

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



POLICY & PROCEDURES

Chapter: E
Section: .1100
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References

Related ACA Standards

5th Edition Standards for Adult Correctional
Institutions 5-ACI-1B-24

.1101 GENERAL

- (a) It is the intent of this policy to establish appropriate rules and regulations to govern the Division of Prisons actions with regard to those **offenders** who receive a court sentence which either orders or recommends that the offender make restitution to **the victims of crimes and/or their survivors** as the court directs.
- (b) The sentencing court may order restitution in the following instances:
- (1) As a condition of Probation;
 - (2) As a condition of Special Probation;
 - (3) Incident to an order of commitment to prison, as a condition of attaining work release privileges and as a condition of attaining parole, when such commitment order is an outgrowth of a plea arrangement.
- (c) **Definitions:**
- (1) **Restitution:** court-ordered payment by a criminal defendant to a victim or other party that compensates the individual for a loss proximately caused by the criminal defendant.
 - (2) **Reparation:** the performing of community services, volunteer work, or doing such other act or things as shall aid the defendant in his rehabilitation.
- (d) A restitution **Order/Recommendation** shall be binding upon the Secretary of Public Safety and the **Post Release Supervision and Parole Commission**, unless, due to the disability of the prisoner, or for other causes, such order cannot be reasonably implemented. In those instances, the Secretary and **Chairman**, **Post Release Supervision and Parole Commission**, or either of them, or their designee, shall notify the sentencing court in writing as to why the order cannot reasonably be implemented and the sentencing court shall issue such further orders as it may deem necessary.

- (e) The following custodial and correctional considerations shall apply in considering restitution Orders/Recommendations as they affect offenders in the custody of the Division of Prisons:
- (1) A restitution Order/Recommendation shall not supersede Division of Prisons policy and procedure as to work release, and those offenders with such Orders/Recommendations shall still be required to meet work release policy requirements before being assigned to work release. N.C. Gen. Stat. § 148-33.2 and N.C. Gen. Stat. § 143B-720 provide that the Post Release Supervision and Parole Commission and the Secretary of Public Safety are authorized to require any prisoner granted work-release privileges to make restitution or reparation to an aggrieved party from any earnings gained by the defendant while on work release when such is Ordered/Recommended by the sentencing court. If the Post-Release Supervision & Parole Commission and Division of Prisons disagree as to whether an offender should pay restitution, the offender will not be delayed on being assigned to a work release assignment if assignment is available. A final decision about whether or not the offender should pay restitution can be rendered after assignment.
 - (2) Offenders who have split sentences who are recommended for immediate work release, and who have a restitution Order, shall be processed as to work release and restitution in the same manner as though they were entitled under an ordinary active sentence. Offenders who have sentences of five years or less who cannot be placed on work release immediately will have the issue of restitution/reparation addressed in the diagnostic center, while those who are serving sentences over five years will be assigned in a normal manner with restitution/reparation being addressed at the time the offender comes under consideration for work release. Offenders admitted to special probation after having served the active portion of a split sentence shall be governed by the policies and procedures of Adult Probation and Parole as they apply to restitution as an incident of special probation.
 - (3) Unless otherwise clearly indicated on the Order/Recommendation of Restitution (incident to a commitment) (AOC-CR 601 or AOC CR-611), the Order / Recommendation shall apply as a condition of work release, parole and post-release supervision. If the sentencing court clearly indicates that the Order/Recommendation apply only as a condition of parole/post-release supervision, the offender may be allowed and encouraged to make restitution voluntarily out of work release earnings by consenting to the deductions per (N.C. G.S. §148-33.1 (f)(4), or to make restitution out of their own funds. Nothing in these policies and procedures shall prevent the implementation of a MAPP Agreement addressing restitution, when such is deemed proper.
 - (4) For offenders serving sentences of five years or less, the decision to implement the restitution Order/Recommendation is a function of the Division of Prisons.; Offenders serving sentences greater than five years, are a joint function of the Division of Prisons and the Post Release Supervision and Parole Commission.

While the policies and procedures afford the offender the opportunity to be heard on the matter their consent is not required. If the restitution Order/Recommendation is implemented as a condition of work release, the restitution deduction will be made **in accord with** other permitted deductions from work release earnings, by the Work Release Accounting Section.

- (5) Offenders who are committed as a result of a probation revocation shall not be subject to restitution requirements unless the Order/Recommendation is made a part of the probation commitment order, even though restitution may have been a condition of probation. Only the revoking court can make valid Orders / Recommendations as to restitution as a condition of work release, parole **or post-release supervision** eligibility.
- (6) Restitution Orders/Recommendations are implemented "as a rehabilitative measure....," this being the sole statutory criteria. Thus, in arriving at its decision as to implementation, the Division of Prisons is not required to consider the distinction between an Order and Recommendation beyond those statutory provisions which (1) make orders binding, unless, "...due to the disability of the prisoner, or for other causes, such order cannot be reasonably implemented..." and (2) "The Secretary shall not be bound by such (restitution) recommendation..." In making its decision to implement restitution recommendations, the Division of Prisons should consider that implementation of restitution measures will (1) serve to make the **offender** aware of the **harm** which **their** criminal conduct has caused, (2) will encourage the **offender** to achieve a realistic sense of responsibility for the consequences of their conduct, and may consider additional other factors to determine that the implementation of a restitution or reparation recommendation will benefit the **offender** as a rehabilitative measure.
- (7) Implementation of a restitution Order/Recommendation **by the Post Release Supervision and Parole Commission for parole/post-release supervision consideration may be a separate action from work release approval by the Division of Prisons although any restitution collected from work release earnings may apply to the parole/post-release supervision case.**
- (8) **N.C. Gen. Stat. § 15A-1343** provides that "reparation" may be ordered or recommended by sentencing courts. Reparation" means, but is not limited to, "...the performing of community services, volunteer work, or doing such other act or things as shall aid the defendant in his rehabilitation. **Whenever** reparation is ordered or recommended as a condition of attaining work release privileges, **the** measures **shall** be implemented as though it were a restitution Order /Recommendation. Consideration **should be given as to** whether or not correctional and custodial considerations permit the particular type of reparation ordered or recommended by the sentencing court.

.1102 PROCEDURES - ACTIVE SENTENCE OF FIVE YEARS OF LESS

- (a) The following procedures apply to all offenders with restitution Orders/Recommendations who have active sentences of five years and less.
- (1) The diagnostic center shall conspicuously stamp the offender's unit jacket "Restitution," on the outside front cover. Staff will appropriately record restitution in the OPUS using the OT24 (Special Conditions /Sanctions/Credits; code 33 and 34), OP03 (Offender Copay Obligations) and OP04 (Payee Copay Account Detail) screens. The OR91 (Victim/Payee Name Search) and OR91 (Victim/Payee Registration) screen may also be utilized. Staff will initiate Form DC-191, by completing Sections A and G. The Diagnostic center staff will explain to the offender the restitution/reparation law under which they were sentenced. Also, at this time, the offender will be advised that they have the right to be heard on the matter, but that the decision to implement the Order/Recommendation will be made independently of whether or not they consent to make restitution. If the offender indicates a desire to be heard, this will be noted on Form DC-191, Section B. If the offender does not desire to be heard, they shall sign Form DC-191, Section F.
 - (2) If the offender has requested to be heard, the case analyst will indicate this fact in the classification referral. The offender may have the assistance of a staff member, appointed by the Warden, if the offender so requests by completing Section C of Form DC-191. Notification, and appointment of a staff representative, if requested, should be at least 24 hours prior to the hearing by the committee.
 - (3) When the appropriate classification authority meets to determine whether or not to implement the Order/Recommendation, the offender will have an opportunity to make a statements to the committee. This statement may include any reason they think appropriate to convince the committee that it should not implement the Order/Recommendation. The offender shall not be allowed to make statements which tend to show that the sentencing court should not have Ordered/Recommended restitution measures, as they had an opportunity to make these statements at sentencing, and this matter is not properly before the committee. Further, the committee shall not take into consideration any testimony which would tend to show that after other deductions are made out of the offender's work release earnings as required by law, there may be no funds left out of which to make restitution. When making the decision on whether to implement a restitution Order/Recommendation, the ability of the offender to earn sufficient funds to make restitution is not a proper consideration for the committee.
 - (4) The staff assistant, if one has been requested by the offender, will be present at all appropriate classification committee hearings wherein implementation of

a restitution Order/Recommendation is under consideration. The committee may direct that the **offender**, or appointed staff representative, verify any statement made. The committee shall keep a record of statements made by the **offender**, or **their** representative, bearing upon the issue of restitution.

- (5) The appropriate classification committee will make the determination as to whether or not the restitution Order/Recommendation shall be implemented as a condition of the **offender's** attaining work release privileges. The chief criteria will be whether or not such implementation would be a rehabilitative measure as to the **offender**. If the **offender** has been heard by the committee on the question, their statement will be taken into consideration.
- (6) When the committee has made its decision, it shall state the reasons for its decision, in writing, on Form DC-191, Section D, and the **offender** will be informed by the Chairman of the committee. If the committee has decided not to implement the Order/Recommendation, this also shall be noted in Section D of Form DC-191. The **Warden**, or **their** designee, will then advise the sentencing court, stating in writing the reasons for the decision. If the decision was not to implement a restitution order, the sentencing court is empowered to issue further orders in the matter and the Department of **Public Safety** will be responsive to such further orders. If the committee has decided to implement the Order/Recommendation of the sentencing court, or the **offender** has waived his right to a hearing, this shall be the final decision and it is not required that any approving authority review and take action as to the implementation of restitution measures.
- (7) Once the proceeding is completed by the committee, the **offender** will be processed for unit assignment as provided by classification and work release regulations, and Form DC-191 will be distributed. The implementation decision on Form DC-191 will be transmitted to the Work Release Accounting Office on Form DC-190, if **immediate** work release **was ordered**. Form DC-191, Section G, sent to Work Release Accounting, will indicate the gross amount of restitution to be paid, along with the name and address of the payee. If the **offender** is not placed on work release immediately, Work Release Accounting will file the DC-191 and pull this form when this **offender** is considered for work release participation. Facilities having **offenders** under consideration for work release should insure that the appropriate restitution/reparation block on the DC-190 is marked to alert Work Release Accounting. Upon confirmation of the **offender's** work release salary, the Work Release Accounting office will fix the amount to be deducted from work release earnings for transmittal to the payee by way of restitution. The amount may be reduced or increased from time to time as the earnings and higher priority obligations of the **offender** permit. **When** **issuing the payee their first check**, Work Release Accounting will advise them what may be reasonably expected by way of restitution, and whether or not it appears that

full restitution may be expected, taking into consideration the length of sentence, earnings of the offender, and other factors.

.1103 PROCEDURES - ACTIVE SENTENCE MORE THAN FIVE YEARS

- (a) The following procedures apply to all offenders with restitution Orders/Recommendations serving sentences of greater than five years.
- (1) The receiving diagnostic center shall, conspicuously stamp the offender's unit jacket "Restitution," on the outside front cover. Staff will appropriately record restitution/reparation in the OPUS using the OT24 (Special Conditions Sanctions/Credits, code 33 and 34), OP03 (Offender Copay Obligations) and OP04 (Payee Copay Account Detail) screens. The OR91 (Victim Payee Name Search) and OR91 (Victim Payee Registration) screens may also be utilized. Staff will explain the restitution/reparation program to the offender, noting that at the time when they are considered for work release, that Form DC-191 would be completed, giving them an opportunity to waive their rights to a hearing on the matter of restitution or present facts relevant to why they should not be required to make restitution as a condition of work release. The facility recommending of an offender for work release privileges, shall have the appropriate staff member initiate Form DC-191 consistent with the requirement of Section .1102, paragraphs 1-6, and submit that in conjunction with the DC-121 and DC-190, recommending work release to the appropriate classification authority. If the decision by the committee is not to implement, the court shall be notified consistent with Section .1102, section 6.
 - (2) Following the waiver of a hearing or decision to implement the committee shall attach the record of the proceeding, including a summary of evidence presented by the offender if they have been heard, along with its written decision on DC-191, to the DC-190. This shall be transmitted to the appropriate work release approving authority, but such authority shall not be required to approve the action of the committee pertaining to restitution. If the offender is approved for work release, the approving authority shall transmit the DC-190 and DC191 to the Post Release Supervision and Parole Commission. The original shall be retained by the approving authority, pending approval of work release by the Post Release Supervision and Parole Commission, and pending consideration of the implementation of restitution measures by the Post Release Supervision and Parole Commission.
 - (3) If the Post Release Supervision and Parole Commission approves the offender for work release, and concurs with the decision of the Division of Prisons to implement the restitution Order/Recommendation as a condition of work release upon receipt of Post Release Supervision and Parole Commission notification establishing these facts, the offender shall be processed for assignment to work release as provided by procedures pertaining thereto. The Warden or their designee, shall notify the offender as to whether or not the Post Release

Supervision and Parole Commission and the Division of Prisons have decided to impose restitution as a condition of work release. If the decision is not to implement the Order/Recommendation, the Warden or their designee, will advise the sentencing court that the Post Release Supervision and Parole Commission and the Division of Prisons have decided not to implement the Order/Recommendation, stating in writing the reasons for the decision. If the decision of the Post Release Supervision and Parole Commission and the Division of Prisons is to implement the Order/Recommendation of the sentencing court, the Region Director, or their designee, shall proceed in accordance with the provisions of this policy.

- (4) If after transmitting the Division of Prisons record as provided in subparagraph (2) herein, the approving authority receives a request from the Post Release Supervision and Parole Commission for additional investigation or fact finding to enable it to make its decision, the approving authority shall transmit this request to the appropriate staff person, who shall take such action as is necessary to develop the requested facts. These actions may include an interview with the offender, a request for a reconvening of the classification committee, with or without the presence of the offender, depending upon whether or not they have waived hearing, or such actions as may be necessary to respond to the Post Release Supervision and Parole Commission request. Upon completion, the appropriate staff person will transmit the report to the work release approving authority, who shall transmit a copy to the Post Release Supervision and Parole Commission.
- (5) If, after transmitting the record to the Post Release Supervision and Parole Commission as provided in subsection (2), or transmitting additional investigative reports to the Post Release Supervision and Parole Commission as provided in sub-section (4), the approving authority receives notification that the Post Release Supervision and Parole Commission cannot concur with the decision of the classification committee the approving authority shall appoint a representative to meet with a representative of the Post Release Supervision and Parole Commission for the purpose of resolving the differences between the Post Release Supervision and Parole Commission and the Division of Prisons as to implementation of the restitution Order/Recommendation. These two representatives shall concur in a joint recommendation to the Post Release Supervision and Parole Commission and the Division of Prisons as to whether or not the Order/Recommendation should be implemented. This recommendation shall be considered by the Post Release Supervision and Parole Commission and classification committee, and if both elect to adopt the recommendation, the matter shall be resolved.
- (6) If the representatives are unable to concur on a recommendation, or if either the Post Release Supervision and Parole Commission or Division of Prisons elects not to adopt the recommendation the matter shall be referred to the chairman of

the Post Release Supervision and Parole Commission and the Secretary of Public Safety for resolution.

- (7) When the Post Release Supervision and Parole Commission and the Division of Prisons have concurred in an action pertaining to restitution, the matter shall be handled in accordance with sub-paragraph (3). The fact that the offender may have been admitted to work release prior to the final decision shall not prevent correctional authorities from implementing the final decision.
- (8) If the final decision is to deny this shall not preclude the Post Release Supervision and Parole Commission and the Division of Prisons from considering implementation of a restitution Order/Recommendation to be applied if the offender may be assigned to work release in the future. When the offender is being considered for work release at some subsequent time, the Post Release Supervision and Parole Commission and the Division of Prisons will review the decision it has made and either jointly affirm the decision, or request that the matter be re-opened. If either party requests that the restitution portion of the decision be re-opened, the matter will be reconsidered in accordance with this section.

.1104 PROCEDURES - NOTIFICATION OF COMPLETED RESTITUTION/REPARATION

- (a) The following procedures apply to the notification of the completion of Orders/Recommendations of restitution.
 - (1) If an offender chooses to fulfill their restitution obligations through their own funds, the following procedures are as to be followed:
 - (A) If the offender's family pays off their restitution indebtedness to the court, they will supply to the unit a receipt from the sentencing court noting the full payment of the offender's restitution obligation, along with the victims' names and docket number.
 - (B) If the offender deposits sufficient funds in their Trust Fund account to pay in full their restitution indebtedness, the unit will forward a Trust Fund check to the victims, noting "full payment" on the check.
 - (C) Following the completion of either one of the above requirements, Form DC-191-A will be sent to the clerk of the sentencing court by the Warden of the facility to which the offender is assigned, noting and verifying full payment of the offender's restitution indebtedness.
 - (2) If the offender decides to pay their restitution indebtedness through their work release earnings, the following procedures are to be followed:

- (A) Work Release Accounting will be responsible for making deductions from **their** work release earnings to make restitution payment or payments with the **last** payment noting "paid in full."
- (B) Following this, Form DC-191-A will be completed by the Work Release Accounting Office and sent to the sentencing court, noting the completion of the **offender** restitution indebtedness.



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Date

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