proposal #30. Mrs. Griffin and Tracy Little with DOC will bring further information to next meeting in early January.

The meeting was adjourned at 11:25 AM

  
L. Hugh Holliman, Chair

  
Rick Eddins, Chair

  
Carol Bowers, Committee Assistant



# VISITOR REGISTRATION SHEET

House Select Committee on Restitution

Tuesday, November 30, 2004

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

Mildred Spearman	DOC
JAMES Lassiter	DACDP
Matt Osborne	AOC
Tom Cawley	DOC
John McHugh	GOV OFFICE
Katie Myers	NC Bar Association
Prof Doran	NC Conference of DAs
John Madler	NC Sentencing Commission
A.A. Adams	Victim Advocate
Thomas Dingo	" "
Mel L. Chilton	NC VAN

## VISITOR REGISTRATION SHEET

House Select Committee on Restitution

Tuesday, November 30, 2004

Name of Committee

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

**FIRM OR AGENCY AND ADDRESS**

Cathy Purvis

Children's Advocacy Centers of NC  
 720 BOX 6212  
 High Point 27262

## House Select Committee on Restitution Possible Proposals

	Improving Collection & Distribution	Increasing Restitution Ordered
Generally	<ol style="list-style-type: none"> <li>1. Income withholding (immediately or only upon default), <del>debt-setoff, tax refund intercept, etc.</del> <i>Child support payments</i></li> <li>2. Revoke driving privileges for non-payment.</li> </ol>	<ol style="list-style-type: none"> <li>23. Require that restitution orders include interest (accrues as of the date of sentencing or loss).</li> <li>24. Provide for recovery of attorney fees and costs incurred for collecting restitution.</li> </ol>
By Victims	<ol style="list-style-type: none"> <li>3. Give crime victims right to any information regarding offender's financial assets, income, or employment that is in possession of the district court or any community correctional service program.</li> <li>4. Require victims to file SSN or have an alternative way to code the victims who request restitution.</li> </ol>	
Within Court System	<ol style="list-style-type: none"> <li>5. Have magistrate provide restitution worksheet to victims beforehand (when charges are filed). Earlier victim notification of restitution rights.</li> <li>6. Require prosecutors to request information about losses from victims. <i>DA's</i></li> <li>7. Require defendants to file a disclosure identifying all assets, income, and liabilities. Failure to disclose may be considered aggravating circumstance in sentencing.</li> </ol>	<ol style="list-style-type: none"> <li>25. Require judge to order restitution ahead of community service/supervision fees in certain situations (e.g. loss of life, serious injury cases).</li> <li>26. Change monthly supervision fee to flat fee and adding program participation fees such as electronic monitoring, drug testing, drug assessment, and drug treatment.</li> <li>27. Require that future earning potential be considered when ordering restitution. Restrict judge's ability to order partial restitution. Consider assets and earning potential when setting payment schedule. Even if defendant is currently unable to pay, a restitution plan must be presented that states the conditions under which the defendant will be making restitution.</li> </ol>
<i>supervised or unsupervised Probation</i> <i>rest. in a Criminal Sense</i>	<ol style="list-style-type: none"> <li>8. Authorize district attorneys to contract with private collection agencies, retaining a portion of the collection fee for administrative expenses.</li> <li>9. Use of bankcards.</li> <li>10. Automate the origination of records in the FMS system.</li> </ol>	

	Improving Collection & Distribution	Increasing Restitution Ordered
Community Corrections	<p>11. Establish automated system by which clerk of court (and possibly community corrections) can monitor and cite back into court offenders who have failed to make payments (i.e. dunning letters, show cause orders, automatic docketing).</p> <p>12. Clarify that restitution may be ordered to a person other than victim for economic loss for crimes which are not adjudicated or are not before the court (plea agreements/multiple victim situation)</p> <p>13. Cases continued until payment made.</p> <p>14. Expand use of criminal contempt.</p> <p>15. Supervision fee not to be remitted after payment (prohibit judges from remit fees paid to supervision to be paid as other fees or costs).</p>	
Continuing Probation	<p>16. Establish offender-funded collections program; offenders who cannot pay restitution at time of sentence must work with collections investigator to develop <u>restitution payment schedule</u>; payments to be monitored by collections investigator; offender must pay fee to cover costs (see <u>Colorado statute</u> <sup>189</sup> <u>§25. Fee</u>)</p>	
	<p>17. Establish general offender assessment, penalty or surcharge that all offenders (not just those with ROs) must pay. The money can go to fund a collections program or to the victims comp fund.</p>	
While on Probation	<p>18. Authorize court to extend probation to allow offender time to satisfy RO</p> <p>19. Encourage probation officers to place same emphasis on payment of restitution as they do on other conditions of probation.</p> <p>20. Provide management information to probation officers and managers.</p> <p>21. Training for probation officers on the use of the FMS system.</p>	

	Improving Collection & Distribution	Increasing Restitution Ordered
	22. Require probation officers to review, twice a year, all cases in which restitution ordered; perform final review 60 days before expiration of probation; file written report with court if payments are not being made; give victim right to receive schedule of restitution payments & name and phone number of probation officer.	
While Incarcerated		28. Create new and/or enhance inmate work programs.
	20, 35 %	29. <u>Revise</u> allocation of work-release earnings; require flat percentage off the top to go toward restitution.
		30. <u>Require</u> percentage of amount raised by inmate arts and crafts be applied toward restitution.

Technical Changes
Clarify distribution statute to indicate priority of community service and supervision fees (can codify current practice or move restitution ahead of these fees).
Clarify how subcategories within same distribution priority are to be treated when there is not enough money to pay all subcategories in full.
Modify joint and several liability of defendants with regard to payment of restitution.

December 14, 2005

**MEMORANDUM**

**TO:** Rep. Bernard Allen, Rep. Mitch Gillespie, Rep. James Harrell, Rep. Carolyn Justus, Rep. Louis Pate, Rep. Beverly Earle, Rep. Arthur Williams,  
Rep. Keith Williams  
**FROM:** Rep. Rick Eddins, Co-Chair, Rep. Hugh Holliman, Co-Chair  
**SUBJECT:** Committee Meeting Notice

There will be a meeting of the **House Select Committee on Restitution:**

DAY: Wednesday TIME: 9:30 AM  
DATE: January 13, 2005  
LOCATION: 1228 Legislative Building

Please advise Carol Bowers, Committee Assistant, at (919) 715-0873, or e-mail [hollimanla@ncleg.net](mailto:hollimanla@ncleg.net) if you will be unable to attend.

Posted: December 14, 2004

cc: Committee  
Record \_\_\_\_\_  
Interested \_\_\_\_\_  
Parties \_\_\_\_\_

# **AGENDA**

## ***House Select Committee on Restitution***

**Thursday, January 13, 2004  
9:30 am  
Room 1228 Legislative Building**

---

- 1. Approval of Minutes from November 30, 2004 Meeting**
- 2. Update on Legislative Proposals Under Consideration  
–*Trina Griffin, Committee Counsel***
- 3. Presentation on Improving Methods of Restitution  
Collection & the Use of Private Collection Agencies  
–*Moir Rowley, Vice President, Court Services,  
Affiliated Computer Services, Inc. ('ACS')***
- 4. Committee Discussion Regarding Proposals for its Report  
to the 2005 Session and the Possibility of Extending the  
Committee**
- 5. Set Next Meeting Date for Adoption of Report**
- 6. Adjourn**

## MINUTES

### HOUSE SELECT COMMITTEE ON RESTITUTION

January 13, 2005

9:30 AM

Room 1228 Legislative Building

The House Select Committee on Restitution met on Thursday, January 13, 2005 at 9:30 AM in Room 1228 of the Legislative Building. Committee Members in attendance were: Representatives J. Harrell, M. Gillespie, A. Williams, K. Williams, B. Earle, L. Pate, and Chairmen R. Eddins H. Holliman and Staff Attorney Trina Griffin.

Chairman Eddins presided and called the meeting to order at 9:38 AM. He welcomed everyone for attending, recognized the staff and visitors. See Attachment #1.

Trina Griffin, Staff Attorney was called on to speak to the results of the committee to date. Mrs. Griffin spoke to proposals and discussed issues and ideas for the committee to pursue. Areas for discussion were: income withholding, taxes, funeral expenses mandatory, ability to pay, use of private collection agencies, use of bank cards. Issues not in the draft bill are: bank cards and fees, credit card usage (justified and sometimes in appropriate) and security measures. See Attachment #2.

Mrs. Griffin referred the committee to an article from The Denver Post to review. See Attachment #3. Ms. Moira Rowley, Vice President, Court Services was introduced and spoke to the issue of restitution, its importance and performance measures. She made recommendation to the committee for consideration. See Attachment #4.

Mr. Gregg Stahl with AOC was called on to speak to the concerns with his department. He noted there are approx. 150,000 inmates on probation in NC. There was much discussion of all county systems being uniform in record keeping and filling out forms in clerk offices. Rep. Earle ask for a comprehension study on accounting practices and/or an audit of these records. Mr. Stahl agreed to assist the attorneys in compiling this information for the committee. See Attachment #5.

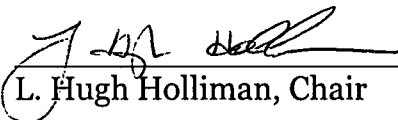
Chairman Eddins called on Ms. Debbie Kimbrell from Goldsboro to speak about her families lost of her husband. She explained she has spent months and over \$30,000 is trying to gain restitution for her 3 children. The defendant was charged with death by vehicle and no restitution was ordered.

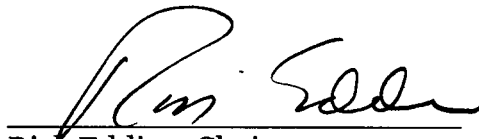



After much discussion from the committee, the decision was made to ask for extending the life of the committee into session in order to get legislation drafted. Pointed out areas needing to be identified and changes made in the existing draft bill.

The committee decided to meet on Wednesday, January 19<sup>th</sup> and Mrs. Griffin would be in contact with AOC attorneys on their findings.

The meeting was adjourned at 12:45 PM

  
L. Hugh Holliman, Chair

  
Rick Eddins, Chair

  
Carol Bowers, Committee Assistant

att: I

## House Pages

1. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
2. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
3. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
4. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
5. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_

## Sgt-At-Arms

1. Name: Thomas Wiloer
2. Name: PAUL Rucho
3. Name: \_\_\_\_\_
4. Name: \_\_\_\_\_

att. H

Date \_\_\_\_\_

FIRM OR AGENCY

[illegible]

att: TH

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

S

D

BILL DRAFT 2005-SVz-2 [v.3] (12/13)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
1/13/2005 8:10:03 AM

Short Title: Restitution Changes.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE COLLECTION AND DISTRIBUTION OF  
RESTITUTION FOR CRIME VICTIMS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

**RESTITUTION FOR FUNERAL EXPENSES MANDATORY**

**SECTION 1.** G.S. 15A-1340.34(b) is amended by adding a new subsection to read:

"(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant. If the defendant is being sentenced for an offense that resulted in the death of the victim, the court shall order the defendant to make restitution for necessary funeral and related services. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1."

**ABILITY TO PAY NOT A FACTOR IN DETERMINING AMOUNT OF  
RESTITUTION**

**SECTION 2.** G.S. 15A-1340.36 reads as rewritten:

"(a) Amount of Restitution. – In determining the amount of restitution to be made, the court shall not take into consideration the economic circumstances of the defendant or the defendant's ability to pay. ~~resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters.~~ The

1 amount of restitution must be limited to that supported by the record, and the court may  
2 order partial restitution when it appears that the damage or loss caused by the offense is  
3 greater than that which the defendant is able to pay. If the court orders partial  
4 restitution, the court shall state on the record the reasons for such an order.record."

5 (b) Payment of Restitution. – Orders for restitution shall be due and payable at  
6 the time that the order of conviction is entered. If the defendant alleges that he or she  
7 cannot pay the full amount of restitution, the The court may require the defendant to  
8 make full restitution no later than a certain date or, if the circumstances warrant, may  
9 allow the defendant to make restitution in installments over a specified time period. In  
10 determining the manner in which the restitution is to be paid, the court shall consider the  
11 resources of the defendant including all real and personal property owned by the  
12 defendant and the income derived from the property, the defendant's ability to earn, the  
13 defendant's obligation to support dependents, and any other matter that pertain to the  
14 defendant's ability to make restitution. After making the determinations required by  
15 subsections (a) and (b) of this section, the court shall enter an order for restitution which  
16 sets forth the total amount of restitution the defendant owes all persons, the total amount  
17 of restitution owed each person, and the manner in which the restitution is to be paid.

18 (c) Payment of Restitution While Incarcerated. – When an active sentence is  
19 imposed, the court shall consider whether it should recommend to the Secretary of  
20 Correction that restitution be made by the defendant out of any earnings gained by the  
21 defendant if the defendant is granted work-release privileges, as provided in  
22 G.S. 148-33.2. The court shall also consider whether it should recommend to the  
23 Post-Release Supervision and Parole Commission that restitution by the defendant be  
24 made a condition of any parole or post-release supervision granted the defendant, as  
25 provided in G.S. 148-57.1.

## 26 INCOME WITHHOLDING

27 SECTION 3. Article 81C of Chapter 15A of the General Statutes is  
28 amended by adding a new section to read:

### 29 § 15A-1340.39. Income withholding order.

30 (a) Entry of order. – When restitution is required of a defendant who will not be  
31 commencing an active sentence and who is employed, the court shall, at the time of  
32 ordering restitution, enter a separate order for income withholding. The withholding  
33 order must direct the employer to deduct from all income due and payable to the  
34 offender an amount required by the court, subject to the restrictions set forth in 15  
35 U.S.C. 1673, to meet the defendant's restitution obligation. The withholding order must  
36 include an instruction to the employer that upon receipt of a copy of the withholding  
37 order the employer shall do all of the following:

- 38 (1) Immediately begin to withhold the defendant's income when the  
39 defendant is usually paid.
- 40 (2) Send each amount withheld to the agency to which restitution has been  
41 ordered to be paid at the address set forth in the order within seven  
42 business days of the withholding.
- 43 (3) Identify each amount sent to the agency by indicating the court's  
44 docket number.

1       (b) Expiration of Order. – The income withholding order is effective as long as  
2 the order for restitution upon which it is based is effective or until further order of the  
3 court.

4 **STATE INCOME TAX REFUND OFFSETS**

5       **SECTION 4.** G.S. 105A-2(2) is amended by adding a new sub-subdivision  
6 to read:

7               " b1. A sum that a claimant agency collects and disburses as required  
8               by a court order, such as restitution."

9       **SECTION 4.1.** G.S. 105A-2(9) is amended by adding a new sub-subdivision  
10 to read:

11               " c. A county clerk of court."

12 **EFFECTIVE DATE**

13       **SECTION 5.** This act becomes effective for restitution orders entered on or  
14 after December 1, 2005.

# The Denver Post

## Crime-victim project pays off

**Colorado's efforts to make criminals reimburse those they hurt collected \$20 million last year and national praise.**

By Howard Pankratz  
Denver Post Staff Writer

**Monday, January 03, 2005 -**

Working with a team of 85 investigators, Colorado is aggressively collecting restitution from criminals - an effort that is drawing national praise.

The goal of state officials and various organizations is to bring financial and emotional support to people whose lives were turned upside down by lawbreakers.

In fiscal 2004, the state collected \$20.5 million in restitution; in 2003, \$19.8 million; in 2002, \$18.4 million; and in 2001, \$18.3 million .

Mary Lou Leary, executive director for the Washington-based National Center for Victims of Crime, said the Colorado system is a model because of its corps of collections investigators whose sole duty is to obtain restitution for victims.

"A number of states like Colorado have really put their nose to the grindstone and undertaken some reforms to ensure that the restitution rate has improved," said Leary, former acting U.S. assistant attorney general for the Office of Justice Programs, where she oversaw the Office for Victims of Crime.

Colorado has dismissed the notion that "you can't get blood from a stone," she said.

The restitution can help pay for medical expenses or property damage and help heal emotional scars by sending a message to victims that the community is behind them and holds the offender responsible.

If there is a failure to pay by the perpetrator, earnings and accounts can be garnished, liens placed on property, tax refunds and lottery winnings intercepted, driver's licenses suspended, probation revoked and arrests made.

The emotional and financial devastation caused by criminals was illustrated in the case of Will Hoover, a once-prominent Cherry Creek financial adviser convicted in June of bilking 25 clients out of more than \$13 million. He has been ordered to pay \$15 million in restitution, some of that being interest on the \$13 million taken.

Among those left destitute was Ferne Teper, who invested \$130,000 with Hoover and then had to beg him for money to pay for a breast cancer operation.

"He took all of our savings, and we are in our 80s," Teper said of herself and her husband, Milt. "He has taken all we have left."

Paul Stephenson, a financial analyst for the Colorado State Court Administrator's Office, said that about four times a year, Colorado officials are asked to explain the structure of the restitution

program and its revenue-producing capability because of interest from other states.

Ken Pankey, a senior analyst with the National Center for State Courts, said there are no studies comparing states' restitution-collection successes and failures.

That's because myriad local and state agencies do the collecting, he said, creating a logistical and statistical morass that makes such studies all but impossible.

Paul Litschewski, financial programs manager for the state Judicial Department, said the Colorado program works because "we have staff in all of the probation departments throughout Colorado (and) that their focus and their No. 1 goal is to make sure that restitution is going to be paid."

"Offenders have to fill out financial affidavits, give disclosure on property they own, on their wages, salaries and bank accounts," Litschewski said.

The collection investigators monitor the cases and work out payment plans if necessary.

During fiscal 2004, money collected from criminal defendants in Colorado reached a record \$85.3 million, which includes the restitution amount of \$20.5 million.

The other money is from court costs, fines and fees paid by the perpetrators. That money is funneled into a variety of programs, including victims' compensation and assistance programs, the Highway Users' Trust Fund and the Law Enforcement Assistance Fund.

One of the most successful restitution stories involves David Joseph Ramsdale, 41, who in 1997 pleaded guilty to one count of securities fraud and one count of theft.

He was sentenced to nine years, but the sentence was suspended on the condition that he complete 12 years probation and pay restitution of \$353,000. He had persuaded about 10 people to invest money with him.

Ramsdale has consistently made his monthly payments and, in some cases, has exceeded the amount due, said Lynn Kimbrough, spokeswoman for the Denver District Attorney's Office. Ramsdale has about \$140,000 left to pay.

The dramatic amounts of money collected in the past few years were the result of Colorado officials and various organizations' deciding in the mid- 1990s that not enough was being done to help victims overcome the devastating economic impact of the crimes they had suffered. In fiscal 1995, almost \$9 million was collected from scofflaws. In fiscal 1996, \$10.3 million was collected.

A legislative restitution crackdown in 2000 on criminals and the hiring of the collections investigators helped initiate the effort, said Steve Siegel, past president of the Colorado Organization for Victim Assistance.

"They (state officials) instituted a series of hiring of collection investigators and that became the heart of the increased collections," Siegel said. "That was really the key philosophical and practical change for the system."

Litschewski said the collection investigators immediately pounce on the perpetrators, getting as much money out of them as they can. He said a study a few years ago showed that after about 18 to 24 months after an collection effort begins, more than 50 percent of the victims have been paid in full.

"I think part of it is that Colorado has taken a pro-active approach where we hit the defendants up



immediately at sentencing," Litschewski said.

He said that if the offenders prove they can't pay everything immediately, a payment schedule is set up.

Depending on the case, the restitution can come in over a period of weeks, months or years. But the collection investigators make sure the money keeps flowing.

They have what are called "restitution visits or home visits" in which they will go to the offender's home and document personal belongings and any other assets they find.

"Restitution is very important ... because it holds the defendant directly accountable for the harm he or she has caused," said Leary of the National Center for Victims of Crime. "I think it sends an important message to the victim and the public that defendants are indeed accountable and that they owe a debt to society but they also owe a debt to this particular victim."

*Staff writer Howard Pankratz can be reached at 303-820-1939 or [hpankratz@denverpost.com](mailto:hpankratz@denverpost.com).*

att: IV

# Moira Rowley

Vice President, Court Services

---

Seasoned professional with more than 20 years of experience serving courts and justice organizations. As a court manager and in her private sector roles, Moira has contributed her skills and expertise to programs, practices, projects, and initiatives that help courts and justice agencies make better use of information assets, enhance services to their constituents, and improve the quality of justice within their reach. Areas of expertise include:

- **Court Consulting:** Organization, governance, technology, case management practices, justice integration and information exchange, compliance and justice revenue, jury management, court performance measurement, and court technology
- **Project and Program Management:** Local, regional, statewide and national court technology and business process project management, implementation and program evaluation.
- **Product Management:** Commercial software planning, design, delivery and adaptation to client-specific needs and requirements

## Professional Experience

**Vice President, Court Services, 1997 – Present, ACS Government Systems**

- Provides guidance and direction for the development of ACS courts and justice solutions and services, currently in use by over 200 courts in the United States. Also directly manages the operations of our Jury Solutions group, with solutions and services in use by over 400 state, local, and federal courts in the United States and over 100 courts internationally.
- Works with jurisdictions across the country to define, implement, monitor and enhance Justice Revenue programs, focused on increasing compliance with court-ordered monetary sanctions.
- Works directly with courts and justice clients to understand their existing and emerging challenges and goals to ensure that ACS solutions are aligned with the needs of the courts and justice community in general, and our clients in particular.
- Contributes to the work of public and private sector professional organizations, and public/private partnerships.

## Accomplishments at ACS

- Helped extend ACS Justice Revenue Services into general jurisdiction, limited jurisdiction and municipal courts.
- Led ACS team in planning the Arizona FARE project, the first statewide court compliance and justice revenue project based on a public/private partnership.
- Participated in the Missouri Fine Collection Center project design and recruitment of large metropolitan area courts and new participants in the statewide project.
- As product manager, oversaw the expansion of ACS court management technologies to a broader set of integrated court management solutions.
- As jury group manager, oversaw the expansion of ACS jury solutions to leverage new technologies that help courts extend better customer service, reduce operating expenses, decrease total cost of ownership, and provide a wide range of constituent self-service options.

**Vice President, Product and Business Development, 1995-1997, Progressive Solutions, Inc. (PSI)**

In this role, Moira established the first comprehensive product release practices for PSI. Responsible for coordination, prioritization, scheduling, and monitoring of product group resources including design, programming, quality assurance, and documentation. Established strategic direction for production development and enhancement.

Project management responsibilities included:

- *New Mexico Statewide Court Automation Project (December 1995 – August 1997)* Completed the statewide implementation of courts case management application, now in place in 92 limited and general jurisdiction courts.
- *Arizona Large Volume Courts Project (August 1995 – March 1996)*
- Led the initial PSI work with Maricopa and Pima County area courts to define enhancements and customization of statewide case management application to better serve the needs of large volume courts. Headed project from requirements analysis through establishment of development schedules, resource allocations and cooperative testing plans.

**Court Manager, 1985-1995, Circuit Court of Jackson County, Missouri (Kansas City)**

The Circuit Court of Jackson County is a large metropolitan area court of combined limited and general jurisdiction. Ms. Rowley was responsible for the operations of the court's business offices at the downtown courthouse and at multiple locations throughout the county, including juvenile facilities.

During her time as a court manager, Ms. Rowley oversaw many projects that helped the court deliver consistently high customer service, meet mandatory case processing standards – even as caseloads increased dramatically, improve information management, coordinate with other agencies, and make the court more accessible to all members of the community.

**Education & Specialized Training**

University of Missouri at Kansas City, Philosophy

Continuing court-related education

**Professional Organizations****Integrated Justice Working Group (IWG)**

- Executive Committee

**IJIS Institute**

- Vice President
- Executive Committee
- Board of Directors
- Chair, Outreach Committee

**Forum on Advancement of Court Technology (FACT)**

- Steering Committee Member
- Co-Chair, Education Committees

**National Association for Court Management (NACM)**

- Member, Faculty

**Court Technology Conference (CTC)**

Faculty

**National Conference of Metropolitan Courts (NCMC)**

Faculty

Count operated

715-4908

Meeklenburg - feel it  
works well & don't  
really have any data

Manually done

Unsupervised only

County funded - is it  
cost effective?

declining number of  
cases in Meeklenburg  
County

85 investigators

\$5.1 million

85

60,000

5100,000

increased  
margin?

off # 11

Hay is  
often  
used  
by  
individuals

ACS

## Restitution Options

- \* One of the least collectable of court indebtedness
- \* Court performance standards focused on restitution paid
- \* Any person can increase collections
- \* Fund the deficit collection by adding rent and fee and/or delinquency fee (those who fail to pay)
- \* State funded property restitution fund
- \*\* limited use in comparing locally run and state run court systems

## Debt collection issues

- ① fee driven versus appropriate dollars

fees must meet the  
regulatory test  
and cannot be seen  
as permitted or  
restitution to the  
agency for their normal  
work function

- ② Best for NC would  
be a legislatively  
fixed dollar fee  
which collected  
minus ~~the~~ <sup>any</sup> collection  
fees so that private  
companies would take  
an appropriate % of  
what it collected

January 13, 2005

**MEMORANDUM**

**TO:** Rep. Bernard Allen, Rep. Mitch Gillespie, Rep. James Harrell, Rep. Carolyn Justus, Rep. Louis Pate, Rep. Beverly Earle, Rep. Arthur Williams,  
Rep. Keith Williams  
**FROM:** Rep. Rick Eddins, Co-Chair, Rep. Hugh Holliman, Co-Chair  
**SUBJECT:** Committee Meeting Notice

There will be a meeting of the **House Select Committee on Restitution:**

DAY: Wednesday TIME: 9:30 AM  
DATE: January 19, 2005  
LOCATION: 1228 Legislative Building

Please advise Carol Bowers, Committee Assistant, at (919) 715-0873, or e-mail [hollimanla@ncleg.net](mailto:hollimanla@ncleg.net) if you will be unable to attend.

Posted: January 13, 2005

cc: Committee  
Record \_\_\_\_\_  
Interested \_\_\_\_\_  
Parties \_\_\_\_\_



# **AGENDA**

## ***House Select Committee on Restitution***

**Wednesday, January 19, 2004  
9:30 am**

**Room 1228 Legislative Building**

---

- 1. Approval of Minutes from January 13, 2004 Meeting**
- 2. Discussion and Adoption of Draft Report to the 2005  
General Assembly**
- 3. Adjourn**

## MINUTES

### HOUSE SELECT COMMITTEE ON RESTITUTION

January 19, 2005

9:30 AM

Room 1228 Legislative Building

The House Select Committee on Restitution met on Wednesday, January 19, 2005 at 9:30 AM in Room 1228 of the Legislative Building. Committee Members in attendance were: Representatives M. Gillespie, A. Williams, L. Pate, and Chairmen R. Eddins H. Holliman and Staff Attorney Trina Griffin.

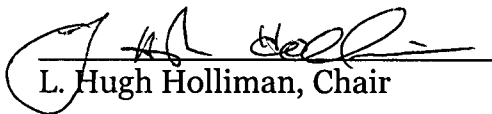
Chairman Holliman presided and called the meeting to order at 9:42 AM. Rep. Holliman ask for a motion to approve the minutes from previous meeting on 1/13. Rep. Pate made the motion and Rep. A. Williams second the motion. Chairman Holliman welcomed everyone for attending, recognized the staff and visitors. See Attachment #1.


Trina Griffin, Staff Attorney spoke on the legislation drafted for the committee. See Attachment II. She highlighted changes made in section 5 of the draft bill on page 12 of the report regarding third party collection. The committee discussed additional research that was needed and extending the study commission. Rep. Holliman will contact the Speaker.

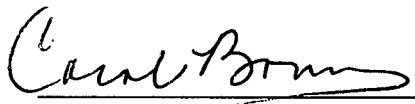
After reviewing the draft, Rep. Holliman ask for a motion to accept the draft. The motion carried.

Chairman Eddins and Holliman thank the committee and staff for their assistance and told the visitors how important their contribution to the committee had been for victims.

The meeting was adjourned at 9:51 AM. The committee will meet after the 2005 session adjourns if extended and approved by the speaker.

  
L. Hugh Holliman, Chair

  
Rick Eddins, Chair

  
Carol Bowers, Committee Assistant

Attachment I

Date \_\_\_\_\_

[illegible]

DOC / DSC

victim

victim lancelin

JORDAN PRICE LAW FIRM

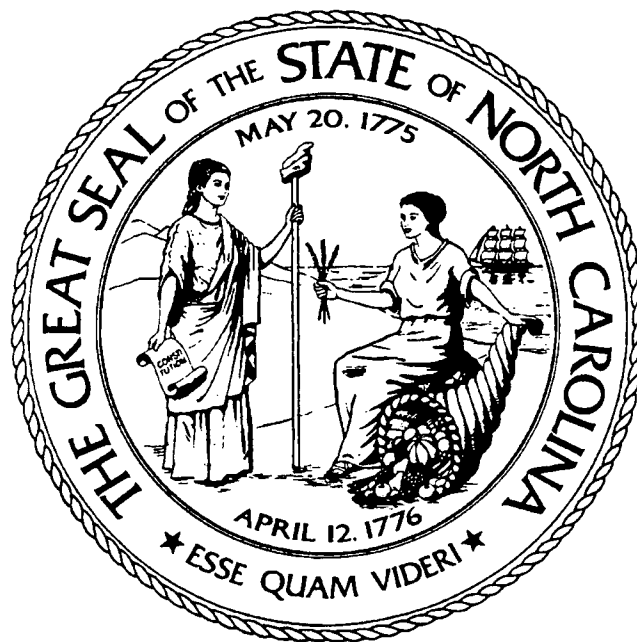
D2C

ALC ADO

HOUSE SELECT COMMITTEE  
ON RESTITUTION

*Attachment II*

**DRAFT**



REPORT TO THE 2005  
GENERAL ASSEMBLY OF NORTH CAROLINA  
2005 SESSION

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE  
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY

ROOMS 2126, 2226  
STATE LEGISLATIVE BUILDING  
RALEIGH, NORTH CAROLINA 27611  
TELEPHONE: (919) 733-7778

OR

ROOM 500  
LEGISLATIVE OFFICE BUILDING  
RALEIGH, NORTH CAROLINA 27603-5925  
TELEPHONE: (919) 733-9390

THE REPORT IS ALSO AVAILABLE ON-LINE:  
<http://www.ncleg.net/LegLibrary/>



**HOUSE SELECT COMMITTEE  
ON RESTITUTION  
State Legislative Building  
Raleigh, North Carolina 27603**

*Representative Rick Eddins, Co-Chair*

*Representative Hugh Holliman, Co-Chair*

**January 19, 2004**

**TO THE MEMBERS OF THE 2005 GENERAL ASSEMBLY:**

The House Select Committee on Restitution submits to you for your consideration its report.

Respectfully Submitted,

---

Rep. Rick Eddins, Co-Chair

---

Rep. Hugh Holliman, Co-Chair

# HOUSE SELECT COMMITTEE ON RESTITUTION

## 2004-2005 MEMBERSHIP

Representative Rick Eddins, Cochair  
Representative Hugh Holliman, Cochair  
Representative Bernard Allen  
Representative Beverly Earle  
Representative Mitch Gillespie  
Representative James Harrell  
Representative Carolyn Justus  
Representative Louis Pate  
Representative Arthur Williams  
Representative Keith Williams

### Staff:

Trina Griffin, Legislative Analyst  
Carol Bowers, Committee Clerk

# TABLE OF CONTENTS

Letter of Transmittal .....	i
Committee Membership .....	ii
Preface.....	1
Current Law.....	2
Committee Proceedings .....	4
Committee Findings and Recommendations .....	9
AN ACT TO IMPROVE THE COLLECTION AND DISTRIBUTION OF RESTITUTION FOR CRIME VICTIMS IN NORTH CAROLINA AND TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY THE USE OF THIRD PARTY COLLECTION.....	11
Bill Analysis .....	15

## Appendices

- A. Committee Authorization
- B. Remarks of Mel Chilton, North Carolina Crime Victims Assistance Network
- C. Presentation Notes of Tracy Little, Department of Corrections
- D. 1995 Status Report on Victim Restitution Recommendations, NC Sentencing and  
Policy Advisory Commission
- E. Presentation Notes of Tom Andrews, General Counsel, Administrative Office of the  
Courts
- F. Remarks of Whit Gibson, Clerk of Superior Court, Scotland County
- G. Report to Appropriations Chairs and JPS Subcommittee on Improving Collection of  
Offender Fees, presented by Gregg Stahl, AOC
- H. Chart of Possible Proposals
- I. Resume and Presentation Notes of Moira Rowley, Vice President for Court Services,  
ACS



## PREFACE

---

In 2004, the House Select Committee on Preventing Unjust Profiteering from Crime was established to study the issue of preventing criminal offenders from profiting from their crimes. During its course of study, the Committee also examined problems associated with the collection and distribution of restitution for crime victims, a significant amount of which goes unpaid or unclaimed. Since the impetus for that Committee's study was House Bill 911, the No Profit from Crime Act, and its work was focused primarily on the complex constitutional issues associated with a rewrite of that bill, the Committee had insufficient time to fully develop legislative solutions regarding restitution. Consequently, the House Select Committee on Restitution was established in the following interim to reexamine the processes for the collection and payment of restitution in this State and to determine methods for reducing the number of restitution payments that go unpaid or unclaimed. The order from the Office of the Speaker of the House of Representatives authorizing the Committee is set out in Appendix A.

## CURRENT LAW

---

When sentencing a defendant convicted of a criminal offense, the court is required to determine whether the defendant should be ordered to make restitution to any victim or the victim's estate for any injuries or damages arising directly from the offense. In determining the amount of restitution, the court must consider certain factors, such as the value of any property damaged or destroyed; in the case of physical injury, the cost of necessary medical and related professional services, any physical or occupational therapy, and income lost by the victim; and in the case of the victim's death, the cost of funeral and related services. However, an order of restitution may not include compensation for pain and suffering, according to a recent North Carolina Court of Appeals case.<sup>1</sup> In determining the amount of restitution to be made, the court must also take into account the resources of the defendant, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution. The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims Compensation Fund, that provided assistance to the victim. Generally, a restitution order is enforceable in the same manner as a civil judgment. A restitution order does not, however, abridge the right of a victim to bring a civil action against the defendant, but any amount paid by the defendant under the terms of a restitution order are credited against any judgment

---

<sup>1</sup> *State of North Carolina v. Wilson*, 580 S.E.2d 386, 2003 N.C.App. LEXIS 1045 (June 3, 2003).

rendered against the defendant in favor of the same victim in a civil action arising out of the criminal offense committed by the defendant.

## COMMITTEE PROCEEDINGS

---

The House Select Committee on Restitution met four times since its inception on September 14, 2004. The final meeting of the Committee prior to the convening of the 2005 General Assembly took place on January 19, 2004, at which the Committee discussed and approved its final report to be submitted to the House.

At its first meeting on October 21, 2004, the Committee heard from seven speakers. Ms. Mel Chilton, Director of NC Victims Assistance Network spoke on the importance of restitution for victims that are suffering both financially and emotionally. She suggested some proposals for the committee to consider, including the enhancement of work programs within the prison system, requiring the consideration of future earning potential when ordering restitution, and making restitution mandatory in cases involving loss of life or serious injury. Ms. Chilton concluded her remarks by noting that restitution is an obligation that should never be waived. A summary of her remarks is attached in Appendix B.

Mr. Frank Parrish, District Attorney for the 1<sup>st</sup> District and President of the Conference of District Attorneys, addressed the duties of a district attorney with regard to restitution and identified areas for improvement. He explained that district attorneys are required to collect and present accurate information regarding a victim's damages to the presiding judge. He also explained that the problems with restitution are different in superior court compared to district court. Mr. Parrish noted that the distribution of restitution could be improved if victims were required to provide their social security numbers for identification, although he acknowledged that victims are often reluctant to do so because of privacy concerns. A second recommendation was to have magistrates gather restitution information from the victims or make the restitution worksheets available to save time.

Ms. Tracy Little, Deputy Secretary with the Department of Correction, provided the committee with an overview of the work-release program and the distribution of those earnings. She also explained how restitution payments are monitored and collected for those offenders on probation. Currently, there are 1,100 inmates out of 36,000 on work release. She identified the minimum requirements that inmates must meet for work-release eligibility. Of particular interest to the committee members, Ms. Little pointed out that an inmate's legal obligation to the state is complete when he or she is released without supervision. Therefore, for low-level felons (Class F-I under structured sentencing) the obligation to pay restitution ends once the offender is released. Class B1-E felons, who are generally released under post-release supervision, may be ordered by the court to make restitution payments while on supervised probation. A community corrections officer will monitor those payments. Ms. Little explained that probationers make restitution payments directly to the clerk of court, who is responsible for distributing those payments. The failure to pay is considered a nonemergency technical violation, for which there is a continuum of sanctions. She further explained that the goal of the probation officer is to keep the offender working, staying in compliance with the law, and making payments. Therefore, it is rare for an offender to have his probation revoked and sentence activated for failure to pay. If the offender's probation is revoked and his sentence activated, the obligation to pay restitution ends. Ms. Little cited that in FY 03-4, probationers paid \$17.8 million in restitution. For more information, Ms. Little's presentation notes are attached as Appendix C.

Next, Karen Jones, Senior Research and Policy Associate, NC Sentencing and Policy Advisory Commission explained that, in 1993, the General Assembly directed the Commission to study restitution policy. Although the recommendations were not adopted at that time, the Courts Commission later studied the same issue and made many of the same recommendations, which were ultimately enacted. A report on the Commission's recommendations in 1995 may be found in Appendix D.

Tom Andrews, General Counsel with Administrative Office of the Courts, discussed distribution priorities and welcomed clarification on disbursing monies. Specifically, he pointed out that the statutes do not address the priority of the community service and the supervision fees. Thus, the AOC has followed generally accepted accounting principles that require current ongoing obligations to be paid before past due obligations are paid. Mr. Andrews' presentation notes may be found in Appendix E.

Next, Whit Gibson, Clerk of Superior Court in Scotland County, explained how Scotland County disburses monies as soon as possible. He spoke to how victims perceive how the system works and the conflicts. The clerks follow judge's orders and feel victims should be considered first in allocation of restitution payments. As for specific recommendations, he indicated that the system of joint and several liability of defendants needs to be overhauled and suggested consideration of an income tax intercept or debt setoff system. A summary of his remarks may be found in Appendix F.

Gregg Stahl, Administrative Office of the Courts, spoke on how the collection rate of offender fees could be improved and shared recommendations. He provided the Committee with a copy of the same report presented to the Appropriations Chairs and Justice and Public Safety Subcommittee, a copy of which is attached as Appendix G.

On November 30, 2004, the Committee held its second meeting and Ms. Trina Griffin, Committee Counsel, presented the Committee with a compilation of proposals that had been identified either by agencies and other interested parties or as the result of research into what other states are doing in this area. This compilation may be found in the chart attached as Appendix H. After much discussion, the Committee agreed to focus on the following proposals:

- Income withholding
- Tax refund intercept
- Use of third party collection agencies to collect unpaid restitution.
- Use of bankcards for payment of restitution

- Establishment of an offender-funded, court-operated collections program.
- Making payment of funeral expenses mandatory in loss of life cases.
- Prohibiting a defendant's ability to pay from being a factor in determining the amount of restitution to be ordered.

At the third meeting on January 13, 2005, the Committee heard from Ms. Moira Rowley, Vice President, Court Services with Affiliated Computer Services, Inc. (ACS), which is a technology-based outsourcing solutions company with a focus on servicing states and local governments. Ms. Rowley explained several types of broad-based compliance programs used by states to improve collection of restitution. Specifically, she indicated that a number of states add a fee, often a percentage of the debt owed, for nonpayment to fund other elements of their collections operations. She also responded to specific questions of the committee members regarding third party collections. Her resume and presentation notes are attached as Appendix I.

Mr. Gregg Stahl with the Administrative Office of the Courts also addressed the Committee regarding AOC's concerns about several of the proposals being considered by the Committee. Specifically, he pointed out that the use of the Setoff Debt Collection Act to collect restitution owed to private individuals would represent a shift in the underlying policy of that act. Currently, the Setoff Debt Collection Act provides a mechanism for the government to collect government debt. Moreover, if restitution were collected through debt setoff, it would impact the collection of indigent attorney fees, which are currently collected by AOC through debt setoff. Another issue is the fact that the Department of Revenue charges a 15% fee for debt setoff. Thus, the proposal should address whether the fee is waived or whether a crime victim would receive only 85% of monies collected. With regard to the idea of an offender-funded collections program, Mr. Stahl cautioned the Committee about structuring a fee-based program for two reasons. First, the fee could be interpreted as a fine that is constitutionally required to go to local school boards. Second, the fee could also be interpreted as a payment ordered by the court to reimburse the state for its general

overhead attributable to prosecution costs, which has been held unconstitutional by the state Supreme Court. Ultimately, the Committee agreed that staff should work with the AOC in improving the bill draft to address some of these issues.

Finally, Ms. Debbie Kimbrell from Goldsboro, a crime victim, spoke to the Committee about the loss of her husband and her experience with the court system. Her husband was killed in a car accident by a person whose license had been revoked. He was ultimately convicted of misdemeanor death by vehicle but no restitution was ever ordered because the judge found that the defendant did not have the ability to pay restitution. She urged the Committee to make changes in the law so that a defendant's ability to pay is not a factor in setting a restitution amount in order to hold offenders accountable for the damage they cause

After hearing from the speakers, the Committee reviewed the proposed bill draft, and agreed that it would include the draft in its report with one additional change. The Committee wanted to add a section requiring the AOC to study the use of third party collection for collecting restitution and other court fines, fees, and costs and report back to this Committee. The Committee also concluded that it needed additional time to study the issues related to improving the collection and distribution of restitution and would seek to extend the life of the Committee.



# COMMITTEE FINDINGS AND RECOMMENDATIONS

---

The House Select Committee on Restitution makes the following findings and recommendations:

**FINDINGS:** The Committee finds the following:

1. Based on recent statistics compiled by the AOC, only 24% of restitution ordered in all criminal cases is paid in a given year.
2. Restitution is among the lowest collectible categories of debt.
3. Many states have enacted broad-based compliance programs or statutory mechanisms to improve enforcement of restitution orders, such as income withholding, tax intercept, late fees, court-operated collections programs, third party collection agencies, diverting a percentage of work-release earnings to victim compensation programs, revoking or extending probation for nonpayment, and converting restitution to civil judgments.
4. Of particular importance to crime victims is the accountability of the offender. Specifically, orders for restitution should not be determined based upon a defendant's ability to pay, they should not become unenforceable upon completion of a person's sentence, and they should be due and payable at the time of sentencing to encourage prompter payment.
5. Orders of restitution should be made without regard for the ability of the defendant to pay but judges should be able to take into consideration ability to pay in setting a payment schedule.
6. There should be more consistency among county clerks of court with regard to their practice of entering restitution information into the court's database.
7. The General Assembly should further study and consider the benefits of outsourcing collection functions to third parties.
8. A fee-based, court-operated collections program may raise constitutional issues in North Carolina if the fee is interpreted as either a fine or as a means to reimburse the State for its "normal overhead." The General Assembly should further study and consider the costs and benefits of establishing a fee-based collections program.

**RECOMMENDATIONS:** Therefore, the Committee recommends the Legislative Proposal titled *Restitution Changes and Study*, which would require payment of funeral expenses mandatory in loss of life cases, prohibit a defendant's ability to pay from being a factor in determining the amount of restitution ordered, authorize income

withholding for restitution, require the AOC to collect restitution through debt setoff, and to require the AOC to study third party collection.

The Committee also recommends that the committee be extended so that it may continue its study of the issued related to the improvement of collecting and distributing restitution.

# **LEGISLATIVE PROPOSAL**

---

## **RESTITUTION CHANGES AND STUDY**

---

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

S

D

BILL DRAFT 2005-SVz-2 [v.4] (12/13)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
1/18/2005 2:11:41 PM

Short Title: Restitution Changes and Study.

(Public)

---

Sponsors:

---

Referred to:

---

A BILL TO BE ENTITLED  
AN ACT TO IMPROVE THE COLLECTION AND DISTRIBUTION OF  
RESTITUTION FOR CRIME VICTIMS IN NORTH CAROLINA AND TO  
DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY  
THIRD PARTY COLLECTION FOR THE COLLECTION OF RESTITUTION  
AND OTHER COURT COSTS.

The General Assembly of North Carolina enacts:

**RESTITUTION FOR FUNERAL EXPENSES MANDATORY**

**SECTION 1.** G.S. 15A-1340.34(b) is amended by adding a new subsection to read:

"(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant. If the defendant is being sentenced for an offense that resulted in the death of the victim, the court shall order the defendant to make restitution for necessary funeral and related services. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1."

**ABILITY TO PAY NOT A FACTOR IN DETERMINING AMOUNT OF  
RESTITUTION**

**SECTION 2.** G.S. 15A-1340.36 reads as rewritten:

"(a) Amount of Restitution. – In determining the amount of restitution to be made, the court shall not take into consideration the economic circumstances of the defendant or the defendant's ability to pay resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay. If the court orders partial restitution, the court shall state on the record the reasons for such an order.record."

(b) Payment of Restitution. – Orders for restitution shall be due and payable at the time that the order of conviction is entered. If the defendant alleges that he or she cannot pay the full amount of restitution, the court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period. In determining the manner in which the restitution is to be paid, the court shall consider the resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's future earning potential, the defendant's obligation to support dependents, and any other matter that pertain to the defendant's ability to make restitution. After making the determinations required by subsections (a) and (b) of this section, the court shall enter an order for restitution which sets forth the total amount of restitution the defendant owes all persons, the total amount of restitution owed each person, and the manner in which the restitution is to be paid.

(c) Payment of Restitution While Incarcerated. – When an active sentence is imposed, the court shall consider whether it should recommend to the Secretary of Correction that restitution be made by the defendant out of any earnings gained by the defendant if the defendant is granted work-release privileges, as provided in G.S. 148-33.2. The court shall also consider whether it should recommend to the Post-Release Supervision and Parole Commission that restitution by the defendant be made a condition of any parole or post-release supervision granted the defendant, as provided in G.S. 148-57.1.

#### **INCOME WITHHOLDING**

**SECTION 3.** Article 81C of Chapter 15A of the General Statutes is amended by adding a new section to read:

##### **§ 15A-1340.39. Income withholding order.**

(a) Entry of order. – When restitution is required of a defendant who will not be commencing an active sentence and who is employed, the court shall, at the time of ordering restitution, enter a separate order for income withholding. The

withholding order must direct the employer to deduct from all income due and payable to the offender an amount required by the court, subject to the restrictions set forth in 15 U.S.C. 1673, to meet the defendant's restitution obligation. The withholding order must include an instruction to the employer that upon receipt of a copy of the withholding order the employer shall do all of the following:

- (1) Immediately begin to withhold the defendant's income when the defendant is usually paid.
- (2) Send each amount withheld to the agency to which restitution has been ordered to be paid at the address set forth in the order within seven business days of the withholding.
- (3) Identify each amount sent to the agency by indicating the court's docket number.

(b) Expiration of Order. – The income withholding order is effective as long as the order for restitution upon which it is based is effective or until further order of the court.

#### **STATE INCOME TAX REFUND OFFSETS**

**SECTION 4.** G.S. 105A-2(2) is amended by adding a new sub-subdivision to read:

"b1. A sum that a claimant agency collects and disburses as required by a court order, such as restitution."

**SECTION 4.1.** G.S. 105A-2(9) is amended by adding a new sub-subdivision to read:

"c. A county clerk of court."

#### **AOC STUDY ON THIRD PARTY COLLECTION**

**SECTION 5.** The Administrative Office of the Courts shall study the use of third party collection as a means to improve the collection of restitution and other court fines, fees, and costs. The Administrative Office of the Courts shall report its findings and recommendations to the 2006 Regular Session of the 2005 General Assembly upon its convening..

#### **EFFECTIVE DATE**

**SECTION 6.** Sections 5 and 6 of this act become effective when they become law. The remainder of this act becomes effective for restitution orders entered on or after December 1, 2005.

## Bill Analysis of Legislative Proposal: RESTITUTION CHANGES AND STUDY

BY: TRINA GRIFFIN, RESEARCH DIVISION

---

**BILL ANALYSIS:** This legislative proposal makes four changes with regard to restitution and directs the Administrative Office of the Courts to conduct a study.

### *Restitution for Funeral Expenses Mandatory*

Under current law, a defendant who is being sentenced for an offense resulting in the death of the victim is not required to make restitution for the victim's funeral expenses. While the court is directed to consider funeral expenses in determining the restitution amount, the court must also consider a defendant's ability to pay. Section 1 of the proposal would require the court to order a defendant who is being sentenced for an offense that resulted in the death of the victim to make restitution for necessary funeral and related expenses.

### *Ability to Pay Not a Factor in Determining Amount of Restitution*

When determining the amount of restitution to order against a defendant, current law requires the court to take into consideration the resources of the defendant including all real and personal property owned by the defendant, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution. Section 2 of the proposal would require that the court not take into consideration the economic circumstances of the defendant when determining the amount of restitution. Instead, the court may consider these factors in establishing a payment schedule. It further requires the court to include the payment schedule in the order for restitution.

### *Income Withholding*

Under North Carolina law, garnishment is only permitted in a limited number of circumstances. These include child support obligations, delinquent taxes, charges for ambulance services in certain counties, collection on judgments for hospital services rendered, and to recoup fraudulent public assistance program payments. Federal law also caps the amount that may be garnished from a person's wages at 25% of weekly earnings or the amount by which a person's disposable weekly earnings exceed 30 times the federal minimum hourly wage, whichever is less. Section 3 of the proposal would require the court, when entering a restitution order against a defendant who is not being sentenced to active time and who is employed, to enter a separate income withholding order directing the defendant's employer to deduct an amount required by the court to meet the defendant's

restitution obligations. The employer would be required to withhold the required amounts and remit the funds to the appropriate clerk of court, who would then disburse the funds.

*State Income Tax Refund Offsets*

Under the current Setoff Debt Collection Act, the Department of Revenue sends the income tax refund of an individual who owes money to a State or local agency to that agency in payment of the debt rather than to the individual. The individual's income tax refund is therefore set off against the debt the individual owes to the State or local agency. Section 4 of the proposal would amend the act to require clerks of court to submit debts for unpaid restitution to the Department of Revenue for setoff against the defendant's income tax refund, if owed one.

*AOC Study of Third Party Collection for Restitution*

Section 5 of the proposal requires the Administrative Office of the Courts to study the use of third party collection agencies to collect restitution and other court fees, fines, and costs and to report to the 2006 Regular Session of the 2005 General Assembly upon its convening.



# APPENDIX A

---

## COMMITTEE AUTHORIZATION

**James B. Black**  
**Speaker**



**Richard T. Morgan**  
**Speaker**

Office of the Speaker  
North Carolina House of Representatives  
Raleigh, North Carolina 27601-1096

---

**TO THE HONORABLE MEMBERS OF THE  
NORTH CAROLINA HOUSE OF REPRESENTATIVES**

**WHEREAS**, a significant amount of restitution remains unclaimed and unpaid due to a variety of reasons that include the defendant's inability to pay, the clerk of court's inability to locate victims, victims' inability to identify and locate assets of a defendant, and the difficulty victims face in navigating the legal system to enforce restitution orders; and

**WHEREAS**, the prior House Select Study Committee on Preventing Unjust Profiteering from Crime began to review the methods by which crime victims are compensated for injuries sustained as the result of the crimes committed against them and determined that further review is needed;

**NOW, THEREFORE:**

**Section 1.** The **House Select Committee on Restitution** is established by the Speakers, effective September 14, 2004, as a select committee of the House pursuant to G.S. 120-19.6(a) and Rule 26(a) of the Rules of the House of Representatives of the 2003 General Assembly.

**Section 2.** The Select Committee consists of 10 members. The individuals listed below are appointed as members of the Select Committee. Members serve at the pleasure of the Speakers of the House of Representatives.

Rep. Rick Eddins, Co-Chair  
Rep. Hugh Holliman, Co-Chair  
Rep. Bernard Allen  
Rep. Beverly Earle  
Rep. Mitch Gillespie  
Rep. James Harrell  
Rep. Carolyn Justus  
Rep. Louis Pate  
Rep. Arthur Williams  
Rep. Keith Williams

**Section 3.** The Select Committee shall study the processes for the collection and payment of restitution in this State, and shall determine the methods for reducing the number of restitution payments that go unclaimed. The Select Committee shall incorporate the work to be conducted under Section 26.1 of Senate Bill 1152, S.L. 04-161, into its study and produce one report that contains the recommendations of the Committee, the Administrative Office of the Courts, and the Department of Correction on this subject.

**Section 4.** The Select Committee may meet during the interim period between regular sessions upon the call of its cochairs.

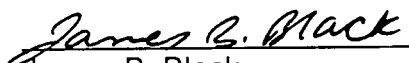
**Section 5.** The Select Committee shall report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before the convening of the of the 2005 General Assembly by filing a copy of the report with the Speakers' offices and the Legislative Library. The Committee terminates upon the convening of the 2005 General Assembly, or upon the filing of its final report, whichever occurs first.

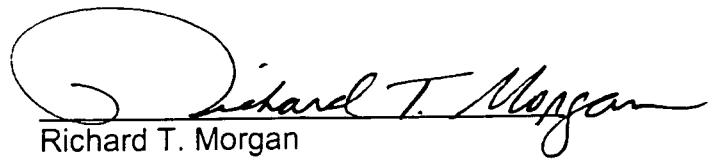
**Section 6.** The Select Committee is vested with the authority contained in Article 5A of Chapter 120 of the General Statutes.

**Section 7.** Members of the Select Committee shall receive per diem, subsistence, and travel allowance at the rate established in G.S. 120-3.1.

**Section 8.** The expenses of the Select Committee are considered expenses incurred for the operation of the House of Representatives and shall be paid pursuant to G.S. 120-35 from funds available to the House for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of a co-chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speakers of the House of Representatives.

Effective this 14th day of September, 2004.

  
James B. Black  
Speaker

  
Richard T. Morgan  
Speaker

# APPENDIX B

---

REMARKS BY MEL CHILTON, NCVAN



October 21, 2004

**To: House Select Committee on Restitution**

**From: Mel L. Chilton, Executive Director of NC Victim Assistance Network**

**Issues of Concern:**

- The Administrative Office of the Courts reported to this Committee last session a rate of only 24% of all restitution ordered was actually collected in the 100 counties across the state of North Carolina.
- Judgments ordered by the court do not always include restitution even when there is loss of life or serious physical injury resulting in financial burdens for victims.
- Accountability: Judgments/Orders of Restitution do not always follow the inmate to prison and the system does not monitor the payment of this restitution. Many victims complain that orders of restitution are "written off" when the probationer absconds (leaves the state). After the case is closed he can return and commit his crime again without being held responsible for his/her crime.

**Recommendation:**

- Require funeral expenses be paid by the offender in all convictions involving loss of life. (Death by vehicle, Manslaughter, 2<sup>nd</sup> Degree, etc.) This should be required regardless of prison sentence and should not be waived until obligation is fulfilled.
- Require restitution in all cases involving physical injury. Obligation should not be waived with active sentence.
- Review work release income percentage and increase to the Federal maximum
- Work programs within the prison system
- Create Restitution Work Programs with Criminal Justice Partnership Programs
- Future earning potential should be taken into consideration and the obligation should never be waived.

Bringing Balance To The System.

# APPENDIX C

---

## PRESENTATION NOTES OF TRACY LITTLE, DEPARTMENT OF CORRECTION

**Department of Correction**  
**Work Release and Restitution Issues**  
October 21, 2004

**Work Release**

**An Overview**

Work Release is a program that allows select inmates to work in the community while they are incarcerated. Inmates on work release leave the prison during the work period and return to the prison at the end of the work period. Wages earned by inmates on work release help defray the costs of incarceration, provide support for dependents and present an opportunity for the offender to meet restitution and reparation obligations. Approximately 1,120 inmates currently have jobs through the work release program.

*Statutory Authority: N.C.G.S. §148-33.1; 148-33.2.*

**General Requirements for Work Release Eligibility**

- A sentence of less than five years OR within 3 years of a release date
- No pending felony charges or felony detainers
- Suitable employment
  - Salary pays at least current minimum wage
  - Employer insurance program
  - Appropriate workplace supervision
- Suitable prison facility within normal commuting distance
- Minimum custody level 3
- No escape within six months or major infraction with three months of placement
- No significant victim conflicts related to housing or community-based participation

**Work Release Disbursements**  
**Priority of Payments<sup>2</sup>**

*Statutory Authority: N.C.G.S. § 148-33.1*

<b>PAYMENT PRIORITY BY CATEGORY</b>
<b>(1) Per diem</b>
<b>(2) DOC and private transportation</b>
<b>(3) Inmate draw</b>
<b>(4) Child support</b>
<b>(5) Restitution/Fines/Court Courts/Attorney's Fees</b>
<b>(6) Judgments and court orders</b>
<b>(7) Special payments</b>

<sup>2</sup> These are deductions made from net income after the employer has withheld all statutory deductions (taxes and FICA) and authorized deductions required by the employer.

**Work Release Numbers (FY 03-04)**

▪ Average Account Balance	\$2,078
▪ Amount paid to General Fund	\$4,202,755

**Restitution Issues for Probationers/Parolees**

*Statutory Authority: N.C.G.S. § 15A-1340.34 et seq.*

- Sentencing court determines amount of fines, costs, fees and restitution
- Offenders make payments directly to the Clerk of Court
- Officers access AOC's Financial Management System to see amount paid, how the Clerk's office applied the payment and the remaining balance
- Officers confirm payments based on level of supervision
  - Community Level 1 every month
  - Community Level 2 every 2 months
  - Community Level 3 every 3 months
  - Intermediate Level every month
- Failure to pay is considered a non-emergency technical violation
- Officers work with offenders to help them meet obligations
- Court may extend period of supervision to allow the offender to continue to pay outstanding indebtedness

**Restitution Numbers for Probation/Parole/Post-Release (FY 2003-04)**

▪ Total Number of Offenders	178,789
▪ Offenders with Restitution Obligations	56,486
▪ Restitution Payments from DCC Offenders	\$17,778,616.93



## **APPENDIX D**

---

### **STATUS REPORT OF VICTIM RESTITUTION RECOMMENDATIONS, NC SENTENCING AND POLICY ADVISORY COMMISSION (1995)**

**STATUS REPORT**

**VICTIM RESTITUTION RECOMMENDATIONS**

**November, 1995**

**Prepared by Sandy C. Pearce  
and  
John Madler**

# STATUS OF N. C. SENTENCING COMMISSION'S VICTIM RESTITUTION RECOMMENDATIONS

## Mandate from the General Assembly

In August 1993, the General Assembly directed the Sentencing and Policy Advisory Commission to "study restitution policy and its place as a part of North Carolina's criminal justice system." The Commission was required to make a report of its findings and recommendations, including any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly.

In June 1994, the Sentencing Commission submitted Victim Restitution in North Carolina: A Report to the 1994 Session of the General Assembly. The report contained a description of the Sentencing Commission's study process, a summary of victim restitution procedures and practices in North Carolina, a statement of purpose and policy principles, and fifteen recommendations for enhancing the system for ordering, collecting, monitoring, and enforcing victim restitution. Four of the recommendations included legislation and eleven of the recommendations involved administrative agency action. During the 1995 Regular Session of the General Assembly, the Commission's legislative recommendations were presented in House Bill 155 and Senate Bill 210.

This report summarizes the status of both the legislative and administrative recommendations as of November 1, 1995.

## Status of Sentencing Commission Recommendations

### **Ordering Victim Restitution**

Recommendation 1: The Commission recommends that the Administrative Office of the Courts develop and adopt a standard form or standard information to address victim impact. The Commission further recommends that this be done in consultation with the Conference of District Attorneys and the Victim Assistance Network.

**STATUS:** In January 1995, the Conference of District Attorneys voted to revise their series of standardized Victim Impact Statements and patterned them after models produced by the National Office of Victims of Crime. The use of these forms is currently voluntary. Subject to legislation requiring the use of a Victim Impact Statement, the Administrative Office of the Court will ask the Judicial Forms Committee to consider adoption of a series of standard victim impact forms covering major crime categories.

Recommendation 5: The Commission recommends legislation to make the ordering of restitution a priority in all cases where it is appropriate.

STATUS: House Bill 155 was referred to the House Judiciary II Committee but was not taken up in the 1995 Regular Session of the General Assembly. Senate Bill 210 was referred to the Senate Judiciary II Committee. A fiscal note was prepared. The bill was given a favorable report by the Committee. The bill was re-referred to the Appropriations Committee, but the Session ended before further action was taken.

Recommendation 6: The Commission recommends legislation to make restitution the first priority among funds disbursed by the clerk of court.

STATUS: House Bill 155 was referred to the House Judiciary II Committee but was not taken up in the 1995 Regular Session of the General Assembly. Senate Bill 210 was referred to the Senate Judiciary II Committee. A fiscal note was prepared. The bill was given a favorable report by the Committee. The bill was re-referred to the Appropriations Committee, but the Session ended before further action was taken.

### **Collecting, Monitoring, and Disbursing Victim Restitution**

Recommendation 7: The Commission recommends that the Administrative Office of the Courts develop procedures to share automated information with the Division of Adult Probation and Parole in order to facilitate documentation and monitoring of restitution payments in cases of supervised probation.

STATUS: The AOC's new automated Financial Management System (FMS) has been installed in over half of the counties in the State. In each of these counties, AOC provides on-line access to restitution information for probation officers. The FMS will be available in 80 counties by the end of 1996.

Recommendation 8: The Commission recommends that the Administrative Office of the Courts expand its Financial Management System to include generation of monthly reports and issuance of bills, unless the Administrative Office of the Courts determines that such expansion is legally, administratively, or financially not feasible.

STATUS: No action has been taken.

Recommendation 9: The Commission recommends that defendants be permitted to use debit/credit cards to pay restitution, unless the Administrative Office of the Courts determines that the use of such cards is legally, administratively, or financially not feasible.

STATUS: The AOC has been advised by the Conference of Chief Justices and State Court Administrators that there is a problem with using debit/credit cards for payment of

restitution in unsupervised probation cases is the responsibility of the victim. No court official or agency has been assigned this responsibility. Consequently, the Administrative Office of the Courts has not developed policies to enforce compliance with victim restitution in unsupervised probation cases beyond the existing rules that pertain to recording and maintaining the judgement record.

Recommendation 12: The Commission recommends legislation to permit the court to extend a period of probation up to five years, for a total period of ten years, if the defendant was convicted of an offense, and to extend a period of probation up to three years, for a total of five years, if the defendant was under deferred prosecution, primarily for the purpose of allowing the defendant to complete a program of restitution.

STATUS: House Bill 155 was referred to the House Judiciary II Committee but was not taken up in the 1995 Regular Session of the General Assembly. Senate Bill 210 was referred to the Senate Judiciary II Committee. A fiscal note was prepared. The bill was given a favorable report by the Committee. The bill was re-referred to the Appropriations Committee, but the Session ended before further action was taken.

Recommendation 13: The Commission recommends that the court should have the authority to garnish a defendant's wages for default on a restitution obligation, unless the Administrative Office of the Courts determines that such garnishment is legally, administratively, or financially not feasible.

STATUS: The garnishment of wages is a widely used practice in the collection of child support in North Carolina. The AOC reports that the garnishment of wages to pay restitution requires statutory authorization by the General Assembly. They report that garnishment is a limited remedy due to the defendant's ability to pay. Since the top priority for garnishment of wages is child support, adding another category will create competition for the funds. It will be difficult locally to determine payments when multiple garnishments exist.

Recommendation 14: The Commission recommends that the Division of Adult Probation and Parole establish written policies and procedures to graduate the intensity of sanctions against probationers who default on restitution payments and study the use of restitution centers as a component of a continuum of sanctions against restitution payment violators.

STATUS: The DAPP created an internal task force to review and revise probation violation procedures. The new policies went into effect in October 1994. The new policies provide guidance to field staff to use when considering options for specific violations, including failure to pay restitution. The foundation of the new policies is to graduate the intensity of community and intermediate sanctions prior to revocation. The Task Force recommended seeking funds from the General Assembly to initiate a restitution residential center for offenders sentenced by the courts and a community work camp for probation violators. The DAPP will request funds from the General Assembly

## **APPENDIX E**

---

### **PRESENTATION NOTES OF TOM ANDREWS, ADMINISTRATIVE OFFICE OF THE COURTS**

## DISTRIBUTION PRIORITIES

Thomas J. Andrews

General Counsel

North Carolina Administrative Office of the Courts

### CONTENTS

I. WHAT DOES DISTRIBUTION PRIORITY MEAN, WHEN DOES IT MATTER, HOW DOES IT WORK

II. DISTRIBUTION PRIORITIES UNDER G.S. 7A-304(D).

A. Generally

B. Restitution

1. *Before the Victims Rights Act*

2. *Victim's Rights Act Amendment*

III. THE COMMUNITY SERVICE AND PROBATION SUPERVISION FEES IN RELATION TO THE SUBSECTION (D) CATEGORIES

1. *Community Service Fee and Probation Supervision Fee Have Highest Distribution Priority*

2. *Judge's Option to Order Restitution Paid Ahead of these Fees*

IV. SUMMARY EXAMPLE

V. LEGISLATIVE CLARIFICATION WOULD BE WELCOME

### DISCUSSION

I. WHAT DOES DISTRIBUTION PRIORITY MEAN, WHEN DOES IT MATTER, HOW DOES IT WORK

In criminal cases, the idea of distribution priority means that all the money paid into court by a defendant on probation is distributed to the persons entitled to receive payments in a set order of priority.

Distribution priority matters only when the defendant has made some, but not all, of the payments due as a condition of probation. Priority does not matter if the defendant pays nothing. No one receives anything. Priority does not matter if the defendant pays everything. Everyone is paid in full.

When the defendant pay only part of what s/he owes, the concept of distribution priorities means that persons entitled to the first priority receive all money paid by the defendant until they are paid in full. When the first priority is paid in full, the next money received from the defendant goes to persons entitled to the second priority, and so forth.

This idea is illustrated by analogy to a set of bowls on a hill. Water is poured from a bucket into the highest bowl on the hill. The water keeps pouring until the highest bowl is full. When highest bowl is full the water overflows into the second highest bowl on the hill until that bowl is full, and so forth. When the bucket is empty one of the bowls will be only partly full and all the lower bowls lower will remain empty.

Priority is a common idea in our legal system. For example, it applies in:

- Bankruptcy and receivership, where claims against the debtor are paid in a set order of priority, and
- Decedent's estates, where claims against the decedent's estate are also paid in a set order of priority.

## II. DISTRIBUTION PRIORITIES UNDER G.S. 7A-304(D).

### A. Generally

G.S. 7A-304(d) currently reads as follows:

#### **"A-304. Costs in criminal actions.**

...  
(d)(1) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- a. Sums in restitution to the victim entitled thereto;
- b. Costs due the county;
- c. costs due the city;
- d. fines to the county school fund;
- e. Sums in restitution prorated among the persons other than the victim entitled thereto;
- f. Costs due the State;
- g. Attorney's fees, including appointment fees assessed pursuant to G.S. 7A-455.1."

Under subsection (d), payments made by a defendant on probation are distributed first to the victim entitled to restitution until all the ordered restitution has been paid. Any further payments received from the defendant are then disbursed to the county until all costs due it are paid, and so forth. At some point, if the payments stop, some priority will be only partly paid and the lower priorities will not be paid at all.

Restitution will be discussed below. As to the other priorities:



“Costs due the county” include:

- The facilities fee (\$12.00 for district court and \$30.00 for superior court), if the case was disposed in a county facility, and
- a \$5.00 fee for each arrest or service of process in the case, other than those by a municipal law enforcement officer

“Costs due the city” include:

- the facilities fee, if the case was disposed in a municipal facility, and
- A \$5.00 fee for each arrest or service of process in the case by a city law enforcement officer.

“Fines due the county” are all fines assessed in the case.

“Costs due the State” include:

- contributions totaling \$7.00 to several law enforcement officer benefit funds, and
- a fee for the support of the General Court of Justice (\$76.00 in district court and \$83.00 in superior court), which is remitted to the State Treasurer.

“Attorney’s fees” include the fees and expenses of the defendant’s court-appointed attorney, if ordered repaid as a condition of probation.

Note that some priority categories contain two or more subcategories. Subsection (d) does not create priorities among these subcategories, nor does it specify that they be satisfied pro rata from the funds available for each priority category. If a priority category is only partially paid, the available money is disbursed to the person entitled to receive it (county, city, State Treasurer) who decides how to allocate it among the subcategories.

## B. Restitution

### 1. *Before the Victims Rights Act*

Before the enactment of the Crime Victims Rights Act in 1998, subsection (d) read as follows:

“(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- (1) Costs due the county;
- (2) Costs due the city;
- (3) Fines to the county school fund;
- (4) Sums in restitution prorated among the persons other entitled thereto;
- (5) Costs due the State;
- (6) Attorney's fees.”

Under this statute, all restitution received the fourth distribution priority. The victim received no restitution until the costs due the county, the costs due the city and the fines due the county

school fund were fully paid. Conversely, no money was distributed to pay the costs due the State or attorney's fees until restitution was paid in full.

Further, there was no distinction between types of restitution. The fourth priority included restitution due the victim, restitution ordered paid on behalf of the victim to satisfy debts for medical care, etc, and restitution ordered paid to an insurance company that had already compensated the victim for injuries suffered.

The fourth priority for restitution applied "unless otherwise ordered by the presiding judge." Therefore the presiding judge always had the option of moving restitution up to the first distribution priority under subsection (d). And long before the VRA was enacted, our sentencing forms contained an option that allowed the judge to order that the restitution be paid before any other subsection (d) priority.

## *2. Victim's Rights Act Amendment*

The Victim's Rights Act legislation amended subsection (d) to read:

"(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

(1) Sums in restitution to the victim entitled thereto;

~~(1)~~(2) Costs due the county;

~~(2)~~(3) Costs due the city;

~~(3)~~(4) Fines to the county school fund;

(4)(5) Sums in restitution prorated among the persons other than the victim entitled thereto;

~~(5)~~(6) Costs due the State;

~~(6)~~(7) Attorney's fees."

As a result, there are now two distribution priorities for restitution. Restitution to the "victim entitled thereto" has the first distribution priority and is paid in full before any lower priorities receive anything. Restitution to persons other than the victim has the fifth distribution priority, and is paid only after all the higher priorities are paid in full.

There can be only one person in the first priority, since the word "victim" is singular. There could be more than one person in the fifth priority, since the word "persons" is plural and restitution is prorated among them.

Who is the "victim entitled thereto" and who are the "persons other than the victim?" The victim is a person who qualifies as a victim under the Victims Rights Act. Persons other than the victim are everyone else to whom restitution is ordered. Persons other than the victim include:

- All victims of offenses committed before December 1, 1998,
- Victims of crimes not listed in the definition of a victim in the Victims Rights Act,
- Persons who were not directly and proximately harmed as a result of the defendant's commission of the offense,
- Persons who provided assistance, medical care, insurance benefits or compensation to the victim.

(The reasoning that supports these conclusions is set out in a footnote<sup>3</sup>)

For restitution to victims who meet the VRA definitions, first priority distribution is mandatory. The court does not need to make any reference in the judgment to the distribution priority of that restitution. For restitution to persons other than the victim, fifth priority distribution is the default priority. Unless "otherwise ordered by the presiding judge" it remains in the fifth priority. The presiding judge may order otherwise, but restitution shall still "be made to the victim . . . before it is made to any other person, organization, corporation or association." G.S.15A-1340.37(b). Our sentencing forms continue to contain an option that allows the judge to order that all restitution be paid before any other subsection (d) priority. When this option is checked, restitution to the victim is paid first, restitution to persons other than the victim is paid second, and the other subsection (d) priorities are paid if any funds remain.

### III. THE COMMUNITY SERVICE AND PROBATION SUPERVISION FEES IN RELATION TO THE SUBSECTION (D) CATEGORIES

A community service fee (currently a one time fee of \$200.00) must be paid by defendants who are ordered to perform community service in a DWI conviction or as a condition of probation or deferred prosecution in any other criminal case. G.S. 20-179.4(c), 143B-262.4(b). A probation supervision fee (currently \$30.00 per month for each month of supervision) must be paid by

---

<sup>3</sup> The amendment to G.S. 7A-304(d) was enacted by S.L. 1998-212, §19.4(k). S.L. 1998-212 was that year's appropriations act. Section 19.4 was the vehicle by which the Crime Victim's Rights Act and related provisions were enacted. It has its own separate heading, which reads in part, "CREATE THE CRIME VICTIMS RIGHTS ACT . . . /CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES . . ." Section 19.4 is one coherent enactment. This section alone runs to 16 pages in the Ratified Bill published by the General Assembly when it was enacted. It has seventeen subsections. All of its subsections enact new laws or revise existing law to conform to the Crime Victims Rights Act. The subsection amending G.S. 7A-304(d) is one of those subsections. In this context the word "victim," which was introduced into subsection (d) by this amendment, has the same meaning in subsection (d) that it has in the Crime Victim's Rights Act. Victim is defined in the Victims Rights Act, in G.S. 15A-830(a)(7), as "a person against whom" one of the crimes listed in that section was committed. It is further defined in the restitution provisions of the Act, in G.S. 15A-1340.24(a), as a person directly and proximately harmed as a result of the defendant's commission of the offense."

defendants who are placed on supervised probation. G.S. 15A-1343(c1). What is the distribution priority for these fees?

*1. Community Service Fee and Probation Supervision Fee Have Highest Distribution Priority*

Currently, payments received from the defendant are disbursed to satisfy the community service fee and the probation supervision fee before any moneys are disbursed to satisfy any of the subsection (d) priorities, unless the court orders otherwise. Here is why.

Subsection (d) prioritizes only the categories of obligation specified in that paragraph. It does not purport to prioritize any other monetary obligations imposed as a condition of probation. The community service fee and the probation supervision fee are not mentioned by name in subsection (d). They are not “costs due the State,” because costs due that State are limited to the costs assessed under the provisions of Article 28 of Chapter 7A of the General Statutes, entitled “Uniform Costs and Fees in the Trial Divisions.” This point is made clear by G.S. 7A-320, which provides, “The costs set forth in this Article are complete and exclusive, and in lieu of any other costs and fees.”

There are only two choices for how to prioritize the community service fee and the probation service fee in relation to the obligations prioritized by subsection (d). These fees are either paid ahead of all the subsection (d) priorities or after all the subsection (d) priorities are fully paid in full. There is no statute or legal precedent that answers the question.

Highest priority distribution is most consistent with generally accepted bookkeeping and accounting principles. Current obligations are generally satisfied ahead of past due obligations. The community service fee and the probation supervision fee are current obligation, because they are fees for services currently being provided to the defendant. Subsection (d) obligations are all past due obligations, because they incurred as a consequence of the commission of the crime.

There is also a practical reason for giving these fees priority over the subsection (d) obligations. Highest priority classification is likely to produce more money for the subsection (d) priorities, especially restitution, than the lowest priority would. If these fees have the highest priority, and have been satisfied by whatever partial payments the defendant has made when the defendant’s probation is being reviewed, these fees can be waived or subordinated as an inducement to the defendant to complete the payment of his/her other obligations. If they have last priority this leverage is not available.

*2. Judge’s Option to Order Restitution Paid Ahead of these Fees*

The presiding judge may order that restitution be paid ahead of even the community service fee and the probation supervision fee. If the presiding judge does not do so, limited funds will be disbursed to pay fees before being disbursed for any restitution, including restitution to the victim and restitution to persons other than the victim.

Merely ordering that restitution be paid first among the subsection (d) priorities does not accomplish this goal. The court must specifically order that restitution be paid ahead of the

community service fee and the probation supervision fee. Our sentencing forms contain an second option that allows the judge to order that all restitution be paid before the community service and probation supervision fees

#### IV. SUMMARY EXAMPLE

Assume that the defendant is ordered to pay the following:

- \$200.00 community service fee
- \$30.00 probation supervision fee per month
- \$500.00 restitution to the victim
- \$30.00 superior court facilities fee
- \$5.00 arrest fee to the county
- \$200.00 fine
- \$500.00 to the Crime Victim's Compensation Fund, for benefits it has paid the victim
- \$7.00 in contributions to law enforcement office benefit funds
- \$83.00 superior court general court of justice fee
- \$500.00 attorney's fee.

Assume further that the defendant's probation is revoked or terminated after 5 months of supervision, and that the payments received through that date total \$900.00.

If no restitution related option is checked on the form, the \$900.00 will be distributed as follows

- \$200.00 to the community service program
- \$150.00 to the Division of Community Correction, for 5 months of probation supervision,
- \$500.00 to the victim
- \$35.00 to the county as costs due the county
- \$15 to the county as partial payment of the fine
- Nothing to the Crime Victims' Compensation Fund, for the restitution ordered to it
- Nothing to the State Treasurer for costs due the State
- Nothing to the Indigent Person's Attorney Fee Fund for the attorney's fee.

The first restitution option on the judgment forms reads, "All payments received by the Clerk shall be distributed pro rata among the persons entitled to restitution in this priority // first

among all G.S. 7A-304(d) priorities.” If only this option is checked on the judgment form, the \$900.00 will be distributed as follows:

- \$200.00 to the community service program
- \$150.00 to DCC
- \$500.00 to the victim
- \$150 to the Crime Victims' Compensation Fund
- Nothing to anyone else

The second restitution option on the judgment forms reads, “All payments received by the Clerk shall be distributed pro rata among the persons entitled to restitution in this priority // first among all G.S. 7A-304(d) priorities // and before payment of community service and probation supervision fees.” If this option is also checked on the judgment form, the \$900.00 will be distributed as follows:

- \$500.00 to the victim
- \$400.00 to the Crime Victims' Compensation Fund
- Nothing to anyone else.

#### V. LEGISLATIVE CLARIFICATION WOULD BE WELCOME

AOC has no position on the merits of the current priorities. However we would welcome any legislative clarification, especially these two questions:

- What priority does the General Assembly believe restitution should have in relationship to the community service fee, the probation supervision fee and any other obligations not listed in subsection (d)?
- How should the subcategories in the same distribution priority be treated when there is not enough money to pay all the subcategories in full?

## **APPENDIX F**

---

### **REMARKS OF WHIT GIBSON, CLERK OF SUPERIOR COURT**

# **RESTITUTION:**

## **I. GENERALLY THE CLERK OF SUPERIOR COURT:**

- 1) RECORDS THE AMOUNT OF RESTITUTION TO BE PAID,**
- 2) COLLECTS THE MONIES THAT ARE PAID BY THE DEFENDANT, AND**
- 3) DISTRIBUTES THOSE MONIES ACCORDING TO THE JUDGE'S ORDER.**

## **II. PROBLEMS THAT OCCUR:**

- 1) INFORMATION NOT PROVIDED TO CLERK ABOUT THE AMOUNT OF RESTITUTION, RECIPIENT'S INFORMATION (ADDRESS, SOCIAL SECURITY NUMBER, ETC.).**
- 2) VICTIM'S DO NOT UNDERSTAND WHY THEIR MONETARY LOSS IS NOT A PRIORITY WITH THE COURT SYSTEM.**
- 3) DEFENDANTS DO NOT PAY MONIES AND PROBATION OFFICERS DO NOT TREAT "NON-PAYMENT" WITH SAME SEVERITY AS OTHER VIOLATIONS.**
- 4) CLERK'S OFFICES MUST MANUALLY MONITOR "UNSUPERVISED" PROBATION CASES IN ORDER TO BRING NON-COMPLIANT DEFENDANTS BACK TO COURT FOR NON-PAYMENT.**
- 5) "JOINTLY AND SEVERALLY" LIABLE IS A CONFUSING CONCEPT, BUT ULTIMATELY A RIGHT METHOD OF COLLECTING RESTITUTION.**
- 6) DEFENDANTS BEING GIVEN TIME TO PAY RESTITUTION WHEN THEY COULD PAY RESTITUTION IF THE CASE WAS "CONTINUED" FOR 30 TO 60 DAYS. MORE RESTITUTION WOULD BE PAID EARLY ELIMINATING THE NEED FOR PROBATIONARY SENTENCES.**
- 7) PROBATION IS SOMETIMES TERMINATED BEFORE ALL OF RESTITUTION IS COLLECTED.**



## **RECOMMENDATIONS ON RESTITUTION ISSUES:**

**1. AUTOMATED SYSTEM BY WHICH CLERK OF COURT (AND POSSIBLY COMMUNITY CORRECTIONS) CAN MONITOR AND CITE BACK INTO COURT THOSE INDIVIDUALS ORDERED TO PAY RESTITUTION WHO HAVE FAILED TO DO SO OR FALLEN BEHIND IN THE ORDERED PAYMENTS.**

**2. PROVIDE FOR "INCOME TAX RETURN" INTERCEPT TO RECOVER RESTITUTION ORDERED, BUT NOT COLLECTED, AFTER A JUDGEMENT HAS BEEN ENTERED AGAINST THE DEFENDANT.**

**3. RE-PRIORITIZE THE ORDER OF DISTRIBUTION OF MONEY PAID INTO THE CLERK SO THAT THE PAYMENT AND DISTRIBUTION OF RESTITUTION TO VICTIMS IS THE "FIRST" (OR AT LEAST A MUCH HIGHER) PRIORITY.**

**4. OVERHAUL AND MAKE LESS COMPLICATED AND CONFUSING THE PRACTICE OF ORDERING THAT DEFENDANTS BE MADE "JOINTLY AND SEVERALLY" LIABLE FOR RESTITUTION PAYMENTS.**

**5. ENCOURAGE JUDGES TO BE MORE DEMANDING OF DEFENDANTS WHEN ORDERING PAYMENT OF RESTITUTION, NOT GIVING SO MUCH TIME TO PAY. PERHAPS CONTINUING THE CASE FOR 30-60 DAYS SO THAT DEFENDANT MAY PAY RESTITUTION IN ORDER NOT TO HAVE A PROBATIONARY SENTENCE.**

**6. ENCOURAGE PROBATION OFFICERS TO PLACE SAME EMPHASIS ON "MONETARY" ISSUES AS THEY DO ON OTHER CONDITIONS OF PROBATION.**

## **APPENDIX G**

---

**REPORT TO APPROPRIATION CHAIRS AND JPS  
SUBCOMMITTEE ON IMPROVING THE  
COLLECTION RATE OF OFFENDER FEES,  
PRESENTED BY GREGG STAHL, AOC**

# **Improving the Collection Rate of Offender Fees**

A Second Report to Appropriation Chairs

And

Subcommittee on Justice and Public Safety Chairs

Prepared by the Administrative Office of the Courts and the Department of Correction

April 1, 2004

## **COLLECTION OF OFFENDER FEES**

**SECTION 16.15.** The Department of Correction and the Judicial Department shall report by April 1, 2004, to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the success of their efforts to improve the collection rate of offender fees for probationers and for nonprobationers sentenced to community service and on any recommendations for statutory or procedural changes that will improve the collection of financial obligations from offenders.

The report shall include a comparison of the percentage of offender fees collected in the most recent year compared to prior years, including the percentage of offenders who were ordered to pay fees and the percentage of offenders who actually paid those fees. The report shall also include the total offender fees collected, in dollars and as a percentage of the fees ordered, and the fees that could have been ordered based on the sentence and conditions imposed by the judge. If any of this information cannot be collected, the report shall include a description of the data collection issues and a plan for addressing those issues.

### **Overview**

Representatives of the Department of Correction, Division of Community Corrections and the Administrative Office of the Courts met on several occasions to re-review and discuss the system of collecting offender fees. . The groups' primary goal was to review the recommendations from last year's report and to develop a reliable means of calculating a collection rate for offender fees and to make any additional recommendations for improving the collection rates.

Under the current process, offenders are assessed a supervision fee while on supervised probation and a community service fee if ordered to perform community service. Judges must, by statute, order probation supervision fees to offenders placed on supervised probation or assign the community service fee unless the offender is unable to pay. Supervision fees are assigned monthly and under the AOC's accounting system, are credited to DCC and the General Fund when paid. In practice, offenders not making payments to the clerk's office on a regular basis are not revoked for this violation of the condition of their probation but often judges will order modifications to the offender's probation and remit all supervision fees paid against other court imposed fees including victim restitution and attorney's fees. Thus, supervision fees actually paid by an offender are reposted as a victim restitution payment. It has also been the practice that offenders must pay the community service fee prior to performing their community service. There have been some recent changes in that practice, especially since the increase in the fee.

Collections of criminal court, probation, and community service fees have gone up each year since FY 2001-02. This fiscal year the AOC is projecting to collect \$75.7 million in criminal

court fees; \$16.9 million in probation supervision fees and \$8.2 million in community service fees. The total projected amount for FY2003-2004 is \$100,884,422 which is an 11% increase in fees collected over the \$91,133,010 collected in FY2003-2004. Fee collected and comparisons to previous years are illustrated on the following table.

### Three-Year Comparisons of Selected Fees

	Actual 2003 as a % of Projected	Current Fee as % of 01-02	Projected Full Year 2003-04	2003-04 Through April 2004	Actual 2002-03	Actual 2001-02
Criminal court fees	90%	117%	\$ 75,747,396	\$ 63,122,830	\$69,989,561	\$66,744,747
Probation fees	133%	150%	\$ 16,892,370	\$ 14,076,975	\$14,337,121	\$10,832,056
Community Service fees	133%	200%	\$ 8,244,656	\$ 6,870,547	\$ 6,806,328	\$ 5,280,879

### Collection Rates

There is some difficulty in calculating annual collection rates for offenders on supervised and unsupervised probation. The Financial Management System (FMS) is an accounts payable system used by AOC in the Clerks' of Superior Court Offices to disperse payments made by offenders as ordered by the court and outlined in the general statutes. There are two practices used by Clerks' offices to establish offender accounts in FMS. The first practice is to enter all offenders who are on probation and ordered by the court to pay fees and fines into the system. Approximately one fourth of all Clerks offices follow this practice. The remaining Clerks' offices establish the FMS account for an offender when the first payment is paid. Thus, if a payment is never paid, then the offender is never entered into FMS.

By comparing offenders who are in the AOC's Automated Criminal Information System (ACIS) to offenders in FMS and matching case numbers, the two practices become obvious. In cases in which offenders are currently on supervised probation, 80% of the over 99,000 cases were matched with an account in the FMS system. The matching ranged from a low of 40% to a high of 95% of all cases in the county. In about two thirds of the counties, 75% of active supervised probation cases were found in the FMS system. The numbers are quite different in unsupervised probation cases. Only 36% of the nearly 27,000 unsupervised probation cases were matched from ACIS to FMS. The matching ranged from low of only 1% to a high of 100%. In 51 of the counties, less than half of the unsupervised probation cases were found the FMS system. This is illustrated in the following table:

### Probation Cases Matched in FMS from ACIS

Active Probation Cases	ACIS	FMS	% In FMS
Supervised Probation cases	99,318	79,909	80%
Unsupervised Probation cases	26,847	9,793	36%

Actual annual collection rates cannot be accurately calculated, as it is not readily clear what is to be and what can be measured. It is common practice for some or all fees and costs in supervised probation cases to be waived before the termination of supervision if all other conditions of probation have been satisfied. Thus, looking at the number of offenders on active probation who have made no payment in cases where fees and costs have been ordered can give an indication of rate of non payment. By comparing offenders on active probation in ACIS matched with accounts found in FMS in which no payment had been made, there is a inverse correlation to the number of cases matched and the number of non payments. The fewer cases found in FMS the

lower the non-payment rate and conversely, the more cases found in FMS the higher the non-payment rate.

Thus, to look at true non-payment rates, the focus should be placed on counties that place all offenders owing fees and costs into FMS. In active supervised probation cases, there are 26 counties that have a 90% or greater rate of offenders entered into FMS. These counties have a no payment rate of 47% of all of their cases. The rate for these counties ranges from a low of 33% to a high of 53%. The other 74 counties, which have rates of cases entered into FMS of less than 90% have a no payment rate of 49%. The rate for these counties ranges from a low of 34% to a high of 69%.

In looking at non-payment rates for cases of unsupervised probation, the focus should also be placed on counties that place all offenders owing fees and costs into FMS. In active unsupervised probation cases, there are 25 counties that have a 90% or greater rate of offenders entered into FMS. These counties have a no payment rate of 69% of all of their cases. The rate for these counties ranges from a low of 29% to a high of 88%. The other 75 counties, which have rates of cases entered into FMS of less than 90% have a no payment rate of 89%. The rate for these counties ranges from a low of 33% to a high of 100%.

The following table illustrates the non-payment rates.

#### **Non-payment Rates in Supervised and Unsupervised Cases**

<b>Active Probation Cases</b>	<b>Number of Non-Payment Cases</b>	<b>Percent Non-Payment</b>	<b>Range</b>
Supervised Probation cases in which counties have a 90% or greater rate of offenders entered into FMS	12,071	47%	33% - 53%
Supervised Probation cases in which counties have a less than 90% of offenders entered into FMS	33,989	49%	34% - 69%
Unsupervised Probation cases in which counties have a 90% or greater rate of offenders entered into FMS	3,306	69%	29% - 88%
Unsupervised Probation cases in which counties have a less than 90% rate of offenders entered into FMS	19,247	89%	33% - 100%

The non-payment rate can be impacted by a number of factors that are not obvious or apparent through these rates. These factors range from local culture, to resource issues to the economic well being of the county. However, it is clear that those on supervised probation have a lower percentage of non-payment cases than unsupervised probation. It is important to note that the vast majority of supervised probation cases in which fees and costs are due are in FMS and the variance of non-payment rate between those counties, which enter all cases into FMS versus those that generally only enter cases as they make payments, is not very great. The difference in non-payment rates in unsupervised probation rates is greater between the two practices but is very high in both. This could be partially explained by this analysis being only a snapshot of payment history and some unsupervised cases may have a date certain future payment date.

#### **Recommendations**

This section contains an update of the recommendations that were contained in last year's report. Some of these recommendations require statutory changes while others could be accomplished through the administrative processes of the two agencies. However, it was agreed by both agencies that caution should be noted in the enactment of means and methods aimed at increasing collection rates that might adversely affect the collection of other court mandated fees and costs

including victim restitution or that might increase length of stay on probation or revocation rates. There was a feeling among the committee that offenders have finite resources and thus an increase in the collection rate of supervision fees may cause a decrease in the collection of victim restitution or attorneys' fees. There was also agreement that increasing the length of time on probation or revocation rates would be counterproductive in that these methods cost more than they return.

The following is a list of the recommendations:

- **Consider changing monthly supervision fee to flat fee and adding program participation fees such as electronic monitoring, drug testing, drug assessment and drug treatment.** This recommendation would take a statutory change but this would make the supervision fee consistent with the Community Service fee and as such would be a definitive cost identified for the offender. The flat fee could be set as a fee of \$300 paid regardless of the number of months under supervision or regardless of the number of cases for which the offender is being supervised. This would eliminate the duplicative collection of fees from offenders under probation in more than one county and the subsequent remittance of those fees. Requiring offenders to pay a \$90 fee for participation in electronic monitoring, and a \$50 - \$150 fee for drug testing, assessment and treatment would parallel costs assessed in DWI cases. The current accounting system (FMS) could handle this but there are a number of forms and practices that would have to be changed.

*Status: No action from last year.*

- **Supervision fee not to be remitted after payment.** This would take a statutory change to prohibit what is becoming a common practice. Judges would no longer be able to remit fees paid to supervision to be paid as other fees or costs. However, judges would retain the discretion to waive supervision fees at the time of conviction or remit fees not already paid in a modification order or a termination of probation order. This would require training for judges and probation officers.

*Status: No action from last year.*

- **Revoke driving privileges for non-payment.** This would require statutory change. Currently, an offender's driving privilege is revoked for non-payment of court-imposed fees and fines for cases in Chapter 20. This would extend the revocations to all felonies and serious misdemeanors in which probation is ordered.

*Status: No action from last year.*

- **Tax offsets, wage garnishments.** This would require statutory change. Currently tax offsets and wage garnishments are used in child support and other selected cases. Some research would need to be done to determine the overall efficiency of this recommendation, as researching tax records and contacting employers can be very time and labor intensive.

*Status: No action from last year.*

- **Automated dunning letters and show cause orders.** The Division of Community Corrections or the Administrative Office of the Courts could adapt their information systems to generate dunning letters following periods of non payment as well as an automated show cause order for offenders to return to court. This is being done manually with some success in Mecklenburg County.

*Status: After further review of the AOC's ACIS and FMS systems, it has been found to not be cost efficient nor readily feasible to adapt either system to an automated accounts receivable system with billing capabilities.*

- **Unsupervised probationers to have date specific pay dates.** Judges should be encouraged to set a specific date due for those sentenced to unsupervised probation who have substantial fees and fines assessed. The automated dunning letters and show cause orders outlined previously could be used to assist in collections.  
*Status: No action from last year.*
- **Cases continued until payment made.** Judges should be encouraged to continue cases in which offenders site a specific date in which they would be able to make a payment in full to satisfy their judgment.  
*Status: After further review of local court practices, this recommendation has been found to not be practical nor efficient.*
- **Expand the use of criminal contempt.** Judges should be encouraged to use criminal contempt in cases in which offenders do not meet fee payment schedules. This could be done in lieu of revocation.  
*Status: No action from last year.*
- **Training for probation officers on the use of the FMS system.** The ACO could conduct periodic training on the use of the FMS system for probation officers. Many officers have never received initial training and others could use refresher courses. The FMS system could then be used more efficiently by probation officers to monitor their caseloads. *Status: A train the trainer training session was planned and implemented with the AOC FMS staff training DCC training staff.*
- **Automate the origination of records in the FMS system.** Currently, all accounts in the FMS system must be manually entered which requires many hours of work. Bringing the information from judgments over from the criminal system would save the setup time and also provide for better monitoring of all cases. This would require funding for programming.  
*Status: After further review, it has been decided that it would be more cost efficient to build this feature into the replacement system that is currently under design.*
- **Provide management information to probation officers and managers.** The AOC should attempt to provide periodic management reports to probation officers and managers in an electronic form that would provide probation officers with specific payment information on the offenders they supervise.  
*Status: The two agencies are continuing to explore the best means of providing useful management reports for probation officers.*
- **Use of bankcards.** This was discussed and rejected as not a viable option for those offenders currently not paying.  
*Status: No action from last year.*

# APPENDIX H

---

## CHART OF POSSIBLE PROPOSALS



## House Select Committee on Restitution Possible Proposals

	<b>Improving Collection &amp; Distribution</b>	<b>Increasing Restitution Ordered</b>
<b>Generally</b>	1. Income withholding (immediately or only upon default), debt setoff, tax refund intercept, etc.	23. Require that restitution orders include interest (accrues as of the date of sentencing or loss).
	2. Revoke driving privileges for non-payment.	24. Provide for recovery of attorney fees and costs incurred for collecting restitution.
<b>By Victims</b>	3. Give crime victims right to any information regarding offender's financial assets, income, or employment that is in possession of the district court or any community correctional service program.	
	4. Require victims to file SSN or have an alternative way to code the victims who request restitution.	
<b>Within Court System</b>	5. Have magistrate provide restitution worksheet to victims beforehand (when charges are filed). Earlier victim notification of restitution rights.	25. Require judge to order restitution ahead of community service/supervision fees in certain situations (e.g. loss of life, serious injury cases).
	6. Require prosecutors to request information about losses from victims.	26. Change monthly supervision fee to flat fee and adding program participation fees such as electronic monitoring, drug testing, drug assessment, and drug treatment.
	7. Require defendants to file a disclosure identifying all assets, income, and liabilities. Failure to disclose may be considered aggravating circumstance in sentencing.	27. Require that future earning potential be considered when ordering restitution. Restrict judge's ability to order partial restitution. Consider assets and earning potential when setting payment schedule. Even if defendant is currently unable to pay, a restitution plan must be presented that states the conditions under which the defendant will be making restitution.
	8. Authorize district attorneys to contract with private collection agencies, retaining a portion of the collection fee, for administrative expenses.	

	<b>Improving Collection &amp; Distribution</b>	<b>Increasing Restitution Ordered</b>
	9. Use of bankcards.	
	10. Automate the origination of records in the FMS system.	
	11. Establish automated system by which clerk of court (and possibly community corrections) can monitor and cite back into court offenders who have failed to make payments (i.e. dunning letters, show cause orders, automatic docketing).	
	12. Clarify that restitution may be ordered to a person other than victim for economic loss for crimes which are not adjudicated or are not before the court (plea agreements/multiple victim situation)	
	13. Cases continued until payment made.	
	14. Expand use of criminal contempt.	
	15. Supervision fee not to be remitted after payment (prohibit judges from remit fees paid to supervision to be paid as other fees or costs).	
	16. Establish offender-funded collections program; offenders who cannot pay restitution at time of sentence must work with collections investigator to develop restitution payment schedule' payments to be monitored by collections investigator; offender must pay fee to cover costs (see Colorado statute)	
	17. Establish general offender assessment, penalty or surcharge that all offenders (not just those with ROs) must pay. The money can go to fund a collections program or to the victims comp fund.	
<b>While on Probation</b>	18. Authorize court to extend probation to allow offender time to satisfy RO	

	<b>Improving Collection &amp; Distribution</b>	<b>Increasing Restitution Ordered</b>
<b>While Incarcerated</b>	19. Encourage probation officers to place same emphasis on payment of restitution as they do on other conditions of probation.	
	20. Provide management information to probation officers and managers.	
	21. Training for probation officers on the use of the FMS system.	
	22. Require probation officers to review, twice a year, all cases in which restitution ordered; perform final review 60 days before expiration of probation; file written report with court if payments are not being made; give victim right to receive schedule of restitution payments & name and phone number of probation officer.	
		28. Create new and/or enhance inmate work programs. 29. Revise allocation of work-release earnings; require flat percentage off the top to go toward restitution. 30. Require percentage of amount raised by inmate arts and crafts be applied toward restitution.

<b>Technical Changes</b>
Clarify distribution statute to indicate priority of community service and supervision fees (can codify current practice or move restitution ahead of these fees).
Clarify how subcategories within same distribution priority are to be treated when there is not enough money to pay all subcategories in full.
Modify joint and several liability of defendants with regard to payment of restitution.

# APPENDIX I

---

## PRESENTATION NOTES OF MOIRA ROWLEY WITH ACS, INC.

# Moira Rowley

## Vice President, Court Services

---

Seasoned professional with more than 20 years of experience serving courts and justice organizations. As a court manager and in her private sector roles, Moira has contributed her skills and expertise to programs, practices, projects, and initiatives that help courts and justice agencies make better use of information assets, enhance services to their constituents, and improve the quality of justice within their reach. Areas of expertise include:

- **Court Consulting:** Organization, governance, technology, case management practices, justice integration and information exchange, compliance and justice revenue, jury management, court performance measurement, and court technology
- **Project and Program Management:** Local, regional, statewide and national court technology and business process project management, implementation and program evaluation.
- **Product Management:** Commercial software planning, design, delivery and adaptation to client-specific needs and requirements

## Professional Experience

### Vice President, Court Services, 1997 - Present, ACS Government Systems

- Provides guidance and direction for the development of ACS courts and justice solutions and services, currently in use by over 200 courts in the United States. Also directly manages the operations of our Jury Solutions group, with solutions and services in use by over 400 state, local, and federal courts in the United States and over 100 courts internationally.
- Works with jurisdictions across the country to define, implement, monitor and enhance Justice Revenue programs, focused on increasing compliance with court-ordered monetary sanctions.
- Works directly with courts and justice clients to understand their existing and emerging challenges and goals to ensure that ACS solutions are aligned with the needs of the courts and justice community in general, and our clients in particular.
- Contributes to the work of public and private sector professional organizations, and public/private partnerships.

### Accomplishments at ACS

- Helped extend ACS Justice Revenue Services into general jurisdiction, limited jurisdiction and municipal courts.
- Led ACS team in planning the Arizona FARE project, the first statewide court compliance and justice revenue project based on a public/private partnership.
- Participated in the Missouri Fine Collection Center project design and recruitment of large metropolitan area courts and new participants in the statewide project.
- As product manager, oversaw the expansion of ACS court management technologies to a broader set of integrated court management solutions.
- As jury group manager, oversaw the expansion of ACS jury solutions to leverage new technologies that help courts extend better customer service, reduce operating expenses, decrease total cost of ownership, and provide a wide range of constituent self-service options.

**Vice President, Product and Business Development, 1995-1997, Progressive Solutions, Inc. (PSI)**

In this role, Moira established the first comprehensive product release practices for PSI. Responsible for coordination, prioritization, scheduling, and monitoring of product group resources including design, programming, quality assurance, and documentation. Established strategic direction for production development and enhancement.

Project management responsibilities included:

- *New Mexico Statewide Court Automation Project (December 1995 – August 1997)* Completed the statewide implementation of courts case management application, now in place in 92 limited and general jurisdiction courts.
- *Arizona Large Volume Courts Project (August 1995 – March 1996)*
- Led the initial PSI work with Maricopa and Pima County area courts to define enhancements and customization of statewide case management application to better serve the needs of large volume courts. Headed project from requirements analysis through establishment of development schedules, resource allocations and cooperative testing plans.

**Court Manager, 1985-1995, Circuit Court of Jackson County, Missouri (Kansas City)**

The Circuit Court of Jackson County is a large metropolitan area court of combined limited and general jurisdiction. Ms. Rowley was responsible for the operations of the court's business offices at the downtown courthouse and at multiple locations throughout the county, including juvenile facilities.

During her time as a court manager, Ms. Rowley oversaw many projects that helped the court deliver consistently high customer service, meet mandatory case processing standards – even as caseloads increased dramatically, improve information management, coordinate with other agencies, and make the court more accessible to all members of the community.

**Education & Specialized Training**

University of Missouri at Kansas City, Philosophy  
Continuing court-related education

**Professional Organizations**

**Integrated Justice Working Group (IWG)**

- Executive Committee

**IJIS Institute**

- Vice President
- Executive Committee
- Board of Directors
- Chair, Outreach Committee

**Forum on Advancement of Court Technology (FACT)**

- Steering Committee Member
- Co-Chair, Education Committees

**National Association for Court Management (NACM)**

- Member, Faculty

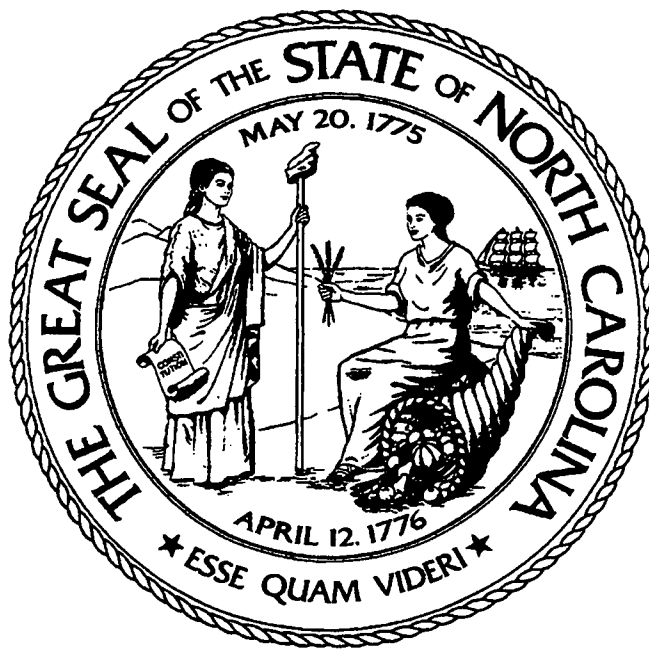
**Court Technology Conference (CTC)**

Faculty

**National Conference of Metropolitan Courts (NCMC)**

Faculty

# HOUSE SELECT COMMITTEE ON RESTITUTION



REPORT TO THE 2005  
GENERAL ASSEMBLY OF NORTH CAROLINA



A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE  
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY

ROOMS 2126, 2226  
STATE LEGISLATIVE BUILDING  
RALEIGH, NORTH CAROLINA 27611  
TELEPHONE: (919) 733-7778

OR

ROOM 500  
LEGISLATIVE OFFICE BUILDING  
RALEIGH, NORTH CAROLINA 27603-5925  
TELEPHONE: (919) 733-9390

THE REPORT IS ALSO AVAILABLE ON-LINE:  
<http://www.ncleg.net/LegLibrary/>

# TABLE OF CONTENTS

Letter of Transmittal .....	i
Committee Membership .....	ii
Preface.....	1
Current Law.....	2
Committee Proceedings .....	4
Committee Findings and Recommendations .....	9
AN ACT TO IMPROVE THE COLLECTION AND DISTRIBUTION OF RESTITUTION FOR CRIME VICTIMS IN NORTH CAROLINA AND TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY THE USE OF THIRD PARTY COLLECTION.....	11
Bill Analysis .....	15

## Appendices

- A. Committee Authorization
- B. Remarks of Mel Chilton, North Carolina Crime Victims Assistance Network
- C. Presentation Notes of Tracy Little, Department of Corrections
- D. 1995 Status Report on Victim Restitution Recommendations, NC Sentencing and Policy Advisory Commission
- E. Presentation Notes of Tom Andrews, General Counsel, Administrative Office of the Courts
- F. Remarks of Whit Gibson, Clerk of Superior Court, Scotland County
- G. Report to Appropriations Chairs and JPS Subcommittee on Improving Collection of Offender Fees, presented by Gregg Stahl, AOC
- H. Chart of Possible Proposals
- I. Resume and Presentation Notes of Moira Rowley, Vice President for Court Services, ACS



**HOUSE SELECT COMMITTEE  
ON RESTITUTION**  
*State Legislative Building  
Raleigh, North Carolina 27603*

*Representative Rick Eddins, Co-Chair*

*Representative Hugh Holliman, Co-Chair*

**January 19, 2004**

**TO THE MEMBERS OF THE 2005 GENERAL ASSEMBLY:**

The House Select Committee on Restitution submits to you for your consideration its report.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Rick Eddins", written over a horizontal line.

Rep. Rick Eddins, Co-Chair

A handwritten signature in cursive script, appearing to read "Hugh Holliman", written over a horizontal line.

Rep. Hugh Holliman, Co-Chair

# HOUSE SELECT COMMITTEE ON RESTITUTION

## 2004-2005 MEMBERSHIP

Representative Rick Eddins, Cochair  
Representative Hugh Holliman, Cochair  
Representative Bernard Allen  
Representative Beverly Earle  
Representative Mitch Gillespie  
Representative James Harrell  
Representative Carolyn Justus  
Representative Louis Pate  
Representative Arthur Williams  
Representative Keith Williams

### Staff:

Trina Griffin, Legislative Analyst  
Carol Bowers, Committee Clerk

## PREFACE

---

In 2004, the House Select Committee on Preventing Unjust Profiteering from Crime was established to study the issue of preventing criminal offenders from profiting from their crimes. During its course of study, the Committee also examined problems associated with the collection and distribution of restitution for crime victims, a significant amount of which goes unpaid or unclaimed. Since the impetus for that Committee's study was House Bill 911, the No Profit from Crime Act, and its work was focused primarily on the complex constitutional issues associated with a rewrite of that bill, the Committee had insufficient time to fully develop legislative solutions regarding restitution. Consequently, the House Select Committee on Restitution was established in the following interim to reexamine the processes for the collection and payment of restitution in this State and to determine methods for reducing the number of restitution payments that go unpaid or unclaimed. The order from the Office of the Speaker of the House of Representatives authorizing the Committee is set out in Appendix A.

## CURRENT LAW

---

When sentencing a defendant convicted of a criminal offense, the court is required to determine whether the defendant should be ordered to make restitution to any victim or the victim's estate for any injuries or damages arising directly from the offense. In determining the amount of restitution, the court must consider certain factors, such as the value of any property damaged or destroyed; in the case of physical injury, the cost of necessary medical and related professional services, any physical or occupational therapy, and income lost by the victim; and in the case of the victim's death, the cost of funeral and related services. However, an order of restitution may not include compensation for pain and suffering, according to a recent North Carolina Court of Appeals case.<sup>1</sup> In determining the amount of restitution to be made, the court must also take into account the resources of the defendant, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution. The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims Compensation Fund, that provided assistance to the victim. Generally, a restitution order is enforceable in the same manner as a civil judgment. A restitution order does not, however, abridge the right of a victim to bring a civil action against the defendant, but any amount paid by the defendant under the terms of a restitution order are credited against any judgment

---

<sup>1</sup> *State of North Carolina v. Wilson*, 580 S.E.2d 386, 2003 N.C.App. LEXIS 1045 (June 3, 2003).

rendered against the defendant in favor of the same victim in a civil action arising out of the criminal offense committed by the defendant.

## COMMITTEE PROCEEDINGS

---

The House Select Committee on Restitution met four times since its inception on September 14, 2004. The final meeting of the Committee prior to the convening of the 2005 General Assembly took place on January 19, 2004, at which the Committee discussed and approved its final report to be submitted to the House.

At its first meeting on October 21, 2004, the Committee heard from seven speakers. Ms. Mel Chilton, Director of NC Victims Assistance Network spoke on the importance of restitution for victims that are suffering both financially and emotionally. She suggested some proposals for the committee to consider, including the enhancement of work programs within the prison system, requiring the consideration of future earning potential when ordering restitution, and making restitution mandatory in cases involving loss of life or serious injury. Ms. Chilton concluded her remarks by noting that restitution is an obligation that should never be waived. A summary of her remarks is attached in Appendix B.

Mr. Frank Parrish, District Attorney for the 1<sup>st</sup> District and President of the Conference of District Attorneys, addressed the duties of a district attorney with regard to restitution and identified areas for improvement. He explained that district attorneys are required to collect and present accurate information regarding a victim's damages to the presiding judge. He also explained that the problems with restitution are different in superior court compared to district court. Mr. Parrish noted that the distribution of restitution could be improved if victims were required to provide their social security numbers for identification, although he acknowledged that victims are often reluctant to do so because of privacy concerns. A second recommendation was to have magistrates gather restitution information from the victims or make the restitution worksheets available to save time.



Ms. Tracy Little, Deputy Secretary with the Department of Correction, provided the committee with an overview of the work-release program and the distribution of those earnings. She also explained how restitution payments are monitored and collected for those offenders on probation. Currently, there are 1,100 inmates out of 36,000 on work release. She identified the minimum requirements that inmates must meet for work-release eligibility. Of particular interest to the committee members, Ms. Little pointed out that an inmate's legal obligation to the state is complete when he or she is released without supervision. Therefore, for low-level felons (Class F-I under structured sentencing) the obligation to pay restitution ends once the offender is released, unless the order has been reduced to civil judgment, which is required for Crime Victims' Rights Act cases where the order is in excess of \$250. Class B1-E felons, who are generally released under post-release supervision, may be ordered by the Post-Release Supervision and Parole Commission to make restitution payments while on supervised release. A community corrections officer will monitor those payments. Ms. Little explained that probationers make restitution payments directly to the clerk of court, who is responsible for distributing those payments. The failure to pay is considered a nonemergency technical violation, for which there is a continuum of sanctions. She further explained that the goal of the probation officer is to keep the offender working, staying in compliance with the law, and making payments. Therefore, it is rare for an offender to have his probation revoked and sentence activated for failure to pay as a one-time nonemergency violation. If the offender's probation is revoked and his sentence activated, his ability to continue making restitution payments will depend largely on whether the offender is placed on work release during the incarceration period. Even so, the obligation to pay restitution ends once the sentence is completed, unless it has previously been reduced to civil judgment. Ms. Little cited that in FY 03-4, probationers paid \$17.8 million in restitution. For more information, Ms. Little's presentation notes are attached as Appendix C.

Next, Karen Jones, Senior Research and Policy Associate, NC Sentencing and Policy Advisory Commission explained that, in 1993, the General Assembly directed the

Commission to study restitution policy. Although the recommendations were not adopted at that time, the Courts Commission later studied the same issue and made many of the same recommendations, which were ultimately enacted. A report on the Commission's recommendations in 1995 may be found in Appendix D.

Tom Andrews, General Counsel with Administrative Office of the Courts, discussed distribution priorities and welcomed clarification on disbursing monies. Specifically, he pointed out that the statutes do not address the priority of the community service and the supervision fees. Thus, the AOC has followed generally accepted accounting principles that require current ongoing obligations to be paid before past due obligations are paid. Mr. Andrews' presentation notes may be found in Appendix E.

Next, Whit Gibson, Clerk of Superior Court in Scotland County, explained how Scotland County disburses monies as soon as possible. He spoke to how victims perceive how the system works and the conflicts. The clerks follow judge's orders and feel victims should be considered first in allocation of restitution payments. As for specific recommendations, he indicated that the system of joint and several liability of defendants needs to be overhauled and suggested consideration of an income tax intercept or debt setoff system. A summary of his remarks may be found in Appendix F.

Gregg Stahl, Administrative Office of the Courts, spoke on how the collection rate of offender fees could be improved and shared recommendations. He provided the Committee with a copy of the same report presented to the Appropriations Chairs and Justice and Public Safety Subcommittee, a copy of which is attached as Appendix G.

On November 30, 2004, the Committee held its second meeting and Ms. Trina Griffin, Committee Counsel, presented the Committee with a compilation of proposals that had been identified either by agencies and other interested parties or as the result of research into what other states are doing in this area. This compilation may be found in the chart attached as Appendix H. After much discussion, the Committee agreed to focus on the following proposals:

- Income withholding
- Tax refund intercept
- Use of third party collection agencies to collect unpaid restitution.
- Use of bankcards for payment of restitution
- Establishment of an offender-funded, court-operated collections program.
- Making payment of funeral expenses mandatory in loss of life cases.
- Prohibiting a defendant's ability to pay from being a factor in determining the amount of restitution to be ordered.

At the third meeting on January 13, 2005, the Committee heard from Ms. Moira Rowley, Vice President, Court Services with Affiliated Computer Services, Inc. (ACS), which is a technology- based outsourcing solutions company with a focus on servicing states and local governments. Ms. Rowley explained several types of broad-based compliance programs used by states to improve collection of restitution. Specifically, she indicated that a number of states add a fee, often a percentage of the debt owed, for nonpayment to fund other elements of their collections operations. She also responded to specific questions of the committee members regarding third party collections. Her resume and presentation notes are attached as Appendix I.

Mr. Gregg Stahl with the Administrative Office of the Courts also addressed the Committee regarding AOC's concerns about several of the proposals being considered by the Committee. Specifically, he pointed out that the use of the Setoff Debt Collection Act to collect restitution owed to private individuals would represent a shift in the underlying policy of that act. Currently, the Setoff Debt Collection Act provides a mechanism for the government to collect government debt. Moreover, if restitution were collected through debt setoff, it would impact the collection of indigent attorney fees, which are currently collected by AOC through debt setoff. Another issue is the fact that the Department of Revenue charges a 15% fee for debt setoff. Thus, the proposal should address whether the fee is waived or whether a crime victim would receive only 85% of monies collected. With regard to the idea of an offender-funded

collections program, Mr. Stahl cautioned the Committee about structuring a fee-based program for two reasons. First, the fee could be interpreted as a fine that is constitutionally required to go to local school boards. Second, the fee could also be interpreted as a payment ordered by the court to reimburse the state for its general overhead attributable to prosecution costs, which has been held unconstitutional by the state Supreme Court. Ultimately, the Committee agreed that staff should work with the AOC in improving the bill draft to address some of these issues.

Finally, Ms. Debbie Kimbrell from Goldsboro, a crime victim, spoke to the Committee about the loss of her husband and her experience with the court system. Her husband was killed in a car accident by a person whose license had been revoked. He was ultimately convicted of misdemeanor death by vehicle but no restitution was ever ordered because the judge found that the defendant did not have the ability to pay restitution. She urged the Committee to make changes in the law so that a defendant's ability to pay is not a factor in setting a restitution amount in order to hold offenders accountable for the damage they cause.

After hearing from the speakers, the Committee reviewed the proposed bill draft, and agreed that it would include the draft in its report with one additional change. The Committee wanted to add a section requiring the AOC to study the use of third party collection for collecting restitution and other court fines, fees, and costs and report back to this Committee. The Committee also concluded that it needed additional time to study the issues related to improving the collection and distribution of restitution and would seek to extend the life of the Committee.

## COMMITTEE FINDINGS AND RECOMMENDATIONS

---

The House Select Committee on Restitution makes the following findings and recommendations:

**FINDINGS:** The Committee finds the following:

1. Based on recent statistics compiled by the AOC, only 24% of restitution ordered in all criminal cases is paid in a given year.
2. Restitution is among the lowest collectible categories of debt.
3. Many states have enacted broad-based compliance programs or statutory mechanisms to improve enforcement of restitution orders, such as income withholding, tax intercept, late fees, court-operated collections programs, third party collection agencies, diverting a percentage of work-release earnings to victim compensation programs, revoking or extending probation for nonpayment, and converting restitution to civil judgments.
4. Of particular importance to crime victims is the accountability of the offender. Specifically, orders for restitution should not be determined based upon a defendant's ability to pay, they should not become unenforceable upon completion of a person's sentence, and they should be due and payable at the time of sentencing to encourage prompter payment.
5. Orders of restitution should be made without regard for the ability of the defendant to pay but judges should be able to take into consideration ability to pay in setting a payment schedule.
6. There should be more consistency among county clerks of court with regard to their practice of entering restitution information into the court's database.
7. The General Assembly should further study and consider the benefits of outsourcing collection functions to third parties.
8. A fee-based, court-operated collections program may raise constitutional issues in North Carolina if the fee is interpreted as either a fine or as a means to reimburse the State for its "normal overhead." The General Assembly should further study and consider the costs and benefits of establishing a fee-based collections program.

**RECOMMENDATIONS:** Therefore, the Committee recommends the Legislative Proposal titled *Restitution Changes and Study*, which would require payment of funeral expenses mandatory in loss of life cases, prohibit a defendant's ability to pay from being a factor in determining the amount of restitution ordered, authorize income

withholding for restitution, require the AOC to collect restitution through debt setoff, and to require the AOC to study third party collection.

The Committee also recommends that the committee be extended so that it may continue its study of the issues related to the improvement of collecting and distributing restitution.

# **LEGISLATIVE PROPOSAL**

---

## **RESTITUTION CHANGES AND STUDY**

---

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

S

D

**BILL DRAFT 2005-SVz-2 [v.4] (12/13)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
1/18/2005 2:11:41 PM**

Short Title: Restitution Changes and Study.

(Public)

---

Sponsors:

---

Referred to:

---

A BILL TO BE ENTITLED  
AN ACT TO IMPROVE THE COLLECTION AND DISTRIBUTION OF  
RESTITUTION FOR CRIME VICTIMS IN NORTH CAROLINA AND TO  
DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY  
THIRD PARTY COLLECTION FOR THE COLLECTION OF RESTITUTION  
AND OTHER COURT COSTS.

The General Assembly of North Carolina enacts:

**RESTITUTION FOR FUNERAL EXPENSES MANDATORY**

**SECTION 1.** G.S. 15A-1340.34(b) is amended by adding a new subsection to read:

"(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant. If the defendant is being sentenced for an offense that resulted in the death of the victim, the court shall order the defendant to make restitution for necessary funeral and related services. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1."

**ABILITY TO PAY NOT A FACTOR IN DETERMINING AMOUNT OF  
RESTITUTION**

**SECTION 2.** G.S. 15A-1340.36 reads as rewritten:



"(a) Amount of Restitution. – In determining the amount of restitution to be made, the court shall not take into consideration the economic circumstances of the defendant or the defendant's ability to pay resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay. If the court orders partial restitution, the court shall state on the record the reasons for such an order.record."

(b) Payment of Restitution. – Orders for restitution shall be due and payable at the time that the order of conviction is entered. If the defendant alleges that he or she cannot pay the full amount of restitution, the court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period. In determining the manner in which the restitution is to be paid, the court shall consider the resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's future earning potential, the defendant's obligation to support dependents, and any other matter that pertain to the defendant's ability to make restitution. After making the determinations required by subsections (a) and (b) of this section, the court shall enter an order for restitution which sets forth the total amount of restitution the defendant owes all persons, the total amount of restitution owed each person, and the manner in which the restitution is to be paid.

(c) Payment of Restitution While Incarcerated. – When an active sentence is imposed, the court shall consider whether it should recommend to the Secretary of Correction that restitution be made by the defendant out of any earnings gained by the defendant if the defendant is granted work-release privileges, as provided in G.S. 148-33.2. The court shall also consider whether it should recommend to the Post-Release Supervision and Parole Commission that restitution by the defendant be made a condition of any parole or post-release supervision granted the defendant, as provided in G.S. 148-57.1.

#### **INCOME WITHHOLDING**

**SECTION 3.** Article 81C of Chapter 15A of the General Statutes is amended by adding a new section to read:

#### **§ 15A-1340.39. Income withholding order.**

(a) Entry of order. – When restitution is required of a defendant who will not be commencing an active sentence and who is employed, the court shall, at the time of ordering restitution, enter a separate order for income withholding. The

withholding order must direct the employer to deduct from all income due and payable to the offender an amount required by the court, subject to the restrictions set forth in 15 U.S.C. 1673, to meet the defendant's restitution obligation. The withholding order must include an instruction to the employer that upon receipt of a copy of the withholding order the employer shall do all of the following:

- (1) Immediately begin to withhold the defendant's income when the defendant is usually paid.
- (2) Send each amount withheld to the agency to which restitution has been ordered to be paid at the address set forth in the order within seven business days of the withholding.
- (3) Identify each amount sent to the agency by indicating the court's docket number.

(b) Expiration of Order. – The income withholding order is effective as long as the order for restitution upon which it is based is effective or until further order of the court.

#### **STATE INCOME TAX REFUND OFFSETS**

**SECTION 4.** G.S. 105A-2(2) is amended by adding a new sub-subdivision to read:

"b1. A sum that a claimant agency collects and disburses as required by a court order, such as restitution."

**SECTION 4.1.** G.S. 105A-2(9) is amended by adding a new sub-subdivision to read:

"c. A county clerk of court."

#### **AOC STUDY ON THIRD PARTY COLLECTION**

**SECTION 5.** The Administrative Office of the Courts shall study the use of third party collection as a means to improve the collection of restitution and other court fines, fees, and costs. The Administrative Office of the Courts shall report its findings and recommendations to the 2006 Regular Session of the 2005 General Assembly upon its convening.

#### **EFFECTIVE DATE**

**SECTION 6.** Sections 5 and 6 of this act become effective when they become law. The remainder of this act becomes effective for restitution orders entered on or after December 1, 2005.

## Bill Analysis of Legislative Proposal: RESTITUTION CHANGES AND STUDY

BY: TRINA GRIFFIN, RESEARCH DIVISION

---

**BILL ANALYSIS:** This legislative proposal makes four changes with regard to restitution and directs the Administrative Office of the Courts to conduct a study.

### *Restitution for Funeral Expenses Mandatory*

Under current law, a defendant who is being sentenced for an offense resulting in the death of the victim is not required to make restitution for the victim's funeral expenses. While the court is directed to consider funeral expenses in determining the restitution amount, the court must also consider a defendant's ability to pay. Section 1 of the proposal would require the court to order a defendant who is being sentenced for an offense that resulted in the death of the victim to make restitution for necessary funeral and related expenses.

### *Ability to Pay Not a Factor in Determining Amount of Restitution*

When determining the amount of restitution to order against a defendant, current law requires the court to take into consideration the resources of the defendant including all real and personal property owned by the defendant, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution. Section 2 of the proposal would require that the court not take into consideration the economic circumstances of the defendant when determining the amount of restitution. Instead, the court may consider these factors in establishing a payment schedule. It further requires the court to include the payment schedule in the order for restitution.

### *Income Withholding*

Under North Carolina law, garnishment is only permitted in a limited number of circumstances. These include child support obligations, delinquent taxes, charges for ambulance services in certain counties, collection on judgments for hospital services rendered, and to recoup fraudulent public assistance program payments. Federal law also caps the amount that may be garnished from a person's wages at 25% of weekly earnings or the amount by which a person's disposable weekly earnings exceed 30 times the federal minimum hourly wage, whichever is less. Section 3 of the proposal would require the court, when entering a restitution order against a defendant who is not being sentenced to active time and who is employed, to enter a separate income withholding order directing the defendant's employer to deduct an amount required by the court to meet the defendant's

restitution obligations. The employer would be required to withhold the required amounts and remit the funds to the appropriate clerk of court, who would then disburse the funds.

State Income Tax Refund Offsets

Under the current Setoff Debt Collection Act, the Department of Revenue sends the income tax refund of an individual who owes money to a State or local agency to that agency in payment of the debt rather than to the individual. The individual's income tax refund is therefore set off against the debt the individual owes to the State or local agency. Section 4 of the proposal would amend the act to require clerks of court to submit debts for unpaid restitution to the Department of Revenue for setoff against the defendant's income tax refund, if owed one.

AOC Study of Third Party Collection for Restitution

Section 5 of the proposal requires the Administrative Office of the Courts to study the use of third party collection agencies to collect restitution and other court fees, fines, and costs and to report to the 2006 Regular Session of the 2005 General Assembly upon its convening.

# **APPENDIX A**

---

## **COMMITTEE AUTHORIZATION**

**James B. Black**  
**Speaker**



**Richard T. Morgan**  
**Speaker**

Office of the Speaker  
North Carolina House of Representatives  
Raleigh, North Carolina 27601-1096

---

**TO THE HONORABLE MEMBERS OF THE  
NORTH CAROLINA HOUSE OF REPRESENTATIVES**

**WHEREAS**, a significant amount of restitution remains unclaimed and unpaid due to a variety of reasons that include the defendant's inability to pay, the clerk of court's inability to locate victims, victims' inability to identify and locate assets of a defendant, and the difficulty victims face in navigating the legal system to enforce restitution orders; and

**WHEREAS**, the prior House Select Study Committee on Preventing Unjust Profiteering from Crime began to review the methods by which crime victims are compensated for injuries sustained as the result of the crimes committed against them and determined that further review is needed;

**NOW, THEREFORE:**

**Section 1.** The **House Select Committee on Restitution** is established by the Speakers, effective September 14, 2004, as a select committee of the House pursuant to G.S. 120-19.6(a) and Rule 26(a) of the Rules of the House of Representatives of the 2003 General Assembly.

**Section 2.** The Select Committee consists of 10 members. The individuals listed below are appointed as members of the Select Committee. Members serve at the pleasure of the Speakers of the House of Representatives.

Rep. Rick Eddins, Co-Chair  
Rep. Hugh Holliman, Co-Chair  
Rep. Bernard Allen  
Rep. Beverly Earle  
Rep. Mitch Gillespie  
Rep. James Harrell  
Rep. Carolyn Justus  
Rep. Louis Pate  
Rep. Arthur Williams  
Rep. Keith Williams

**Section 3.** The Select Committee shall study the processes for the collection and payment of restitution in this State, and shall determine the methods for reducing the number of restitution payments that go unclaimed. The Select Committee shall incorporate the work to be conducted under Section 26.1 of Senate Bill 1152, S.L. 04-161, into its study and produce one report that contains the recommendations of the Committee, the Administrative Office of the Courts, and the Department of Correction on this subject.

**Section 4.** The Select Committee may meet during the interim period between regular sessions upon the call of its cochairs.


**Section 5.** The Select Committee shall report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before the convening of the of the 2005 General Assembly by filing a copy of the report with the Speakers' offices and the Legislative Library. The Committee terminates upon the convening of the 2005 General Assembly, or upon the filing of its final report, whichever occurs first.

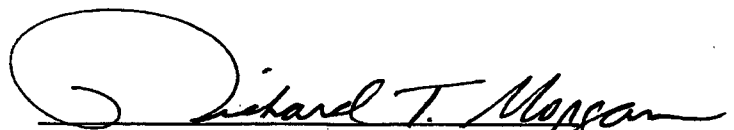
**Section 6.** The Select Committee is vested with the authority contained in Article 5A of Chapter 120 of the General Statutes.

**Section 7.** Members of the Select Committee shall receive per diem, subsistence, and travel allowance at the rate established in G.S. 120-3.I.

**Section 8.** The expenses of the Select Committee are considered expenses incurred for the operation of the House of Representatives and shall be paid pursuant to G.S. 120-35 from funds available to the House for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of a co-chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speakers of the House of Representatives.

Effective this 14th day of September, 2004.

  
James B. Black  
Speaker

  
Richard T. Morgan  
Speaker

## **APPENDIX B**

---

**REMARKS BY MEL CHILTON, NCVAN**





October 21, 2004

**To: House Select Committee on Restitution**

**From: Mel L. Chilton, Executive Director of NC Victim Assistance Network**

**Issues of Concern:**

- **The Administrative Office of the Courts reported to this Committee last session a rate of only 24% of all restitution ordered was actually collected in the 100 counties across the state of North Carolina.**
- **Judgments ordered by the court do not always include restitution even when there is loss of life or serious physical injury resulting in financial burdens for victims.**
- **Accountability: Judgments/Orders of Restitution do not always follow the inmate to prison and the system does not monitor the payment of this restitution. Many victims complain that orders of restitution are "written off" when the probationer absconds (leaves the state). After the case is closed he can return and commit his crime again without being held responsible for his/her crime.**

**Recommendation:**

- **Require funeral expenses be paid by the offender in all convictions involving loss of life. (Death by vehicle, Manslaughter, 2<sup>nd</sup> Degree, etc.) This should be required regardless of prison sentence and should not be waived until obligation is fulfilled.**
- **Require restitution in all cases involving physical injury. Obligation should not be waived with active sentence.**
- **Review work release income percentage and increase to the Federal maximum**
- **Work programs within the prison system**
- **Create Restitution Work Programs with Criminal Justice Partnership Programs**
- **Future earning potential should be taken into consideration and the obligation should never be waived.**

Bringing Balance To The System.

# **APPENDIX C**

---

## **PRESENTATION NOTES OF TRACY LITTLE, DEPARTMENT OF CORRECTION**

**Department of Correction**  
**Work Release and Restitution Issues**  
October 21, 2004

**Work Release**

**An Overview**

Work Release is a program that allows select inmates to work in the community while they are incarcerated. Inmates on work release leave the prison during the work period and return to the prison at the end of the work period. Wages earned by inmates on work release help defray the costs of incarceration, provide support for dependents and present an opportunity for the offender to meet restitution and reparation obligations. Approximately 1,120 inmates currently have jobs through the work release program.

*Statutory Authority: N.C.G.S. §148-33.1; 148-33.2.*

**General Requirements for Work Release Eligibility**

- A sentence of less than five years OR within 3 years of a release date
- No pending felony charges or felony detainers
- Suitable employment
  - Salary pays at least current minimum wage
  - Employer insurance program
  - Appropriate workplace supervision
- Suitable prison facility within normal commuting distance
- Minimum custody level 3
- No escape within six months or major infraction with three months of placement
- No significant victim conflicts related to housing or community-based participation

**Work Release Disbursements**  
**Priority of Payments<sup>2</sup>**

*Statutory Authority: N.C.G.S. § 148-33.1*

<b>PAYMENT PRIORITY BY CATEGORY</b>
<b>(1) Per diem</b>
<b>(2) DOC and private transportation</b>
<b>(3) Inmate draw</b>
<b>(4) Child support</b>
<b>(5) Restitution/Fines/Court Courts/Attorney's Fees</b>
<b>(6) Judgments and court orders</b>
<b>(7) Special payments</b>

<sup>2</sup> These are deductions made from net income after the employer has withheld all statutory deductions (taxes and FICA) and authorized deductions required by the employer.

**Work Release Numbers (FY 03-04)**

▪ Average Account Balance	\$2,078
▪ Amount paid to General Fund	\$4,202,755

**Restitution Issues for Probationers/Parolees**

*Statutory Authority: N.C.G.S. § 15A-1340.34 et seq.*

- Sentencing court determines amount of fines, costs, fees and restitution
- Offenders make payments directly to the Clerk of Court
- Officers access AOC's Financial Management System to see amount paid, how the Clerk's office applied the payment and the remaining balance
- Officers confirm payments based on level of supervision
  - Community Level 1 every month
  - Community Level 2 every 2 months
  - Community Level 3 every 3 months
  - Intermediate Level every month
- Failure to pay is considered a non-emergency technical violation
- Officers work with offenders to help them meet obligations
- Court may extend period of supervision to allow the offender to continue to pay outstanding indebtedness

**Restitution Numbers for Probation/Parole/Post-Release (FY 2003-04)**

▪ Total Number of Offenders	178,789
▪ Offenders with Restitution Obligations	56,486
▪ Restitution Payments from DCC Offenders	\$17,778,616.93

## **APPENDIX D**

---

### **STATUS REPORT OF VICTIM RESTITUTION RECOMMENDATIONS, NC SENTENCING AND POLICY ADVISORY COMMISSION (1995)**

**STATUS REPORT**

**VICTIM RESTITUTION RECOMMENDATIONS**

**November, 1995**

**Prepared by Sandy C. Pearce  
and  
John Madler**

# STATUS OF N. C. SENTENCING COMMISSION'S VICTIM RESTITUTION RECOMMENDATIONS

## Mandate from the General Assembly

In August 1993, the General Assembly directed the Sentencing and Policy Advisory Commission to "study restitution policy and its place as a part of North Carolina's criminal justice system." The Commission was required to make a report of its findings and recommendations, including any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly.

In June 1994, the Sentencing Commission submitted Victim Restitution in North Carolina: A Report to the 1994 Session of the General Assembly. The report contained a description of the Sentencing Commission's study process, a summary of victim restitution procedures and practices in North Carolina, a statement of purpose and policy principles, and fifteen recommendations for enhancing the system for ordering, collecting, monitoring, and enforcing victim restitution. Four of the recommendations included legislation and eleven of the recommendations involved administrative agency action. During the 1995 Regular Session of the General Assembly, the Commission's legislative recommendations were presented in House Bill 155 and Senate Bill 210.

This report summarizes the status of both the legislative and administrative recommendations as of November 1, 1995.

## Status of Sentencing Commission Recommendations

### Ordering Victim Restitution

Recommendation 1: The Commission recommends that the Administrative Office of the Courts develop and adopt a standard form or standard information to address victim impact. The Commission further recommends that this be done in consultation with the Conference of District Attorneys and the Victim Assistance Network.

**STATUS:** In January 1995, the Conference of District Attorneys voted to revise their series of standardized Victim Impact Statements and patterned them after models produced by the National Office of Victims of Crime. The use of these forms is currently voluntary. Subject to legislation requiring the use of a Victim Impact Statement, the Administrative Office of the Court will ask the Judicial Forms Committee to consider adoption of a series of standard victim impact forms covering major crime categories.

Recommendation 5: The Commission recommends legislation to make the ordering of restitution a priority in all cases where it is appropriate.

STATUS: House Bill 155 was referred to the House Judiciary II Committee but was not taken up in the 1995 Regular Session of the General Assembly. Senate Bill 210 was referred to the Senate Judiciary II Committee. A fiscal note was prepared. The bill was given a favorable report by the Committee. The bill was re-referred to the Appropriations Committee, but the Session ended before further action was taken.

Recommendation 6: The Commission recommends legislation to make restitution the first priority among funds disbursed by the clerk of court.

STATUS: House Bill 155 was referred to the House Judiciary II Committee but was not taken up in the 1995 Regular Session of the General Assembly. Senate Bill 210 was referred to the Senate Judiciary II Committee. A fiscal note was prepared. The bill was given a favorable report by the Committee. The bill was re-referred to the Appropriations Committee, but the Session ended before further action was taken.

### Collecting, Monitoring, and Disbursing Victim Restitution

Recommendation 7: The Commission recommends that the Administrative Office of the Courts develop procedures to share automated information with the Division of Adult Probation and Parole in order to facilitate documentation and monitoring of restitution payments in cases of supervised probation.

STATUS: The AOC's new automated Financial Management System (FMS) has been installed in over half of the counties in the State. In each of these counties, AOC provides on-line access to restitution information for probation officers. The FMS will be available in 80 counties by the end of 1996.

Recommendation 8: The Commission recommends that the Administrative Office of the Courts expand its Financial Management System to include generation of monthly reports and issuance of bills, unless the Administrative Office of the Courts determines that such expansion is legally, administratively, or financially not feasible.

STATUS: No action has been taken.

Recommendation 9: The Commission recommends that defendants be permitted to use debit/credit cards to pay restitution, unless the Administrative Office of the Courts determines that the use of such cards is legally, administratively, or financially not feasible.

STATUS: The AOC has been advised by the Conference of Chief Justices and State Court Administrators that there is a problem with using debit/credit cards for payment of



restitution in unsupervised probation cases is the responsibility of the victim. No court official or agency has been assigned this responsibility. Consequently, the Administrative Office of the Courts has not developed policies to enforce compliance with victim restitution in unsupervised probation cases beyond the existing rules that pertain to recording and maintaining the judgement record.

Recommendation 12: The Commission recommends legislation to permit the court to extend a period of probation up to five years, for a total period of ten years, if the defendant was convicted of an offense, and to extend a period of probation up to three years, for a total of five years, if the defendant was under deferred prosecution, primarily for the purpose of allowing the defendant to complete a program of restitution.

STATUS: House Bill 155 was referred to the House Judiciary II Committee but was not taken up in the 1995 Regular Session of the General Assembly. Senate Bill 210 was referred to the Senate Judiciary II Committee. A fiscal note was prepared. The bill was given a favorable report by the Committee. The bill was re-referred to the Appropriations Committee, but the Session ended before further action was taken.

Recommendation 13: The Commission recommends that the court should have the authority to garnish a defendant's wages for default on a restitution obligation, unless the Administrative Office of the Courts determines that such garnishment is legally, administratively, or financially not feasible.

STATUS: The garnishment of wages is a widely used practice in the collection of child support in North Carolina. The AOC reports that the garnishment of wages to pay restitution requires statutory authorization by the General Assembly. They report that garnishment is a limited remedy due to the defendant's ability to pay. Since the top priority for garnishment of wages is child support, adding another category will create competition for the funds. It will be difficult locally to determine payments when multiple garnishments exist.

Recommendation 14: The Commission recommends that the Division of Adult Probation and Parole establish written policies and procedures to graduate the intensity of sanctions against probationers who default on restitution payments and study the use of restitution centers as a component of a continuum of sanctions against restitution payment violators.

STATUS: The DAPP created an internal task force to review and revise probation violation procedures. The new policies went into effect in October 1994. The new policies provide guidance to field staff to use when considering options for specific violations, including failure to pay restitution. The foundation of the new policies is to graduate the intensity of community and intermediate sanctions prior to revocation. The Task Force recommended seeking funds from the General Assembly to initiate a restitution residential center for offenders sentenced by the courts and a community work camp for probation violators. The DAPP will request funds from the General Assembly

## **APPENDIX E**

---

### **PRESENTATION NOTES OF TOM ANDREWS, ADMINISTRATIVE OFFICE OF THE COURTS**

## DISTRIBUTION PRIORITIES

Thomas J. Andrews

General Counsel

North Carolina Administrative Office of the Courts

### CONTENTS

I. WHAT DOES DISTRIBUTION PRIORITY MEAN, WHEN DOES IT MATTER, HOW DOES IT WORK

II. DISTRIBUTION PRIORITIES UNDER G.S. 7A-304(D).

A. Generally

B. Restitution

1. *Before the Victims Rights Act*

2. *Victim's Rights Act Amendment*

III. THE COMMUNITY SERVICE AND PROBATION SUPERVISION FEES IN RELATION TO THE SUBSECTION (D) CATEGORIES

1. *Community Service Fee and Probation Supervision Fee Have Highest Distribution Priority*

2. *Judge's Option to Order Restitution Paid Ahead of these Fees*

IV. SUMMARY EXAMPLE

V. LEGISLATIVE CLARIFICATION WOULD BE WELCOME

### DISCUSSION

I. WHAT DOES DISTRIBUTION PRIORITY MEAN, WHEN DOES IT MATTER, HOW DOES IT WORK

In criminal cases, the idea of distribution priority means that all the money paid into court by a defendant on probation is distributed to the persons entitled to receive payments in a set order of priority.

Distribution priority matters only when the defendant has made some, but not all, of the payments due as a condition of probation. Priority does not matter if the defendant pays nothing. No one receives anything. Priority does not matter if the defendant pays everything. Everyone is paid in full.

When the defendant pay only part of what s/he owes, the concept of distribution priorities means that persons entitled to the first priority receive all money paid by the defendant until they are paid in full. When the first priority is paid in full, the next money received from the defendant goes to persons entitled to the second priority, and so forth.

This idea is illustrated by analogy to a set of bowls on a hill. Water is poured from a bucket into the highest bowl on the hill. The water keeps pouring until the highest bowl is full. When highest bowl is full the water overflows into the second highest bowl on the hill until that bowl is full, and so forth. When the bucket is empty one of the bowls will be only partly full and all the lower bowls lower will remain empty.

Priority is a common idea in our legal system. For example, it applies in:

- Bankruptcy and receivership, where claims against the debtor are paid in a set order of priority, and
- Decedent's estates, where claims against the decedent's estate are also paid in a set order of priority.

## II. DISTRIBUTION PRIORITIES UNDER G.S. 7A-304(D).

### A. Generally

G.S. 7A-304(d) currently reads as follows:

#### **"A-304. Costs in criminal actions.**

...

(d)(1) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- a. Sums in restitution to the victim entitled thereto;
- b. Costs due the county;
- c. costs due the city;
- d. fines to the county school fund;
- e. Sums in restitution prorated among the persons other than the victim entitled thereto;
- f. Costs due the State;
- g. Attorney's fees, including appointment fees assessed pursuant to G.S. 7A-455.1."

Under subsection (d), payments made by a defendant on probation are distributed first to the victim entitled to restitution until all the ordered restitution has been paid. Any further payments received from the defendant are then disbursed to the county until all costs due it are paid, and so forth. At some point, if the payments stop, some priority will be only partly paid and the lower priorities will not be paid at all.

Restitution will be discussed below. As to the other priorities:

“Costs due the county” include:

- The facilities fee (\$12.00 for district court and \$30.00 for superior court), if the case was disposed in a county facility, and
- a \$5.00 fee for each arrest or service of process in the case, other than those by a municipal law enforcement officer

“Costs due the city” include:

- the facilities fee, if the case was disposed in a municipal facility, and
- A \$5.00 fee for each arrest or service of process in the case by a city law enforcement officer.

“Fines due the county” are all fines assessed in the case.

“Costs due the State” include:

- contributions totaling \$7.00 to several law enforcement officer benefit funds, and
- a fee for the support of the General Court of Justice (\$76.00 in district court and \$83.00 in superior court), which is remitted to the State Treasurer.

“Attorney’s fees” include the fees and expenses of the defendant’s court-appointed attorney, if ordered repaid as a condition of probation.

Note that some priority categories contain two or more subcategories. Subsection (d) does not create priorities among these subcategories, nor does it specify that they be satisfied pro rata from the funds available for each priority category. If a priority category is only partially paid, the available money is disbursed to the person entitled to receive it (county, city, State Treasurer) who decides how to allocate it among the subcategories.

## B. Restitution

### 1. *Before the Victims Rights Act*

Before the enactment of the Crime Victims Rights Act in 1998, subsection (d) read as follows:

“(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- (1) Costs due the county;
- (2) Costs due the city;
- (3) Fines to the county school fund;
- (4) Sums in restitution prorated among the persons other entitled thereto;
- (5) Costs due the State;
- (6) Attorney's fees.”

Under this statute, all restitution received the fourth distribution priority. The victim received no restitution until the costs due the county, the costs due the city and the fines due the county

school fund were fully paid. Conversely, no money was distributed to pay the costs due the State or attorney's fees until restitution was paid in full.

Further, there was no distinction between types of restitution. The fourth priority included restitution due the victim, restitution ordered paid on behalf of the victim to satisfy debts for medical care, etc, and restitution ordered paid to an insurance company that had already compensated the victim for injuries suffered.

The fourth priority for restitution applied "unless otherwise ordered by the presiding judge." Therefore the presiding judge always had the option of moving restitution up to the first distribution priority under subsection (d). And long before the VRA was enacted, our sentencing forms contained an option that allowed the judge to order that the restitution be paid before any other subsection (d) priority.

## *2. Victim's Rights Act Amendment*

The Victim's Rights Act legislation amended subsection (d) to read:

"(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

(1) Sums in restitution to the victim entitled thereto;

~~(1)~~(2) Costs due the county;

~~(2)~~(3) Costs due the city;

~~(3)~~(4) Fines to the county school fund;

~~(4)~~(5) Sums in restitution prorated among the persons other than the victim entitled thereto;

~~(5)~~(6) Costs due the State;

~~(6)~~(7) Attorney's fees."

As a result, there are now two distribution priorities for restitution. Restitution to the "victim entitled thereto" has the first distribution priority and is paid in full before any lower priorities receive anything. Restitution to persons other than the victim has the fifth distribution priority, and is paid only after all the higher priorities are paid in full.

There can be only one person in the first priority, since the word "victim" is singular. There could be more than one person in the fifth priority, since the word "persons" is plural and restitution is prorated among them.

Who is the "victim entitled thereto" and who are the "persons other than the victim?" The victim is a person who qualifies as a victim under the Victims Rights Act. Persons other than the victim are everyone else to whom restitution is ordered. Persons other than the victim include:

- All victims of offenses committed before December 1, 1998,
- Victims of crimes not listed in the definition of a victim in the Victims Rights Act,
- Persons who were not directly and proximately harmed as a result of the defendant's commission of the offense,
- Persons who provided assistance, medical care, insurance benefits or compensation to the victim.

(The reasoning that supports these conclusions is set out in a footnote<sup>3</sup>)

For restitution to victims who meet the VRA definitions, first priority distribution is mandatory. The court does not need to make any reference in the judgment to the distribution priority of that restitution. For restitution to persons other than the victim, fifth priority distribution is the default priority. Unless "otherwise ordered by the presiding judge" it remains in the fifth priority. The presiding judge may order otherwise, but restitution shall still "be made to the victim . . . before it is made to any other person, organization, corporation or association."

G.S.15A-1340.37(b). Our sentencing forms continue to contain an option that allows the judge to order that all restitution be paid before any other subsection (d) priority. When this option is checked, restitution to the victim is paid first, restitution to persons other than the victim is paid second, and the other subsection (d) priorities are paid if any funds remain.

### III. THE COMMUNITY SERVICE AND PROBATION SUPERVISION FEES IN RELATION TO THE SUBSECTION (D) CATEGORIES

A community service fee (currently a one time fee of \$200.00) must be paid by defendants who are ordered to perform community service in a DWI conviction or as a condition of probation or deferred prosecution in any other criminal case. G.S. 20-179.4(c), 143B-262.4(b). A probation supervision fee (currently \$30.00 per month for each month of supervision) must be paid by

---

<sup>3</sup> The amendment to G.S. 7A-304(d) was enacted by S.L. 1998-212, §19.4(k). S.L. 1998-212 was that year's appropriations act. Section 19.4 was the vehicle by which the Crime Victim's Rights Act and related provisions were enacted. It has its own separate heading, which reads in part, "CREATE THE CRIME VICTIMS RIGHTS ACT/ . . . /CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES . . ." Section 19.4 is one coherent enactment. This section alone runs to 16 pages in the Ratified Bill published by the General Assembly when it was enacted. It has seventeen subsections. All of its subsections enact new laws or revise existing law to conform to the Crime Victims Rights Act. The subsection amending G.S. 7A-304(d) is one of those subsections. In this context the word "victim," which was introduced into subsection (d) by this amendment, has the same meaning in subsection (d) that it has in the Crime Victim's Rights Act. Victim is defined in the Victims Rights Act, in G.S. 15A-830(a)(7), as "a person against whom" one of the crimes listed in that section was committed. It is further defined in the restitution provisions of the Act, in G.S. 15A-1340.24(a), as a person directly and proximately harmed as a result of the defendant's commission of the offense."

defendants who are placed on supervised probation. G.S. 15A-1343(c1). What is the distribution priority for these fees?

*1. Community Service Fee and Probation Supervision Fee Have Highest Distribution Priority*

Currently, payments received from the defendant are disbursed to satisfy the community service fee and the probation supervision fee before any moneys are disbursed to satisfy any of the subsection (d) priorities, unless the court orders otherwise. Here is why.

Subsection (d) prioritizes only the categories of obligation specified in that paragraph. It does not purport to prioritize any other monetary obligations imposed as a condition of probation. The community service fee and the probation supervision fee are not mentioned by name in subsection (d). They are not “costs due the State,” because costs due that State are limited to the costs assessed under the provisions of Article 28 of Chapter 7A of the General Statutes, entitled “Uniform Costs and Fees in the Trial Divisions.” This point is made clear by G.S. 7A-320, which provides, “The costs set forth in this Article are complete and exclusive, and in lieu of any other costs and fees.”

There are only two choices for how to prioritize the community service fee and the probation service fee in relation to the obligations prioritized by subsection (d). These fees are either paid ahead of all the subsection (d) priorities or after all the subsection (d) priorities are fully paid in full. There is no statute or legal precedent that answers the question.

Highest priority distribution is most consistent with generally accepted bookkeeping and accounting principles. Current obligations are generally satisfied ahead of past due obligations. The community service fee and the probation supervision fee are current obligation, because they are fees for services currently being provided to the defendant. Subsection (d) obligations are all past due obligations, because they incurred as a consequence of the commission of the crime.

There is also a practical reason for giving these fees priority over the subsection (d) obligations. Highest priority classification is likely to produce more money for the subsection (d) priorities, especially restitution, than the lowest priority would. If these fees have the highest priority, and have been satisfied by whatever partial payments the defendant has made when the defendant’s probation is being reviewed, these fees can be waived or subordinated as an inducement to the defendant to complete the payment of his/her other obligations. If they have last priority this leverage is not available.

*2. Judge’s Option to Order Restitution Paid Ahead of these Fees*

The presiding judge may order that restitution be paid ahead of even the community service fee and the probation supervision fee. If the presiding judge does not do so, limited funds will be disbursed to pay fees before being disbursed for any restitution, including restitution to the victim and restitution to persons other than the victim.

Merely ordering that restitution be paid first among the subsection (d) priorities does not accomplish this goal. The court must specifically order that restitution be paid ahead of the



community service fee and the probation supervision fee. Our sentencing forms contain an second option that allows the judge to order that all restitution be paid before the community service and probation supervision fees

#### IV. SUMMARY EXAMPLE

Assume that the defendant is ordered to pay the following:

- \$200.00 community service fee
- \$30.00 probation supervision fee per month
- \$500.00 restitution to the victim
- \$30.00 superior court facilities fee
- \$5.00 arrest fee to the county
- \$200.00 fine
- \$500.00 to the Crime Victim's Compensation Fund, for benefits it has paid the victim
- \$7.00 in contributions to law enforcement office benefit funds
- \$83.00 superior court general court of justice fee
- \$500.00 attorney's fee.

Assume further that the defendant's probation is revoked or terminated after 5 months of supervision, and that the payments received through that date total \$900.00.

If no restitution related option is checked on the form, the \$900.00 will be distributed as follows

- \$200.00 to the community service program
- \$150.00 to the Division of Community Correction, for 5 months of probation supervision,
- \$500.00 to the victim
- \$35.00 to the county as costs due the county
- \$15 to the county as partial payment of the fine
- Nothing to the Crime Victims' Compensation Fund, for the restitution ordered to it
- Nothing to the State Treasurer for costs due the State
- Nothing to the Indigent Person's Attorney Fee Fund for the attorney's fee.

The first restitution option on the judgment forms reads, "All payments received by the Clerk shall be distributed pro rata among the persons entitled to restitution in this priority // first

among all G.S. 7A-304(d) priorities.” If only this option is checked on the judgment form, the \$900.00 will be distributed as follows:

- \$200.00 to the community service program
- \$150.00 to DCC
- \$500.00 to the victim
- \$150 to the Crime Victims' Compensation Fund
- Nothing to anyone else

The second restitution option on the judgment forms reads, “All payments received by the Clerk shall be distributed pro rata among the persons entitled to restitution in this priority // first among all G.S. 7A-304(d) priorities // and before payment of community service and probation supervision fees.” If this option is also checked on the judgment form, the \$900.00 will be distributed as follows:

- \$500.00 to the victim
- \$400.00 to the Crime Victims' Compensation Fund
- Nothing to anyone else.

#### V. LEGISLATIVE CLARIFICATION WOULD BE WELCOME

AOC has no position on the merits of the current priorities. However we would welcome any legislative clarification, especially these two questions:

- What priority does the General Assembly believe restitution should have in relationship to the community service fee, the probation supervision fee and any other obligations not listed in subsection (d)?
- How should the subcategories in the same distribution priority be treated when there is not enough money to pay all the subcategories in full?

## **APPENDIX F**

---

### **REMARKS OF WHIT GIBSON, CLERK OF SUPERIOR COURT**

# **RESTITUTION:**

## **I. GENERALLY THE CLERK OF SUPERIOR COURT:**

- 1) RECORDS THE AMOUNT OF RESTITUTION TO BE PAID,**
- 2) COLLECTS THE MONIES THAT ARE PAID BY THE DEFENDANT, AND**
- 3) DISTRIBUTES THOSE MONIES ACCORDING TO THE JUDGE'S ORDER.**

## **II. PROBLEMS THAT OCCUR:**

- 1) INFORMATION NOT PROVIDED TO CLERK ABOUT THE AMOUNT OF RESTITUTION, RECIPIENT'S INFORMATION (ADDRESS, SOCIAL SECURITY NUMBER, ETC.).**
- 2) VICTIM'S DO NOT UNDERSTAND WHY THEIR MONETARY LOSS IS NOT A PRIORITY WITH THE COURT SYSTEM.**
- 3) DEFENDANTS DO NOT PAY MONIES AND PROBATION OFFICERS DO NOT TREAT "NON-PAYMENT" WITH SAME SEVERITY AS OTHER VIOLATIONS.**
- 4) CLERK'S OFFICES MUST MANUALLY MONITOR "UNSUPERVISED" PROBATION CASES IN ORDER TO BRING NON-COMPLIANT DEFENDANTS BACK TO COURT FOR NON-PAYMENT.**
- 5) "JOINTLY AND SEVERALLY" LIABLE IS A CONFUSING CONCEPT, BUT ULTIMATELY A RIGHT METHOD OF COLLECTING RESTITUTION.**
- 6) DEFENDANTS BEING GIVEN TIME TO PAY RESTITUTION WHEN THEY COULD PAY RESTITUTION IF THE CASE WAS "CONTINUED" FOR 30 TO 60 DAYS. MORE RESTITUTION WOULD BE PAID EARLY ELIMINATING THE NEED FOR PROBATIONARY SENTENCES.**
- 7) PROBATION IS SOMETIMES TERMINATED BEFORE ALL OF RESTITUTION IS COLLECTED.**

## **RECOMMENDATIONS ON RESTITUTION ISSUES:**

- 1. AUTOMATED SYSTEM BY WHICH CLERK OF COURT (AND POSSIBLY COMMUNITY CORRECTIONS) CAN MONITOR AND CITE BACK INTO COURT THOSE INDIVIDUALS ORDERED TO PAY RESTITUTION WHO HAVE FAILED TO DO SO OR FALLEN BEHIND IN THE ORDERED PAYMENTS.**
- 2. PROVIDE FOR "INCOME TAX RETURN" INTERCEPT TO RECOVER RESTITUTION ORDERED, BUT NOT COLLECTED, AFTER A JUDGEMENT HAS BEEN ENTERED AGAINST THE DEFENDANT.**
- 3. RE-PRIORITIZE THE ORDER OF DISTRIBUTION OF MONEY PAID INTO THE CLERK SO THAT THE PAYMENT AND DISTRIBUTION OF RESTITUTION TO VICTIMS IS THE "FIRST" (OR AT LEAST A MUCH HIGHER) PRIORITY.**
- 4. OVERHAUL AND MAKE LESS COMPLICATED AND CONFUSING THE PRACTICE OF ORDERING THAT DEFENDANTS BE MADE "JOINTLY AND SEVERALLY" LIABLE FOR RESTITUTION PAYMENTS.**
- 5. ENCOURAGE JUDGES TO BE MORE DEMANDING OF DEFENDANTS WHEN ORDERING PAYMENT OF RESTITUTION, NOT GIVING SO MUCH TIME TO PAY. PERHAPS CONTINUING THE CASE FOR 30-60 DAYS SO THAT DEFENDANT MAY PAY RESTITUTION IN ORDER NOT TO HAVE A PROBATIONARY SENTENCE.**
- 6. ENCOURAGE PROBATION OFFICERS TO PLACE SAME EMPHASIS ON "MONETARY" ISSUES AS THEY DO ON OTHER CONDITIONS OF PROBATION.**

## **APPENDIX G**

---

**REPORT TO APPROPRIATION CHAIRS AND JPS  
SUBCOMMITTEE ON IMPROVING THE  
COLLECTION RATE OF OFFENDER FEES,  
PRESENTED BY GREGG STAHL, AOC**

## **Improving the Collection Rate of Offender Fees**

**A Second Report to Appropriation Chairs**

**And**

**Subcommittee on Justice and Public Safety Chairs**

**Prepared by the Administrative Office of the Courts and the Department of Correction**

**April 1, 2004**

### **COLLECTION OF OFFENDER FEES**

**SECTION 16.15.** The Department of Correction and the Judicial Department shall report by April 1, 2004, to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the success of their efforts to improve the collection rate of offender fees for probationers and for nonprobationers sentenced to community service and on any recommendations for statutory or procedural changes that will improve the collection of financial obligations from offenders.

The report shall include a comparison of the percentage of offender fees collected in the most recent year compared to prior years, including the percentage of offenders who were ordered to pay fees and the percentage of offenders who actually paid those fees. The report shall also include the total offender fees collected, in dollars and as a percentage of the fees ordered, and the fees that could have been ordered based on the sentence and conditions imposed by the judge. If any of this information cannot be collected, the report shall include a description of the data collection issues and a plan for addressing those issues.

### **Overview**

Representatives of the Department of Correction, Division of Community Corrections and the Administrative Office of the Courts met on several occasions to re-review and discuss the system of collecting offender fees. The groups' primary goal was to review the recommendations from last year's report and to develop a reliable means of calculating a collection rate for offender fees and to make any additional recommendations for improving the collection rates.

Under the current process, offenders are assessed a supervision fee while on supervised probation and a community service fee if ordered to perform community service. Judges must, by statute, order probation supervision fees to offenders placed on supervised probation or assign the community service fee unless the offender is unable to pay. Supervision fees are assigned monthly and under the AOC's accounting system, are credited to DCC and the General Fund when paid. In practice, offenders not making payments to the clerk's office on a regular basis are not revoked for this violation of the condition of their probation but often judges will order modifications to the offender's probation and remit all supervision fees paid against other court imposed fees including victim restitution and attorney's fees. Thus, supervision fees actually paid by an offender are reposted as a victim restitution payment. It has also been the practice that offenders must pay the community service fee prior to performing their community service. There have been some recent changes in that practice, especially since the increase in the fee.

Collections of criminal court, probation, and community service fees have gone up each year since FY 2001-02. This fiscal year the AOC is projecting to collect \$75.7 million in criminal

court fees; \$16.9 million in probation supervision fees and \$8.2 million in community service fees. The total projected amount for FY2003-2004 is \$100,884,422 which is an 11% increase in fees collected over the \$91,133,010 collected in FY2003-2004. Fee collected and comparisons to previous years are illustrated on the following table.

### Three-Year Comparisons of Selected Fees

	Actual 2003 as a % of Projected	Current Fee as % of 01-02	Projected Full Year 2003-04	2003-04 Through April 2004	Actual 2002-03	Actual 2001-02
Criminal court fees	90%	117%	\$ 75,747,396	\$ 63,122,830	\$69,989,561	\$66,744,747
Probation fees	133%	150%	\$ 16,892,370	\$ 14,076,975	\$14,337,121	\$10,832,056
Community Service fees	133%	200%	\$ 8,244,656	\$ 6,870,547	\$ 6,806,328	\$ 5,280,879

### Collection Rates

There is some difficulty in calculating annual collection rates for offenders on supervised and unsupervised probation. The Financial Management System (FMS) is an accounts payable system used by AOC in the Clerks' of Superior Court Offices to disperse payments made by offenders as ordered by the court and outlined in the general statutes. There are two practices used by Clerks' offices to establish offender accounts in FMS. The first practice is to enter all offenders who are on probation and ordered by the court to pay fees and fines into the system. Approximately one fourth of all Clerks offices follow this practice. The remaining Clerks' offices establish the FMS account for an offender when the first payment is paid. Thus, if a payment is never paid, then the offender is never entered into FMS.

By comparing offenders who are in the AOC's Automated Criminal Information System (ACIS) to offenders in FMS and matching case numbers, the two practices become obvious. In cases in which offenders are currently on supervised probation, 80% of the over 99,000 cases were matched with an account in the FMS system. The matching ranged from a low of 40% to a high of 95% of all cases in the county. In about two thirds of the counties, 75% of active supervised probation cases were found in the FMS system. The numbers are quite different in unsupervised probation cases. Only 36% of the nearly 27,000 unsupervised probation cases were matched from ACIS to FMS. The matching ranged from low of only 1% to a high of 100%. In 51 of the counties, less than half of the unsupervised probation cases were found the FMS system. This is illustrated in the following table:

### Probation Cases Matched in FMS from ACIS

Active Probation Cases	ACIS	FMS	% In FMS
Supervised Probation cases	99,318	79,909	80%
Unsupervised Probation cases	26,847	9,793	36%

Actual annual collection rates cannot be accurately calculated, as it is not readily clear what is to be and what can be measured. It is common practice for some or all fees and costs in supervised probation cases to be waived before the termination of supervision if all other conditions of probation have been satisfied. Thus, looking at the number of offenders on active probation who have made no payment in cases where fees and costs have been ordered can give an indication of rate of non payment. By comparing offenders on active probation in ACIS matched with accounts found in FMS in which no payment had been made, there is a inverse correlation to the number of cases matched and the number of non payments. The fewer cases found in FMS the



lower the non-payment rate and conversely, the more cases found in FMS the higher the non-payment rate.

Thus, to look at true non-payment rates, the focus should be placed on counties that place all offenders owing fees and costs into FMS. In active supervised probation cases, there are 26 counties that have a 90% or greater rate of offenders entered into FMS. These counties have a no payment rate of 47% of all of their cases. The rate for these counties ranges from a low of 33% to a high of 53%. The other 74 counties, which have rates of cases entered into FMS of less than 90% have a no payment rate of 49%. The rate for these counties ranges from a low of 34% to a high of 69%.

In looking at non-payment rates for cases of unsupervised probation, the focus should also be placed on counties that place all offenders owing fees and costs into FMS. In active unsupervised probation cases, there are 25 counties that have a 90% or greater rate of offenders entered into FMS. These counties have a no payment rate of 69% of all of their cases. The rate for these counties ranges from a low of 29% to a high of 88%. The other 75 counties, which have rates of cases entered into FMS of less than 90% have a no payment rate of 89%. The rate for these counties ranges from a low of 33% to a high of 100%.

The following table illustrates the non-payment rates.

### **Non-payment Rates in Supervised and Unsupervised Cases**

<b>Active Probation Cases</b>	<b>Number of Non-Payment Cases</b>	<b>Percent Non-Payment</b>	<b>Range</b>
Supervised Probation cases in which counties have a 90% or greater rate of offenders entered into FMS	12,071	47%	33% - 53%
Supervised Probation cases in which counties have a less than 90% of offenders entered into FMS	33,989	49%	34% - 69%
Unsupervised Probation cases in which counties have a 90% or greater rate of offenders entered into FMS	3,306	69%	29% - 88%
Unsupervised Probation cases in which counties have a less than 90% rate of offenders entered into FMS	19,247	89%	33% - 100%

The non-payment rate can be impacted by a number of factors that are not obvious or apparent through these rates. These factors range from local culture, to resource issues to the economic well being of the county. However, it is clear that those on supervised probation have a lower percentage of non-payment cases than unsupervised probation. It is important to note that the vast majority of supervised probation cases in which fees and costs are due are in FMS and the variance of non-payment rate between those counties, which enter all cases into FMS versus those that generally only enter cases as they make payments, is not very great. The difference in non-payment rates in unsupervised probation rates is greater between the two practices but is very high in both. This could be partially explained by this analysis being only a snapshot of payment history and some unsupervised cases may have a date certain future payment date.

### **Recommendations**

This section contains an update of the recommendations that were contained in last year's report. Some of these recommendations require statutory changes while others could be accomplished through the administrative processes of the two agencies. However, it was agreed by both agencies that caution should be noted in the enactment of means and methods aimed at increasing collection rates that might adversely affect the collection of other court mandated fees and costs

including victim restitution or that might increase length of stay on probation or revocation rates. There was a feeling among the committee that offenders have finite resources and thus an increase in the collection rate of supervision fees may cause a decrease in the collection of victim restitution or attorneys' fees. There was also agreement that increasing the length of time on probation or revocation rates would be counterproductive in that these methods cost more than they return.

The following is a list of the recommendations:

- **Consider changing monthly supervision fee to flat fee and adding program participation fees such as electronic monitoring, drug testing, drug assessment and drug treatment.** This recommendation would take a statutory change but this would make the supervision fee consistent with the Community Service fee and as such would be a definitive cost identified for the offender. The flat fee could be set as a fee of \$300 paid regardless of the number of months under supervision or regardless of the number of cases for which the offender is being supervised. This would eliminate the duplicative collection of fees from offenders under probation in more than one county and the subsequent remittance of those fees. Requiring offenders to pay a \$90 fee for participation in electronic monitoring, and a \$50 - \$150 fee for drug testing, assessment and treatment would parallel costs assessed in DWI cases. The current accounting system (FMS) could handle this but there are a number of forms and practices that would have to be changed.

*Status: No action from last year.*

- **Supervision fee not to be remitted after payment.** This would take a statutory change to prohibit what is becoming a common practice. Judges would no longer be able to remit fees paid to supervision to be paid as other fees or costs. However, judges would retain the discretion to waive supervision fees at the time of conviction or remit fees not already paid in a modification order or a termination of probation order. This would require training for judges and probation officers.

*Status: No action from last year.*

- **Revoke driving privileges for non-payment.** This would require statutory change. Currently, an offender's driving privilege is revoked for non-payment of court-imposed fees and fines for cases in Chapter 20. This would extend the revocations to all felonies and serious misdemeanors in which probation is ordered.

*Status: No action from last year.*

- **Tax offsets, wage garnishments.** This would require statutory change. Currently tax offsets and wage garnishments are used in child support and other selected cases. Some research would need to be done to determine the overall efficiency of this recommendation, as researching tax records and contacting employers can be very time and labor intensive.

*Status: No action from last year.*

- **Automated dunning letters and show cause orders.** The Division of Community Corrections or the Administrative Office of the Courts could adapt their information systems to generate dunning letters following periods of non payment as well as an automated show cause order for offenders to return to court. This is being done manually with some success in Mecklenburg County.

*Status: After further review of the AOC's ACIS and FMS systems, it has been found to not be cost efficient nor readily feasible to adapt either system to an automated accounts receivable system with billing capabilities.*

- **Unsupervised probationers to have date specific pay dates.** Judges should be encouraged to set a specific date due for those sentenced to unsupervised probation who have substantial fees and fines assessed. The automated dunning letters and show cause orders outlined previously could be used to assist in collections.  
*Status: No action from last year.*
- **Cases continued until payment made.** Judges should be encouraged to continue cases in which offenders site a specific date in which they would be able to make a payment in full to satisfy their judgment.  
*Status: After further review of local court practices, this recommendation has been found to not be practical nor efficient.*
- **Expand the use of criminal contempt.** Judges should be encouraged to use criminal contempt in cases in which offenders do not meet fee payment schedules. This could be done in lieu of revocation.  
*Status: No action from last year.*
- **Training for probation officers on the use of the FMS system.** The ACO could conduct periodic training on the use of the FMS system for probation officers. Many officers have never received initial training and others could use refresher courses. The FMS system could then be used more efficiently by probation officers to monitor their caseloads. *Status: A train the trainer training session was planned and implemented with the AOC FMS staff training DCC training staff.*
- **Automate the origination of records in the FMS system.** Currently, all accounts in the FMS system must be manually entered which requires many hours of work. Bringing the information from judgments over from the criminal system would save the setup time and also provide for better monitoring of all cases. This would require funding for programming.  
*Status: After further review, it has been decided that it would be more cost efficient to build this feature into the replacement system that is currently under design.*
- **Provide management information to probation officers and managers.** The AOC should attempt to provide periodic management reports to probation officers and managers in an electronic form that would provide probation officers with specific payment information on the offenders they supervise.  
*Status: The two agencies are continuing to explore the best means of providing useful management reports for probation officers.*
- **Use of bankcards.** This was discussed and rejected as not a viable option for those offenders currently not paying.  
*Status: No action from last year.*

# **APPENDIX H**

---

## **CHART OF POSSIBLE PROPOSALS**

## House Select Committee on Restitution Possible Proposals

	<b>Improving Collection &amp; Distribution</b>	<b>Increasing Restitution Ordered</b>
<b>Generally</b>	<p>1. Income withholding (immediately or only upon default), debt setoff, tax refund intercept, etc.</p> <p>2. Revoke driving privileges for non-payment.</p>	<p>23. Require that restitution orders include interest (accrues as of the date of sentencing or loss).</p> <p>24. Provide for recovery of attorney fees and costs incurred for collecting restitution.</p>
<b>By Victims</b>	<p>3. Give crime victims right to any information regarding offender's financial assets, income, or employment that is in possession of the district court or any community correctional service program.</p> <p>4. Require victims to file SSN or have an alternative way to code the victims who request restitution.</p>	
<b>Within Court System</b>	<p>5. Have magistrate provide restitution worksheet to victims beforehand (when charges are filed). Earlier victim notification of restitution rights.</p> <p>6. Require prosecutors to request information about losses from victims.</p> <p>7. Require defendants to file a disclosure identifying all assets, income, and liabilities. Failure to disclose may be considered aggravating circumstance in sentencing.</p> <p>8. Authorize district attorneys to contract with private collection agencies, retaining a portion of the collection fee, for administrative expenses.</p>	<p>25. Require judge to order restitution ahead of community service/supervision fees in certain situations (e.g. loss of life, serious injury cases).</p> <p>26. Change monthly supervision fee to flat fee and adding program participation fees such as electronic monitoring, drug testing, drug assessment, and drug treatment.</p> <p>27. Require that future earning potential be considered when ordering restitution. Restrict judge's ability to order partial restitution. Consider assets and earning potential when setting payment schedule. Even if defendant is currently unable to pay, a restitution plan must be presented that states the conditions under which the defendant will be making restitution.</p>

	<b>Improving Collection &amp; Distribution</b>	<b>Increasing Restitution Ordered</b>
	9. Use of bankcards.	
	10. Automate the origination of records in the FMS system.	
	11. Establish automated system by which clerk of court (and possibly community corrections) can monitor and cite back into court offenders who have failed to make payments (i.e. dunning letters, show cause orders, automatic docketing).	
	12. Clarify that restitution may be ordered to a person other than victim for economic loss for crimes which are not adjudicated or are not before the court (plea agreements/multiple victim situation)	
	13. Cases continued until payment made.	
	14. Expand use of criminal contempt.	
	15. Supervision fee not to be remitted after payment (prohibit judges from remit fees paid to supervision to be paid as other fees or costs).	
	16. Establish offender-funded collections program; offenders who cannot pay restitution at time of sentence must work with collections investigator to develop restitution payment schedule' payments to be monitored by collections investigator; offender must pay fee to cover costs (see Colorado statute)	
	17. Establish general offender assessment, penalty or surcharge that all offenders (not just those with ROs) must pay. The money can go to fund a collections program or to the victims comp fund.	
	18. Authorize court to extend probation to allow offender time to satisfy RO	
<b>While on Probation</b>		

	<b>Improving Collection &amp; Distribution</b>	<b>Increasing Restitution Ordered</b>
	19. Encourage probation officers to place same emphasis on payment of restitution as they do on other conditions of probation.	
	20. Provide management information to probation officers and managers.	
	21. Training for probation officers on the use of the FMS system.	
	22. Require probation officers to review, twice a year, all cases in which restitution ordered; perform final review 60 days before expiration of probation; file written report with court if payments are not being made; give victim right to receive schedule of restitution payments & name and phone number of probation officer.	
<b>While Incarcerated</b>		28. Create new and/or enhance inmate work programs.
		29. Revise allocation of work-release earnings; require flat percentage off the top to go toward restitution.
		30. Require percentage of amount raised by inmate arts and crafts be applied toward restitution.

<b>Technical Changes</b>
Clarify distribution statute to indicate priority of community service and supervision fees (can codify current practice or move restitution ahead of these fees).
Clarify how subcategories within same distribution priority are to be treated when there is not enough money to pay all subcategories in full.
Modify joint and several liability of defendants with regard to payment of restitution.

# **APPENDIX I**

---

## **PRESENTATION NOTES OF MOIRA ROWLEY WITH ACS, INC.**



# Moira Rowley

## Vice President, Court Services

---

Seasoned professional with more than 20 years of experience serving courts and justice organizations. As a court manager and in her private sector roles, Moira has contributed her skills and expertise to programs, practices, projects, and initiatives that help courts and justice agencies make better use of information assets, enhance services to their constituents, and improve the quality of justice within their reach. Areas of expertise include:

- **Court Consulting:** Organization, governance, technology, case management practices, justice integration and information exchange, compliance and justice revenue, jury management, court performance measurement, and court technology
- **Project and Program Management:** Local, regional, statewide and national court technology and business process project management, implementation and program evaluation.
- **Product Management:** Commercial software planning, design, delivery and adaptation to client-specific needs and requirements

## Professional Experience

### Vice President, Court Services, 1997 – Present, ACS Government Systems

- Provides guidance and direction for the development of ACS courts and justice solutions and services, currently in use by over 200 courts in the United States. Also directly manages the operations of our Jury Solutions group, with solutions and services in use by over 400 state, local, and federal courts in the United States and over 100 courts internationally.
- Works with jurisdictions across the country to define, implement, monitor and enhance Justice Revenue programs, focused on increasing compliance with court-ordered monetary sanctions.
- Works directly with courts and justice clients to understand their existing and emerging challenges and goals to ensure that ACS solutions are aligned with the needs of the courts and justice community in general, and our clients in particular.
- Contributes to the work of public and private sector professional organizations, and public/private partnerships.

### Accomplishments at ACS

- Helped extend ACS Justice Revenue Services into general jurisdiction, limited jurisdiction and municipal courts.
- Led ACS team in planning the Arizona FARE project, the first statewide court compliance and justice revenue project based on a public/private partnership.
- Participated in the Missouri Fine Collection Center project design and recruitment of large metropolitan area courts and new participants in the statewide project.
- As product manager, oversaw the expansion of ACS court management technologies to a broader set of integrated court management solutions.
- As jury group manager, oversaw the expansion of ACS jury solutions to leverage new technologies that help courts extend better customer service, reduce operating expenses, decrease total cost of ownership, and provide a wide range of constituent self-service options.

**Vice President, Product and Business Development, 1995-1997, Progressive Solutions, Inc. (PSI)**

In this role, Moira established the first comprehensive product release practices for PSI. Responsible for coordination, prioritization, scheduling, and monitoring of product group resources including design, programming, quality assurance, and documentation. Established strategic direction for production development and enhancement.

Project management responsibilities included:

- *New Mexico Statewide Court Automation Project (December 1995 – August 1997)* Completed the statewide implementation of courts case management application, now in place in 92 limited and general jurisdiction courts.
- *Arizona Large Volume Courts Project (August 1995 – March 1996)*
- Led the initial PSI work with Maricopa and Pima County area courts to define enhancements and customization of statewide case management application to better serve the needs of large volume courts. Headed project from requirements analysis through establishment of development schedules, resource allocations and cooperative testing plans.

**Court Manager, 1985-1995, Circuit Court of Jackson County, Missouri (Kansas City)**

The Circuit Court of Jackson County is a large metropolitan area court of combined limited and general jurisdiction. Ms. Rowley was responsible for the operations of the court's business offices at the downtown courthouse and at multiple locations throughout the county, including juvenile facilities.

During her time as a court manager, Ms. Rowley oversaw many projects that helped the court deliver consistently high customer service, meet mandatory case processing standards – even as caseloads increased dramatically, improve information management, coordinate with other agencies, and make the court more accessible to all members of the community.

**Education & Specialized Training**

University of Missouri at Kansas City, Philosophy  
Continuing court-related education

**Professional Organizations**

**Integrated Justice Working Group (IWG)**

- Executive Committee

**IJIS Institute**

- Vice President
- Executive Committee
- Board of Directors
- Chair, Outreach Committee

**Forum on Advancement of Court Technology (FACT)**

- Steering Committee Member
- Co-Chair, Education Committees

**National Association for Court Management (NACM)**

- Member, Faculty

**Court Technology Conference (CTC)**

Faculty

**National Conference of Metropolitan Courts (NCMC)**

Faculty

# Restitution

## ***Problem:***

***Not enough crime victims receiving restitution as compensation for monetary damage***

## **CAUSES**

Not enough restitution ordered (or orders not effective base for enforcement)

Non-payment or court-ordered restitution

Not paid because defendant does not have the means

Not paid because defendant with means chooses not to pay

Enforcement options:

Weigh cost, practicality, propriety, legality and the likelihood of recovery for most effective methods

Nature of restitution (direct payment by offender to those harmed) may limit our considerations about enforcement options.

## ***Are there dual goals?***

***Make defendant pay***

***Ensure that crime victims are compensated***

Make defendant pay

Structured, effective, broad based compliance programs

Many of the components listed in chart and considered by committee

Difficult to enforce – window of enforcement limited to term of probation

Ensure that crime victims are compensated

Revenue earmarked for payment to victims

May come from multiple sources

Not necessary paid by the offender

State Crime Victim Compensation Funds follow that model.

Can that model be expanded beyond charges where restitution is possible outcome?

Two approaches generating revenue for courts and state court systems

Fees added to all cases, or cases within given categories

Sanction percentages/fees on back end for non-payment

Restitution is among the lowest collectible categories of debt

Greater revenues and higher percentage of collectibility – limited jurisdiction traffic.

Compliance programs often include ability for State to add percentage fee for non-payment.

While effective enforcement/compliance programs increase the number of cases paid without invoking sanctions, there are still many, many cases that are not paid in a timely manner.

Therefore, this source of revenue remains viable.

Sanction percentages run a wide range – up to 40% in FL

Consider enacting legislation authorizing a high percentage

**Carefully craft language so that funds may be used (or later challenges my invalidate, and put sentencing/judgments at risk)**

: To support the costs and operation of the compliance program  
For restitution to crime victims (general fund – follow rules for CVC)  
Other ? ? ?

Use some of that money to remediate Court information/financial systems, or to resurrect the development/implementation of a new system

Use some as incentive to courts for timely and accurate data entry/information exchange.

Allocate portion of the overall percentage to CVC

**Advantages:**

More money likely to be paid to victims

Comprehensive program will increase revenues overall – not just restitution

Financial model makes it possible/profitable for private sector involvement

Costs are still paid by bad actors.