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**Notes and
References**

Financial Matters

I. Statutory Requirements

A. Restitution

1. Restitution is defined as full or partial payment for the value of stolen or damaged property, medical expenses, wages or profits lost due to injury or for time spent as a witness or in assisting the police or prosecution.
2. The losses covered by restitution are those caused by the minor as a result of committing the offense for which the minor was found to be a person described in 602 W&IC. In certain cases, a judge may order restitution on dismissed counts via a Harvey Waiver.
3. The value of stolen or damaged property shall be the replacement cost of like property or the actual cost of repairing the property, when repair is possible.

730.6 W&IC

Harvey Waiver

B. Restitution Fine

1. A restitution fine is a form of penalty assessment paid to the Restitution Fund for cases in which a minor is found to be a person described in 602 W&IC by reason of the commission of one or more offenses.
 - a. The restitution fine is ordered in addition to any other penalty in an amount of at least \$100 and not more than \$1,000.00 for felonies, and no more than \$100 for misdemeanors.
 - b. The restitution fine shall be imposed in all cases, regardless of the minor's ability to pay.
 - c. The restitution fine may be waived only under compelling and extraordinary circumstances.
 - d. In any case in which a minor is ordered to pay restitution as a condition of probation, the order to pay a restitution fine may be stayed pending successful completion of probation; if probation is revoked, the stay shall be lifted.

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- e. The restitution fine pursuant to 730.6 W&IC is not a term and condition of probation and is a civil debt owed to the state.

II. Restitution Determination – Investigations

- A. General: The Probation Officer is expected to address the financial obligations of the minor as they relate to the terms of probation. Minors may be ordered to pay restitution, as indicated on the probation order.
 - 1. The officer assigned to the case has the responsibility to determine restitution.
 - a. The Investigating Officer shall send a Pro-211e or Pro-211f to the victim(s) to determine the amount of restitution, which will be documented via a Victim Contact chronological note in Events. Victims are encouraged to send documentation of repairs or other losses to the Investigator.
 - b. If the total amount of restitution is known prior to disposition, the amount is to be included in the terms and conditions of probation, including each separate victim's full legal name and the amount owed to each separately.
 - c. If the total amount of restitution is unknown, the following language should be utilized in the terms and conditions, "Matter to be further investigated with an amount for the restitution included in an ex-parte order or a restitution hearing scheduled within 90 days."
 - i. If in 90 days, restitution is established, the DPO will prepare and file an ex-parte Restitution Informational Report for the Court's authorization.
 - ii. If in 90 days, restitution has not been established, the DPO will set the matter for a restitution hearing utilizing the Restitution Informational Report.

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Pro 211f

Pro 703

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- iii. If within 90 days of disposition, after reasonable efforts (victim notification via mail and follow up telephone calls) have been made to notice the victim at their last known address/telephone and the victim fails to respond, or the victim needs additional time to secure all documents, a Restitution Informational Report will be submitted advising that:
- Probation has been unable to locate the victim, or
 - No restitution is being sought as the victim has not responded, or
 - The victim does not want restitution, or
 - The matter will be continued for the victim to secure needed documents.

III. Disputed Restitution – Restitution Hearing

- A. If one of the parties disputes the suggested amount of restitution, the matter should go to a restitution hearing.
1. Once the minor and their parents contest the amount of restitution, they should sign the Pro-396, indicating the minor's attorney will be consulted. The form and restitution claim should then be submitted to the minor's attorney with any personal victim information redacted from the claim form and any supporting documents.
 2. After reviewing the material, if the minor's attorney agrees with contesting the restitution amount, the matter will be set for a restitution hearing.
 3. When setting the matter for a restitution hearing, in Santa Maria, the Probation Officer is to email the Juvenile Court at smjuv@sbcourts.org, and in Santa Barbara at sbjuv@sbcourts.org, to inquire whether setting a particular date is acceptable for setting the restitution hearing. The court date is generally set three weeks from the date the Court Clerk is contacted. The Juvenile Court will normally hear Santa Maria cases on Tuesdays and Wednesdays at 8:30 a.m. The Santa Barbara cases are normally heard on Mondays and Wednesdays at 1:30 p.m.

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4. If there are additional restitution claims from other victims which have not been received, every effort should be made to obtain the claims prior to the restitution hearing so the matter will be settled for all victims. A separate Pro-396 should be completed for each victim.
5. After establishing the date of the hearing, the Probation Officer will personally notice the victim(s), the minor, the minor's parents, and the minor's attorney via a Proof of Service.
6. A Request to Calendar will need to be filed at least two weeks prior to the court date, along with the Pro-396(s), the victim's claim, the supporting documentation regarding the claim, and proof of service to the victim, the minor, and the minor's parents. A follow up phone call should be made to the victim to ensure they have been noticed about the hearing. The Probation Officer should indicate in the Court Hearing Officer (CHO) notes whether the victim(s) intend to attend the hearing.
7. During the restitution hearing the CHO should review the abstract and the restitution order for accuracy. If there are discrepancies, the matter should be brought to the Court's attention during the hearing. The Court Clerk will need the names of all of the victims.
8. If the parents are jointly and severally liable, or there are co-offenders, information regarding them should be provided to the Court Clerk as well, as that information needs to be recorded on the minute order. It should be noted that pursuant to California Civil Code §1714.1 parents are liable for civil damages of up to \$25,000 for each tort or act of willful misconduct of a minor in their custody and control that results in injury or death to another person or in any injury to the property of another.
9. Once the Court has made a final decision regarding restitution, the minor and/or parent may continue to be in disagreement with the amount. Admonishments for refusing to pay should be given and the parties should be advised that, despite their disagreement, the amount ordered by the Court will be submitted to the Revenue Recovery Unit (RRU).

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- B. The minor and their parents or guardians are to be notified of the following:
 - 1. The amount of restitution to be paid.
 - 2. The amount of restitution may increase if subsequent claims are received for ongoing restitution expenses.
 - 3. The victims have a right to take civil action.

IV. Restitution Account Establishment

- A. Restitution is collected through the RRU once an account has been established for the minor via the completion of a Juv-Pro-129, followed by a Juv-Pro-129A, the latter of which provides victim contact information and the amount of restitution owed. Both documents should be completed and submitted using the process delineated on the Probation Portal under Revenue Recovery, Financial Matters, Pro-129 Procedures.
 - 1. Cases with co-offenders owing restitution are to be set up as “Responsible Persons” accounts.
 - 2. A payment plan should be developed and the Supervision Officer should indicate a payment amount and a date the minor is to begin making payments.
 - a. If the minor has been sent to Los Prietos Boys’ Camp or placement, the Pro-129 should be completed and submitted to RRU two weeks after the disposition hearing and the payment amount should be set at \$10.00.
 - 3. The payment amount should be adjusted whenever the minor’s circumstances change. For example, if a minor obtains employment, they should be directed to pay in proportion to their earnings.
 - 4. Payments may be made at the Probation Department cashier, calling the RRU telephone number, or by mail. Payments made in person can be made by cash, check, money order, certified check, cashier’s

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check, or credit card. Payments made by phone can be made by Visa or Master Card.

- a. Under no circumstances is Probation staff to accept a check, cash, or money order from a client and remit it directly to a victim. If a client mistakenly makes out a check or money order to a victim, they will need to write another check or have the money order replaced.
 - b. Payments erroneously made payable directly to the Probation Officer named as the payee should be endorsed immediately and delivered to the Probation Department cashier. Minors or their parents are to be instructed that further payments are to name the County of Santa Barbara Probation Department or Revenue Recovery Unit as payee.
5. Joint and several liability means more than one minor is responsible for restitution to one or more victims. Co-offenders are joint and severally liable for the amount of restitution and both offenders owe the total amount until restitution is paid in full. When completing the Pro 129 and Pro 129A, co-offenders should be listed in the appropriate areas and “Joint and Several” should be checked on the Pro 129A to ensure the accounts are linked.
6. California Victim Compensation Board (CALVCB)
- a. Non-property crime victims can submit claims to the CALVCB for reimbursement.
 - b. Victims can file claims with the CALVCB up to one year after the offense.
 - c. The amount of the victim’s claims will be increased to cover ongoing medical needs or counseling.
 - d. To find out if a victim has filed a claim with the CALVCB and the amount of the claim, contact the District Attorney Restitution Recovery Specialist.

Pro 129
Pro 129A

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- e. If the CALVCB has paid a claim for a victim, the CALVCB fund must be set up to receive victim restitution for the claim paid. The CALVCB claim number is necessary on the Pro-129A for CALVCB reimbursement.

V. Information to Victims

- A. The investigation/supervision officer shall inform the victim(s) of the following:
 - 1. The determination of the amount of restitution does not ensure payment.
 - 2. Victims may be able to obtain reimbursement from the CALVCB for non-property losses.
 - 3. The victim's right to civil action against the minor or the parents/guardians of the minor is in no way affected by the minor's probation status and should be exercised within the legislated civil lawsuit time frames.
 - 4. The terms of payment may be subject to change.
 - 5. Victims should be encouraged to keep their address current with Probation so that restitution payments or correspondence can be sent to the correct address.
 - 6. If there is more than one victim, each is paid as directed by the court order or as directed by Probation.
 - 7. When restitution is owed on more than one case, the RRU will establish payment priorities.
- B. The assigned Probation Officer should make bi-monthly contact with the victim(s) to provide updates, answer any questions, address any concerns, and otherwise check in.
- C. The victim(s) will also be contacted anytime there is a change in assigned supervision officer.

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VI. **Payments to Victims**

- A. If there is more than one victim, each is paid in proportion to their loss. Individual victim losses shall be paid prior to any CALVCB claim.
- B. When restitution is owed on more than one case, the Revenue Recovery Unit will establish payment priorities by the respective grant expiration dates.
- C. Victims' claims may include amounts paid by the victim's insurance reimbursement and amounts not paid by victim's insurance such as deductibles. If victims claim amounts paid by their insurance companies, then victims are responsible to repay their insurance companies in accordance with the subrogation clauses of their insurance policies.
- D. An insurance company that has paid the crime losses of its insured under the terms of an insurance policy is not a direct victim of crime and has no right to restitution. However, when the defendant is convicted of submitting false claims to an insurance company, the insurance company is considered to be a direct victim of the defendant's crime and thus entitled to restitution.
- E. The RRU issues victim checks bi-weekly and mails them directly to the victim. The RRU's collections system, REVENUE RESULTS, provides an accounting record of the payments made by the clients and the checks issued by the RRU. Checks issued to victims can be reissued by the RRU if the victim misplaces it or loses it. Uncashed (stale dated) checks are transferred to the District Attorney Victim/Witness program for victim services after skip tracing by the RRU.

VII. **Civil Judgment**

- A. Prior to the termination of probation, a thorough case review should be done. If restitution is still owed, a CR-110/JV 790 must be done and submitted to the Court on behalf of the victim(s). It is imperative that the amount of restitution be established by the Court prior to the termination of probation as the Court will lose jurisdiction over the matter once probation has been terminated.

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1. A separate CR-110/JV 790 should be submitted to the Court for each victim awarded restitution where the restitution was not paid prior to the termination of probation. The total amount of restitution originally ordered, and a notation of how much has been paid to date, should be included on the CR-110.
2. Once the CR-110 is completed, it must be filed with the Court.
3. The Court Clerk will return a copy of the document to the Probation Officer after it is signed by the judge.
4. A copy of the signed CR-110 is scanned into the Probation file. The original certified copy is sent to the victim with a Pro-212c.

CR110/JV790

Pro-212c