



The Vermont Model: A Victim-centered Approach to Restitution

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OVERVIEW

In 2002, Vermont began the process of reforming how restitution is ordered, collected and paid to crime victims. It culminated in the passage of Act 57, which created a Restitution Fund and a centralized Restitution Unit attached to the Vermont Center for Crime Victim Services. A 15 percent surcharge is now added to all criminal and traffic fines and is deposited into a Restitution Fund. When the court orders restitution, a restitution judgment order is sent to the Restitution Unit. The Unit verifies the amount on the order and can advance restitution payments from the Restitution Fund to individual crime victims, up to a \$10,000 cap. For business crime victims and amounts above the \$10,000 cap, the unit collects from the offender and disburses that money to the victims.

The Restitution Unit is structured and operates as a collection agency. Collection analysts manage a caseload of offenders who owe restitution, maintaining regular contact with the offenders and using a number of collection tools to promote compliance. Since July 1, 2004, the unit has advanced a little over \$6 million to 5,600 individual crime victims. The overall collection rate of the Unit is 24 percent. One positive outcome has been the coordination between the Restitution Unit and the Victims Compensation Program, which has tripled the amount of restitution ordered to the Compensation Program.

Moving forward, the Unit will work with the Vermont Legislature to improve the collection tools and the overall collection rate of the Unit. Lessons learned from this project include the realization that decoupling restitution from probation was a mistake. The ability to tell offenders that they won't be released from probation until they pay their restitution is a motivation to pay.

RESTITUTION REFORM IN VERMONT

Vermont's Restitution Fund was established in response to a clear need. In a 2001 Special Report to the Vermont Legislature entitled *Vermont's Restitution System: Failing to Pay the Victim*, State Auditor Elizabeth M. Ready wrote: "An average of only 13 cents of every dollar owed for restitution in Vermont has been collected and repaid to victims during the past ten years. Nearly 5,000 people are currently owed restitution, many of whom will wait years to be paid." Ready concluded that this woeful state of affairs had several causes. Among them: the collection of restitution was not a high priority for the agencies responsible; the collection process was inefficient and ineffective; and there was no coordinated system among the myriad public and private offices involved in the restitution process. Finally, she observed that the Courts have no systems in place to help carry out their statutory obligations to follow through on the imposition of restitution.

At the time of the 2001 report, the Vermont Department of Corrections (DOC) was handling the collection of restitution. Offenders sent their payments to a collection agency contracted by the DOC. After the collection agency's commission was deducted, the net amount was sent to the DOC, which in turn paid this amount to victims. This system was slow, cumbersome, and an accounting nightmare. Victims not only suffered loss at the time of the crime; they then continued to suffer during an unreasonably long collection process. Many victims never received a penny of the ordered restitution.

ESTABLISHMENT OF THE VERMONT RESTITUTION UNIT

The restitution reform process began in 2002, when the Vermont Legislature mandated key stakeholders to come together to create a new restitution model. Stakeholders included the Commissioner of Corrections, the Executive Director of the Department of State's Attorneys, the Court Administrator, the Defender General, and the Executive Director of the Center for Crime Victim Services. This committee examined what restitution reform might look like: whether the existing model could be improved, models for funding, and effective restitution models in other states. This exploratory process took the better part of a year.

As the result of its work, the committee recommended the creation of a Restitution Fund. In 2002, the Legislature responded by passing Act 57, which made significant changes to Vermont's system of ordering, paying and collecting restitution. The Act capitalized a Restitution Fund 13 V.S.A. § 5363 (see *Attachment 2-A*) through a 15 percent surcharge added to criminal and traffic fines. The surcharge generated revenue of \$1.2 million into the Fund during FY04. The creation of this Fund meant that victims would be paid at the time restitution was ordered and would not have to wait for restitution to be collected from the offender—which, in some cases, was not even possible, because the offender was in jail.

The following year, the Restitution Unit became operational, pursuant to 13 V.S.A. §5362. (See *Attachment 2-B.*)

HOW THE UNIT FUNCTIONS

The State of Vermont Restitution Unit, created by the Vermont Center for Crime Victim Services, took over the collection of restitution from the Vermont Department of Corrections in 2003. Individual victims currently may receive up to \$10,000 of their restitution out of the Fund. In order to receive restitution, victims must provide evidence of uninsured material losses suffered as a result of the crime, and the court must order restitution pursuant to 13 V.S.A. § 7043 (see *Attachment 2-C*). When the Court does so, the restitution judgment order is sent to the restitution unit (see *Attachment 2-D*.) This order identifies the offender, the name of the victim, the total amount of restitution owed, and, in some cases, a payment schedule. The court may also determine that the offender has no ability to pay at the current time: for example, if the offender is, or will be, incarcerated. The unit receives a report from the prosecutor-based victim advocate containing the confidential address of the victim. An affidavit is sent to the victim to be signed and returned to the unit, verifying that he/she is owed the restitution and that he/she has not been compensated for this loss by any other source such as insurance. The payment is then sent to the victim.

ENFORCEMENT OF COLLECTION

Under the Vermont model, the restitution judgment order has become a civil judgment, giving the unit the ability to file an action to enforce the order in Superior or Small Claims Court. If the court finds that the offender has failed to comply with the order, it can amend the payment schedule; order the disclosure, attachment, and sale of assets; order the withholding of the offender's wages; or order the suspension of recreational licenses. In addition, the unit has the right to intercept lottery winnings and Vermont state tax returns belonging to any offender who owes restitution. When the collection analyst has exhausted all negotiations and avenues with an offender, the case is given to the unit manager for possible legal enforcement either in Small Claims Court or Superior Court.

STRUCTURE OF THE VERMONT RESTORATION UNIT

The Vermont Restoration Unit was set up to operate as a collection agency. At the present time, it employs a unit manager, a general data specialist, another data specialist who serves as a victim liaison, four collections analysts, and a contracted attorney from a private law firm specializing in collection work.

RESPONSIBILITIES OF THE UNIT STAFF

The Restitution Unit Manager performs all the usual duties of a department manager, including the supervision, training and evaluation of staff. The unit manager is responsible for monitoring operations, functions and procedures in accordance with the mission of the Vermont Center for Crime Victim Services as well as with external state laws and regulations. In addition, the unit manager reviews all new orders for compliance with state statute, investigates and verifies restitution claims, and approves files for advance payment from the Fund. The unit manager handles all enforcement in Small Claims Court in cases under \$5,000 and works with the unit's contractual attorney when bringing cases over \$5,000 to Superior Court.

The data specialist/victim liaison is the primary contact person for all victims who contact the unit. The victim liaison is responsible for answering questions from victims about forms and process and is responsible for ensuring that payments to victims are timely and accurate. This staff person also provides administrative support to the unit manager.

The general data specialist is responsible for tracking, recording and depositing checks or payments collected from offenders. This staff person also provides general office support to the unit manager and staff.

The collections analysts are responsible for collecting all court-ordered restitution from offenders in criminal cases. Each collections analyst has his or her own caseload and is the primary contact with the offenders in that caseload. Currently, each analyst is expected to make approximately 1,000 outbound calls per month to offenders and bring in approximately \$15,000 per month in restitution. Other responsibilities including posting payments, negotiating payment schedules, communicating with probation officers, and maintaining regular contacts with offenders in their respective caseloads.

OPERATIONS AND PROCEDURES

Restitution judgment orders are sent to the unit either by the courts or by the victim advocates in the State's Attorney's offices. According to state statute, an order should come to the unit with the following information: docket number, county, offender's full name, address, and social security number, as well as the employer's name, address, and telephone number. The order should also show the victim's name, amount ordered, and any negotiated payment arrangement.

The unit also receives a restitution report from the prosecutor-based victim advocate that provides all the necessary contact information for the victim and any special notes (*see Attachment 2-E.*) Along with the restitution report, the victim advocate sends the documentation used to support the order.

The collections analysts begin working on new cases as soon as the unit receives the restitution report. A letter is mailed, and then calls are scheduled to offenders. As each new order/report comes in, the assigned collection analyst enters it into the collections database and creates a paper file for the case. The collections analyst also prints the appropriate affidavits, which the victims must sign prior to receiving payment. (Victims are required to sign affidavits affirming that they have not been compensated for losses from other sources, such as insurance.)

By statute, the courts can order restitution to the Victims Compensation Program, and they often include a restitution amount to the compensation program on the order. In order to make sure that restitution to the compensation program has not been overlooked, the unit sends every case involving an individual victim to the program for their review. After this review, the file is then sent back to the unit manager. If the compensation program had advanced money to the victim, then the manager will file a motion with the court to amend the order so that the compensation program can receive its share of restitution.

The unit manager then conducts her own review of the case before sending any correspondence to the victim. The case is reviewed to assure it is in compliance with state statute and the unit's administrative rules. There must be a conviction on at least one count. The unit manager also looks for any indications that the victim might actually be a business, in which case it would not be eligible for advance payment from the fund. If the file passes the review, the affidavit and a verification form asking questions about the type of loss and insurance coverage will be sent to the victim. The file is then passed to the data specialist/victim liaison to hold for the return of the signed affidavit and verification form. If the prosecutor-based victim advocate has not sent appropriate documentation to support the dollar amount on the order, she will then contact the victim and ask for the documentation.

When the victim returns the affidavit, the file is again given to the unit manager for review to determine that the documentation, affidavit, and verification support the amount ordered and that the victim is eligible for advance payment from the fund. If the documentation is not clear or verifiable, further investigation may be required before payment can be made from the fund. When victims state that their loss is less than the amount of the restitution order, the unit manager will file a motion with the court to amend the order. The unit waits a minimum of 40 days from the date the order is signed by the judge, in case the offender files an appeal. Once the 40-day period has elapsed and the file passes review, the unit manager approves the payment from the fund and sends it to the victim liaison to process.

COST OF THE RESTITUTION UNIT AND HOW IT IS FUNDED

Revenue to the restitution fund is generated through a 15 percent surcharge on criminal and traffic fines. The surcharge brings in between \$1.5 to \$2 million each year. The restitution unit pays out on average \$1.7 million in restitution to crime victims each year. The unit collects approximately \$1 million per year from offenders. The restitution fund is also used to pay for the cost of operating the restitution unit, which is currently \$500,000. This amount covers all personnel and operating expenses described above.

The restitution fund only advances restitution payments to individual victims up to a \$10,000 cap. Business victims and individual victims who are owed more than \$10,000 get paid as the unit collects from the offender. For example, in FY 09, there were 1,572 restitution orders issued by the courts, totaling \$2,168,161. Of that total, 809 were restitution orders to individual victims who were paid \$890,223 from the restitution fund. The remaining 763 victims are being paid as the unit collects from the offender. Since its beginning, the unit has advanced \$6,038,267 dollars from the Restitution Fund to 5,648 crime victims.

In terms of collection, the unit's overall collection rate is 24 percent for both business and individual crime victim restitution orders. However, when orders are broken down by age, collection rates increase with older orders. For example, the collection rate for orders issued in FY 09 is 14 percent while the collection rate for orders issued in FY 05 is 35 percent. This reflects the fact that restitution is rarely paid in full at the time it is ordered. The vast majority of offenders pay their restitution over time on a payment plan. These collection rates also reflect the fact that a certain percent of restitution is uncollectible. We have determined that at any given time, approximately 35 percent is uncollectible because offenders are incarcerated, unemployed, or unable to be located. The two most useful collection tools are the tax offset program and the interception of lottery winnings. To date, the unit has collected \$1,146,607 through the Vermont Tax Offset program (which intercepts offenders' state tax refunds) and \$43,000 in offender lottery winnings. (*See Attachments 2-F and 2-G for more information on the five-year restitution fund's financial history.*)

ADDRESSING CHALLENGES

Data entry has proven to be a very labor-intensive part of the operation. The Vermont Restitution Unit processes large numbers of small payments from offenders, which are sometimes divided among several victims. The unit uses COLLECT, a collection software system, that allows for the management of individual accounts. It also uses the State of Vermont's financial system for deposits to and payments from the restitution fund. Because this collection software is designed for traditional types of collection accounts, we have encountered some challenges. For example, managing cases with multiple co-defendants and extracting data-specific reports are both cumbersome when using this system. We are currently analyzing this collection software and will be addressing our concerns and needs with the vendor.

Finding offenders is another ongoing challenge. We currently use LexisNexis, which has a skip-tracing program that helps to find people's addresses and contact information, but we are looking at other options because it is so expensive. We work closely with the Department of Corrections, but very often they cannot locate the offender, especially if he or she is not on probation. One of the changes made by the Vermont legislature during the restitution reform process was that an offender could not be placed on probation for the sole purpose of collecting restitution. In hindsight, decoupling restitution from probation was not a good idea.

There is also the issue of providing regular training to our partner agencies, including state's attorneys, victim advocates, judges, court staff, and the defense bar on changes to the restitution statute, court forms, and unit procedures. There is a lack of consistency from county to county on how orders are issued and how victims are informed about what to expect during the process. Prosecutors and judges often interpret the restitution statute differently, which is challenging for the unit.

IMPACT OF THE REFORMED RESTITUTION MODEL

The vast majority of individual crime victims in Vermont receive, through the Restitution Fund, all of the restitution that is owed to them. While there is a \$10,000 cap on what can be paid out of the fund to individual crime victims, most orders are under \$10,000. For example, in FY 09, of the 1,572 restitution orders processed by the unit, only 3 percent were over \$10,000. These victims are very appreciative of the unit and the fund. Employees of the unit take great pride in their work. The collectors feel very strongly that it is their job to hold offenders accountable for their actions and the harm they have caused victims. Everyone at the unit takes pride in playing their part to make sure crime victims receive their restitution. They also work as a team and provide each other with encouragement and support to do this difficult and important work.

Coordination of restitution with the Victims Compensation Program dramatically increased the amount of restitution that the program receives. Prior to restitution reform, the program received approximately \$30,000 a year in restitution. Now, it receives closer to \$90,000.

We have very little statistical data on offender attitudes and recidivism, but we do know anecdotally that there is a core group of offenders in our caseload who re-offend, cycle in and out of jail, and never pay their restitution. However, there are also conscientious offenders who want to pay their restitution and move on with their lives.

NEXT STEPS

With the creation of the Vermont Restitution Unit came several tools to assist in the collection of restitution from offenders. In practice, we have found that most of these enforcement options are problematic or not useful at all. This will be an area for us to redevelop in next year's legislative session.

13 V.S.A. § 7043 gives us the authority to file an action to enforce in Superior or Small Claims court. Civil enforcement is time-consuming and costly. It involves asking for another judgment in civil court, even though the higher burden of proof has already been met in criminal court, resulting in the restitution judgment order.

We have had some moderate success through civil enforcement such as attaching bank accounts, placing a lien against real estate, and liens against estate and future proceeds of house sale. We are currently testing the reach of this civil enforcement tool by filing the action in Vermont court while the defendant lives in another state. We have also obtained wage garnishment through Superior Court.

In an amendment to § 7043, mandatory wage garnishment was required with every order. However, this has not been workable because of the lack of financial disclosure in District Court and the Judge's inability to make future decisions without sufficient information. We have met with the District Court Oversight committee to discuss this problem, and the administrative judge has agreed to convene a workgroup of judges to look at this issue so we can make a recommendation to the legislature.

Suspension of recreational licenses (hunting and fishing) has not become operational because the Department of Fish and Wildlife does not have the appropriate technology to support this statutory requirement. Most licenses are issued by local sporting and gun stores, and it is largely a paper system. When the stores submit the paperwork to the state, it takes months for the data entry to be completed at the state level. The system needs to be completely automated before suspensions can be done in a timely manner.

As stated before, interception of Vermont lottery winnings and Vermont tax refunds has been very successful.

13 V.S.A. § 5365 gives us the authority to request account information from Vermont financial institutions. We have had initial meetings with the Vermont Department of Banking and Insurance to discuss the process, but have not yet tested it.

We have not yet reported to the credit bureaus because of strict regulations around transmission of this information. Our collection software has some limitations, especially with regard to co-defendants. We will be exploring credit reporting in the future.

LESSONS LEARNED

We have found that the various players in the criminal justice system may take advantage of the availability of a Restitution Fund to pay victims. As part of a plea agreement, the State's Attorney may propose no jail time if the offender agrees to pay a certain amount of restitution. Often the

amount ordered cannot be verified as the actual material loss, and only verifiable amounts can be paid to victims from the Restitution Fund. If the “agreed-upon” amount on the order is not the actual material loss, victims may receive less than they expected from the fund, and they must then wait for the offender to pay the balance of the agreed-upon amount before receiving the additional money. Victims are not told this at the time the restitution is ordered and are therefore frustrated and angry when they receive less than they expected. Another concern about this method is the lack of offender accountability. The message to offenders is that they can agree to an amount and avoid jail time. Although we currently do not request that the plea agreement be sent with every order, it is now clear that we need it. Frequently cases may be settled involving several different dockets, which has made it very time-consuming to determine if there was at least one conviction necessary for a restitution advance payment.

Due to the inherent slowness and current structure of the criminal justice system, the unit does not become involved with the victim until after the restitution has been ordered. A better model would be to have the unit function as the clearinghouse for the entire process. Under this model, the court-based victim advocate would tell the victim at the time of arraignment that all paperwork and requests for restitution will go to the unit. The unit could then verify crime-related losses and amounts, verify collateral resources such as insurance or victims compensation program payments, and then provide an accurate restitution figure to the prosecutor at the time of sentencing.

When the collection of restitution was moved from the Department of Corrections to the unit, the law was changed to sever probation from restitution. Prior to the unit’s creation, an offender could be kept on probation until restitution was paid in full. Obviously, this could result in burdensome caseloads for probation officers when an offender had met all other conditions of probation but had not—and in some cases could not—pay restitution. Since the creation of the unit, the only condition of probation that is connected to restitution is that an offender must “cooperate with the Restitution Unit.” Once offenders are released from probation, they are free to leave the state. And once offenders leave the state, the chances of the unit collecting restitution decrease dramatically.

Another issue that surfaced in the first year of the unit’s operations was that many of the business victims were large corporations, such as national store chains and large banking institutions. The original legislative intent was to reimburse individual Vermonters from the fund and not large corporations, which some argued were self-insured and therefore not entitled to restitution. As a result, the legislature amended the statute so that only individuals could be paid from the fund and businesses must wait until the offender pays what was ordered to the unit.

This change in statute after the first year of operation to exclude business victims from receiving advance payments from the fund created confusion and dramatically increased the workload for unit staff. In addition, small “mom and pop” businesses can no longer receive restitution up front, which can create a very real financial hardship for a small business. The legislature and

the unit struggled to draft language that would still allow small businesses to be paid from the fund while not allowing large banks and other corporate entities (who can easily afford to wait for the offender to pay with little or no consequence to their survival) to be paid from the fund. However, there appears to be no way to define a “small business” without opening ourselves up to a discriminatory practice.

We also discovered during the first year of the unit’s operation that victims sometimes receive insurance payments after restitution has been ordered by the court, and although obtaining a signed affidavit helps to avoid overpayments, it is almost impossible to prevent this from happening in all cases.

One of the most important lessons learned is that our model of restitution is a work in progress. It was not possible to anticipate all of the challenges that come with creating a restitution fund since it had not been done before. We hope that the Vermont experience will pave the way for other states and jurisdictions to pursue this model while avoiding some of our pitfalls.

References:

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Vermont Restitution Unit: 2003 and 2007 Reports to the Legislature, (www.ccvs.state.vt.us)

Vermont Restitution Unit Web site: www.vru.state.vt.us.

Boyce, Elaine, “A Victim-Centered Approach to Restitution,” The Crime Victims Report, Volume II, No. 6, January/February, 2008, page 81.

Title 13: Crimes and Criminal Procedure

Chapter 167: CRIME VICTIMS

13 V.S.A. § 5363. Crime victims' restitution special fund

§ 5363. Crime victims' restitution special fund

(a) There is hereby established in the state treasury a fund to be known as the crime victims' restitution special fund, to be administered by the restitution unit established by section 5362 of this title, and from which payments may be made to provide restitution to crime victims.

(b)(1) There shall be deposited into the fund:

(A) All monies collected by the restitution unit pursuant to section 7043 of this title.

(B) All fees imposed by the clerk of court and designated for deposit into the fund pursuant to section 7282 of this title.

(C) All monies donated to the restitution unit or the crime victims' restitution special fund.

(D) Such sums as may be appropriated to the fund by the general assembly.

(2) If a person donates funds, or if a restitution recipient has declined to accept payment of restitution, the donated or declined amounts shall be retained in the crime victims' restitution special fund.

(3) If a victim who is entitled to receive an advance payment of restitution from the crime victims' restitution special fund cannot be located, the restitution unit shall report the amount to the treasurer within the time limits provided by subsection 1247(d) of Title 27, and the treasurer shall report it as unclaimed property. Notwithstanding any other provision of law, in no event shall the advance payments from the restitution special fund to which the victim is entitled be subject to ultimate deposit in the general or education fund.

(c) The restitution unit shall make disbursements from the restitution special fund only to pay restitution obligations arising under section 7043 of this title, to support the restitution unit, or pursuant to subsection (d) of this section.

(d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; and

(C) has not been reimbursed under subdivision (2) of this subsection.

(2) The restitution unit may make advances of up to \$10,000.00 under this subsection to the following persons or entities:

(A) A victim service agency approved by the restitution unit if the agency has advanced monies which would have been payable to a victim under subdivision (1) of this subsection.

(B) A victim who is a natural person or the natural person's legal representative in a case where the defendant, before or after an adjudication of guilt, enters into a drug court contract requiring payment of restitution.

(3) An advance under this subsection shall not be made to the government or to any governmental subdivision or agency.

(e) If the restitution unit collects in excess of \$10,000.00 from an offender, the amount in excess of \$10,000.00 shall first be paid to that offender's victims until the victims have received the full amount of restitution ordered. Any excess remaining after the victims have received the full amount of restitution ordered shall be divided between the victims' compensation fund and the crime victims' special restitution fund in proportion to the amount which each paid.

(f)(1) In no event shall the amount of restitution advanced to the victims of a single crime spree during a single fiscal year under this title exceed five percent of the balance of the fund at the end of the prior fiscal year. If this section applies, an advance payment to a victim shall be reduced by the same percentage that the restitution unit reduces the total amount advanced to all victims in connection with the crime spree. Unless otherwise ordered by the court, the restitution unit shall determine the offenders and crimes encompassed within a crime spree.

(2) A victim whose advance payment is reduced pursuant to this subsection shall be entitled to receive additional advance payments during subsequent fiscal years until the restitution order has been satisfied or the \$10,000.00 cap has been reached, whichever occurs first.

(g) All balances in the fund at the end of any fiscal year shall be carried forward and remain a part of the fund. Disbursements from the fund shall be made by the state treasurer on warrants drawn by the commissioner of finance and management.

(h) Notwithstanding anything in this section or any other provision of law to the contrary, revenue from the surcharge fees deposited into the crime victims' restitution special fund shall be used exclusively to support the restitution unit and restitution for crime victims, and for no other purpose. (Added 2003, No. 57, § 4, eff. June 4, 2003; amended 2003, No. 92 (Adj. Sess.), § 2; 2005, No. 51, § 3; 2007, No. 40, § 4, eff. July 1, 2012.)

Title 13: Crimes and Criminal Procedure

Chapter 167: CRIME VICTIMS

13 V.S.A. § 5362. Restitution unit

§ 5362. Restitution unit

- (a) A restitution unit is created within the center for crime victim services for purposes of assuring that crime victims receive restitution when it is ordered by the court.
- (b) The restitution unit shall administer the restitution fund established under section 5363 of this title.
- (c) The restitution unit shall have the authority to:
- (1) Collect restitution from the offender when it is ordered by the court under section 7043 of this title.
 - (2) Bring an action to enforce a restitution obligation as a civil judgment under section 7043 of this title. The restitution unit shall enforce restitution orders issued prior to July 1, 2004 pursuant to the law in effect on the date the order is issued.
 - (3)(A) Share and access information, consistent with Vermont and federal law, from the court, the department of corrections, the department of motor vehicles, the department of taxes, and the department of labor in order to carry out its collection and enforcement functions.
 - (B) Provide information to the department of corrections concerning supervised offenders, including an offender's restitution payment history and balance, address and contact information, employment information, and information concerning the restitution unit's collection efforts.
 - (C) The restitution unit is specifically authorized to collect, record, use, and disseminate Social Security numbers as needed for the purpose of collecting restitution and enforcing restitution judgment orders issued by the court.
 - (4) Investigate and verify the amount of insurance or other payments paid to or for the benefit of a victim, and reduce the amount collected or to be collected from the offender or disbursed to the victim from the crime victims' restitution special fund accordingly. The restitution unit shall submit to the court a proposed revised restitution order stipulated to by the victim and the unit, with copies provided to the victim and the offender. No hearing shall be required, and the court shall amend the judgment order to reflect the amount stipulated to by the victim and the restitution unit.

(5) Adopt such administrative rules as are reasonably necessary to carry out the purposes set forth in this section.

(6) Report offenders' payment histories to credit reporting agencies, provided that the unit shall not report information regarding offenders who are incarcerated. The unit shall not make a report under this subdivision until after it has notified the offender of the proposed report by first class mail or other like means to give actual notice, and provided the offender a period not to exceed 20 days to contest the accuracy of the information with the unit. The unit shall immediately notify each credit bureau organization to which information has been furnished of any increases or decreases in the amount of restitution owed by the offender. (Added 2003, No. 57, § 3, eff. June 4, 2003; amended 2003, No. 92 (Adj. Sess.), § 1; 2005, No. 51, § 2; amended 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; No. 162 (Adj. Sess.), § 4, eff. Jan. 1, 2007; 2007, No. 40, § 3.)

Title 13: Crimes and Criminal Procedure

Chapter 221: JUDGMENT, SENTENCE AND EXECUTION

13 V.S.A. § 7043. Restitution

§ 7043. Restitution

(a)(1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title, has suffered a material loss.

(2) For purposes of this section, "material loss" means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.

(b)(1) When ordered, restitution may include:

(A) return of property wrongfully taken from the victim;

(B) cash, credit card, or installment payments paid to the restitution unit; or

(C) payments in kind, if acceptable to the victim.

(2) In the event of a victim's crime-related death, the court may, at the request of the restitution unit, direct the unit to pay up to \$10,000.00 from the restitution fund to the victim's estate to cover future uninsured material losses caused by the death.

(c) In awarding restitution, the court shall make findings with respect to:

(1) The total amount of the material loss incurred by the victim. If sufficient documentation of the material loss is not available at the time of sentencing, the court shall set a hearing on the issue, and notice thereof shall be provided to the offender.

(2) The offender's current ability to pay restitution, based on all financial information available to the court, including information provided by the offender.

(d)(1) An order of restitution shall establish the amount of the material loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection (k) of this section. Notwithstanding chapter 113 of Title 12 or any other provision of law, interest shall not accrue on a restitution judgment.

(2)(A) Every order of restitution shall:

- (i) include the offender's name, address, and Social Security number;
- (ii) include the name, address, and telephone number of the offender's employer; and
- (iii) require the offender, until his or her restitution obligation is satisfied, to notify the restitution unit within 30 days if the offender's address or employment changes, including providing the name, address, and telephone number of each new employer.

(B) [Repealed.]

(e)(1) If not paid at the time of sentencing, restitution may be ordered as a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole if the convicted person is sentenced to preapproved furlough, probation, or supervised community sentence, or is sentenced to imprisonment and later placed on parole. A person shall not be placed on probation solely for purposes of paying restitution. An offender may not be charged with a violation of probation, furlough, or parole for nonpayment of a restitution obligation incurred after July 1, 2004.

(2) The department of corrections shall work collaboratively with the restitution unit to assist with the collection of restitution. The department shall provide the restitution unit with information about the location and employment status of the offender.

(f)(1) When restitution is requested but not ordered, the court shall set forth on the record its reasons for not ordering restitution.

(2)(A) If restitution was not requested at the time of sentencing, or if expenses arose after the entry of a restitution order, the state may file a motion with the sentencing court to reopen the restitution case in order to consider a request for restitution payable from the restitution fund. Restitution ordered under this subdivision shall not be payable by the offender.

(B) A motion under this subdivision shall be filed within one year after the imposition of sentence or the entry of the restitution order.

(g) Restitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.

(h)(1) The court shall transmit a copy of a restitution order to the restitution unit, which shall make payment to the victim in accordance with section 5363 of this title.

(2) To the extent that the victims compensation board has made payment to or on behalf of the victim in accordance with chapter 167 of this title, restitution, if imposed, shall be paid to the restitution unit, which shall make payment to the victims compensation fund.

(i) The restitution unit may bring an action to enforce a restitution order against an offender in the superior or small claims court of the county where the offender resides or in the county where the order was issued. In an action under this subsection, a restitution order issued by the

district court shall be enforceable in superior or small claims court in the same manner as a civil judgment. Superior and small claims court filing fees shall be waived for an action under this subsection, and for an action to renew a restitution judgment.

(j) All restitution payments shall be made to the restitution unit, with the exception of restitution relating to a conviction for welfare fraud ordered under this section and recouped by the economic services division. The economic services division shall provide the restitution unit with a monthly report of all restitution collected through recoupment. This subsection shall have no effect upon the collection or recoupment of restitution ordered under Title 33.

(k) The sentencing court may modify the payment schedule of a restitution order if, upon motion by the restitution unit or the offender, the court finds that modification is warranted by a substantial change in circumstances.

(1) If the offender fails to pay restitution as ordered by the court, the restitution unit may file an action to enforce the restitution order in superior or small claims court. After an enforcement action is filed, any further proceedings related to the action shall be heard in the court where it was filed. The court shall set the matter for hearing and shall provide notice to the restitution unit, the victim, and the offender. If the court determines the offender has failed to comply with the restitution order, the court may take any action the court deems necessary to ensure the offender will make the required restitution payment, including:

- (1) amending the payment schedule of the restitution order;
- (2) ordering, in compliance with the procedures required in Rule 4.1 of the Vermont Rules of Civil Procedure, the disclosure, attachment, and sale of assets and accounts owned by the offender;
- (3) ordering the offender's wages withheld pursuant to subsection (n) of this section; or
- (4) ordering the suspension of any recreational licenses owned by the offender.

(m)(1) Any monies owed by the state to an offender who is under a restitution order, including lottery winnings and tax refunds, shall be used to discharge the restitution order to the full extent of the unpaid total financial losses, regardless of the payment schedule established by the courts.

(2) When an offender is entitled to a tax refund, any restitution owed by the offender shall be withheld from the refund pursuant to subchapter 12 of chapter 151 of Title 32.

(3)(A) For all Vermont lottery games, the lottery commission shall, before issuing prize money of \$500.00 or more to a winner, determine whether the winner has an outstanding restitution order. If the winner owes restitution, the lottery commission shall withhold the entire amount of restitution owed and pay it to the restitution unit. The remainder of the winnings, if any, shall be sent to the winner. The winner shall be notified by the restitution unit of the offset prior to payment to the victim and given a period not to exceed 20 days to contest the accuracy of the information.

(B) The restitution unit shall inform the lottery commission of persons with outstanding restitution orders upon request. Each person subject to such an order shall be identified by name, address, and Social Security number.

(C) If a lottery winner has an outstanding restitution order and an outstanding child support order, the lottery winnings shall be offset first pursuant to section 792 of Title 15 by the amount of child support owed, and second pursuant to this subsection by the amount of restitution owed. The remainder of the winnings, if any, shall be sent to the winner.

(4) Unless otherwise provided, monies paid under this subsection shall be paid directly to the restitution unit.

(n)(1) All restitution orders made or modified on or after January 1, 2008 shall include an order for wage withholding unless the court in its discretion finds good cause not to order wage withholding or the parties have entered into an alternative arrangement by written agreement which is affirmatively stated in the order. The wage withholding order shall direct current and subsequent employers of the offender to pay a portion of the offender's wages directly to the restitution unit until the offender's restitution obligation is satisfied. The wages of the offender shall be exempt as follows:

(A) to the extent provided under Section 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)); or

(B) if the court finds the weekly expenses reasonably incurred by the debtor for his or her maintenance and that of dependents exceed the amounts exempted by subdivision (1)(A) of this subsection, such greater amount of earnings as the court shall order.

(2) The court shall transmit all wage withholding orders issued under this section to the restitution unit, which shall forward the orders to the offender's employers. Upon receipt of a wage withholding order from the restitution unit, an employer shall:

(A) withhold from the wages paid to the offender the amount specified in the order for each wage period;

(B) forward the withheld wages to the restitution unit within seven working days after wages are withheld, specifying the date the wages were withheld;

(C) retain a record of all withheld wages;

(D) cease withholding wages upon notice from the restitution unit; and

(E) notify the restitution unit within 10 days of the date the offender's employment is terminated.

(3) In addition to the amounts withheld pursuant to this section, the employer may retain not more than \$5.00 per month from the offender's wages as compensation for administrative costs incurred.

(4) Any employer who fails to withhold wages pursuant to a wage withholding order within 10 working days of receiving actual notice or upon the next payment of wages to the employee, whichever is later, shall be liable to the restitution unit in the amount of the wages required to be withheld.

(5) An employer who makes an error in the amount of wages withheld shall not be held liable if the error was made in good faith.

(6) For purposes of this subsection, "wages" means any compensation paid or payable for personal services, whether designated as wages, salary, commission, bonuses, or otherwise, and shall include periodic payments under pension or retirement programs and workers' compensation or insurance policies of any type.

(o) An obligation to pay restitution is part of a criminal sentence and is:

(1) nondischargeable in the United States Bankruptcy Court to the maximum extent provided under 11 U.S.C. § § 523 and 1328; and

(2) not subject to any statute of limitations.

(p) A transfer of property made with the intent to avoid a restitution obligation shall be deemed a fraudulent conveyance for purposes of chapter 57 of Title 9, and the restitution unit shall be entitled to the remedies of creditors provided under section 2291 of Title 9. (Added 1983, No. 229 (Adj. Sess.), § 3; amended 1989, No. 291 (Adj. Sess.), § 3; 1993, No. 169 (Adj. Sess.), § 2, eff. June 3, 1993; 1997, No. 148 (Adj. Sess.), § 63, eff. April 29, 1998; 2001, No. 134 (Adj. Sess.), § 3; 2003, No. 57, § 6, eff. July 1, 2004; 2003, No. 92 (Adj. Sess.), § 5; 2005, No. 51, § 5; 2005, No. 162 (Adj. Sess.), § 3, eff. Jan. 1, 2007; 2007, No. 40, § 6.)

Form 245

DISTRICT COURT OF VERMONT
SELECT COUNTY CIRCUIT

STATE OF VERMONT v. _____ DOCKET NO. _____
(defendant)

Proposed Stipulated **RESTITUTION JUDGMENT ORDER (13 V.S.A. § 7043)**

Defendant: Name: _____
Address: _____
Social Security No.: _____

Employer: Name: _____
Address: _____
Telephone No.: _____

Victim's Name: _____

The victim incurred an uninsured material loss in the total amount of \$ _____. Judgment is against Defendant individually for the whole amount, and also jointly with the following people:

Name: _____ Docket No.: _____
Name: _____ Docket No.: _____
Name: _____ Docket No.: _____
Name: _____ Docket No.: _____

The court finds Defendant has the current ability or reasonably foreseeable ability to make the payment(s) by cash, certified bank check, traveler's check or money order made payable to the State of Vermont Restitution Unit as ordered below:

- Defendant shall immediately pay \$ _____ to the court clerk's office.
- Defendant shall pay the amount of \$ _____ per week 2 weeks 1/2 month month, beginning _____, to the State of Vermont Restitution Unit, POB 10, Waterbury, VT 05676-0010. (VT: 1-800-584-3485, Outside VT: 802-241-4688)
- Defendant's earnings shall be subject to wage withholding (see attached order).
- Defendant's earnings shall not be subject to wage withholding because:
 - The court finds good cause not to order wage withholding.
 - The parties have entered into an alternative arrangement by written agreement.
- Defendant shall return the following property to the victim within _____ days: _____
- Defendant shall make the following payments in kind to the victim within _____ days: _____
- Defendant has no ability to pay at this time.

Defendant remains liable for this judgment until paid in full, regardless of whether full payment is ordered above based on defendant's current or reasonably foreseeable ability to pay. Until the total amount is paid in full, Defendant shall notify in writing the VERMONT RESTITUTION UNIT within 30 days if the Defendant's address or employment changes, including providing the name, address, and telephone number of each new employer.

Date Judge

Notice: If Defendant fails to pay restitution as ordered, the Vermont Restitution Unit may file a motion to enforce, which may result in wage withholding, suspension of recreational licenses, or other enforcement remedies against defendant as provided by law.

Acceptance of Service: I accept service of this Restitution Judgment Order and waive all other forms of service.

Date Defendant

TO: VERMONT RESTITUTION UNIT

RESTITUTION REPORT

STATE vs. _____

DOCKET #: _____

VICTIM: _____

(Name)

(Mailing Address)

(City, State, Zip)

(Phone number)

Federal Tax Identification Number: _____ *

*Required for victims who are business entities

Amount of restitution to be paid to Victim: \$ _____

Amount of restitution to be paid to the Victims Compensation Program: \$ _____

TOTAL RESTITUTION AMOUNT: \$ _____

CO-DEFENDANTS: _____

ADDITIONAL INFORMATION: _____

Report prepared by: _____ at _____ County State's Attorney's Office

Date: _____

State of Vermont Restitution Fund History

	FY04	FY05	FY06	FY07	FY08	FY09
Beginning Fund balances by fiscal year	0	1,469,497	2,508,701	3,463,420	4,726,874	4,769,854
Revenue						
Fines and fees	1,469,497	2,005,955	2,172,396	2,111,552	1,987,420	1,779,545
Restitution collected		1,036,445	1,159,898	1,106,578	960,517	937,649
Other Units		115,126	77,462	97,176	47,441	16,588
Total Revenue	1,469,497	3,157,526	3,409,756	3,315,306	2,995,378	2,733,781
Expenses						
Operating and Personal Services of the Unit		308,200	396,872	470,218	459,329	502,780
Restitution payments		1,810,121	2,050,223	1,581,634	1,768,581	1,295,725
States Attorneys Victim Advocates					604,488	723,270
Other grants						1,639,229
Total Expenses	0	2,118,321	2,447,095	2,051,852	2,832,398	4,161,004
Other Units of government			7,942		120,000	2,162,973
End of year balance	1,469,497	2,508,702	3,463,420	4,726,874	4,769,854	1,179,658

Vermont Restitution Unit, Restitution Ordered and Collected

	# of Orders Individual victims	Amount Ordered	Collected as of 2/26/10	% Collected
FY05	1,670	\$1,753,183.25	\$833,410.31	47.54%
FY06	898	\$924,795.93	\$396,550.46	42.88%
FY07	907	\$972,872.05	\$277,331.84	28.51%
FY08	1,062	\$1,118,786.23	\$231,999.37	20.74%
FY09	809	\$890,223.38	\$156,812.57	17.61%
FY10 (½ yr)	302	\$378,405.96	\$24,041.66	6.35%
Totals	5,648	\$6,038,266.80	\$1,920,146.21	31.80%

	# of Orders Business/over \$10,000	Amount Ordered	Collected as of 2/26/10	% Collected
FY05	59	\$811,904.27	\$178,743.31	22.02%
FY06	991	\$1,655,918.72	\$345,689.00	20.88%
FY07	888	\$1,314,036.03	\$325,608.84	24.78%
FY08	766	\$1,128,320.56	\$193,098.52	17.11%
FY09	763	\$1,271,668.91	\$120,483.19	9.47%
FY10 (½ yr)	322	\$865,243.97	\$92,735.49	10.72%
Totals	3,789	\$7,047,092.46	\$1,256,358.35	17.83%
Overall totals	9,437	\$13,085,359.26	\$3,176,504.56	24.28%

