

NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE	CHAPTER <u>Enforcement Operations</u> STATEMENT NUMBER <u>5.42</u>
SUBJECT: VICTIM IMPACT AND RESTITUTION DETERMINATION PROPONENT: <u>Michael McAlister, Director</u> <i>Name/Title</i> <u>Field Services</u> <u>271-5652</u> <i>Office</i> <i>Phone #</i>	EFFECTIVE DATE <u>06/15/14</u> REVIEW DATE <u>06/15/15</u> SUPERSEDES PPD# <u>5.42</u> DATED <u>02/01/13</u>
ISSUING OFFICER: <hr/> <i>William Wrenn, Commissioner</i>	DIRECTOR'S INITIALS: _____ DATE: _____ APPENDIX ATTACHED: YES _____ NO _____
REFERENCE NO: See reference section on last page of PPD.	

I. PURPOSE:

To provide the method for obtaining the full impact of the crime on the victim including the direct and indirect physical, emotional and financial harms to determine restitution and make recommendations to the Court.

II. APPLICABILITY:

To all staff of the Division of Field Services only.

III. POLICY:

It is the policy of the NH Department of Corrections, Division of Field Services to provide the victim with an opportunity to address the court through the pre-sentence report. This information may include the nature and extent of direct and indirect harms caused by the crime, the overall impact of the crime and the victim's desired terms of sentencing including the terms of restitution.

IV. PROCEDURES:

- A. In the process of completing a pre-sentence report the assigned Probation/Parole Officer (PPO) from Field Services shall contact the victim. For a property crime, a "Victim Input Request" and "Victim Data Form" mailed to the victim will suffice (Attachments 1 and 2). When the offense is a crime against a person, the Victim Witness Advocate should be contacted as a source for information.
- B. If the victim suffered or was directly threatened with physical injury he/she shall be personally contacted and interviewed. The interview may be by telephone. However, if the victim requests a face to face interview, one shall be arranged.
- C. In cases where physical injury was threatened or caused and the victim cannot be contacted by telephone, a letter will be sent to the victim requesting them to contact the PPO.
- D. If the victim does not respond within 14 days to the first request for information, a second and final inquiry will be sent. Documentation of all inquiries shall be kept in the defendant's case

- file.
- E. The victim shall also be informed that it is his/her legal right to provide an impact statement, but they are under no obligation to furnish said statement. The victim shall be informed that the defendant and the defense counsel have the right to read the pre-sentence report including the summary of the victim's input.
 - F. If the victim of the crime is a minor he/she shall not be contacted directly. The parent or legal guardian shall be contacted instead. Minor victims shall not be interviewed without the permission of the parent or legal guardian.
Likewise, a victim's therapist, doctor or other such agent shall not be contacted without the permission of the victim or a parent or legal guardian if the victim is a minor.
 - G. When the victim is deceased the next of kin shall be contacted for an impact statement.
 - H. All communications and attempts at communication with the victim shall be summarized in the victim statement section of the pre-sentence report; should the victim provide a timely written statement it shall be attached to the report.
 - I. Information to be ascertained from the victim includes:
 1. The direct and indirect physical, emotional and financial effects the crime had on the individual/family.
 2. The extent of direct loss (i.e., out-of-pocket losses or other expenses incurred as a direct result of the criminal offense).
 3. The amount of insurance reimbursement and deductible.
 4. The victim's sentence recommendation.
 - J. In the event a disagreement exists between the offender and the victim as to the actual loss incurred the court shall be so notified and requested to make a final determination as to the restitution amount. It will be necessary for the victim to furnish documentation of the financial loss.
 - K. Claims for restitution shall be reviewed to determine if the claim qualifies for restitution in a criminal proceeding (NH RSA 651:63, 64, 65 Attachment 4). Losses must equate to economic losses in which a monetary value can be assigned and must be corroborated by supporting documentation.
 - L. As per RSA 651:62 "Economic loss" includes: (Attachment 3)
 1. Reasonable charges incurred for reasonably needed products, services and accommodations, including but not limited to medical and dental care charges, rehabilitation and other remedial treatment and care including mental health services for the victim, or in the case of the death of the victim, for the victim's spouse and immediate family
 2. Loss of income by the victim or the victim's dependents
 3. The value of damaged, destroyed or lost property
 4. Expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured or deceased victim would have performed, if the crime had not occurred, for the benefit of the victim or the victim's dependents.
 5. Reasonable expenses related to funeral and burial/crematory services for the decedent victim.
 6. Losses relating to the pain and suffering, loss of earning capacity and wrongful death claims are not readily ascertainable, are under the purview of civil actions and may not be appropriately considered for restitution. If these issues exist, note them in the evaluation and analysis section of the pre-sentence report
 - M. Insurance companies or any collateral source subrogated to the rights of a victim that identifies a victim for personal injury, death or economic loss are entitled to restitution provided that the victim's claim is satisfied before that of the subrogee.
 - N. Restitution can be requested from the Court for the Victim's Assistance Commission and the N.H. Drug Task Force.

- O. Refused or unclaimed restitution payments shall be transferred to the Victims' Assistance Fund (see RSA 651:63, III).

REFERENCES:

Standards for the Administration of Correctional Agencies
Second Edition Standards

Standards for Adult Correctional Institutions
Fourth Edition Standards

Standards for Adult Community Residential Services
Fourth Edition Standards

Standards for Adult Probation and Parole Field Services
Third Edition Standards

3-3214

Other

McALISTER/clr

Attachments

PLEASE RESPOND TO: NH Department of Corrections
Division of Field Services

RE: State v. (defendant)

Dear _____ :

The New Hampshire Department of Corrections, Division of Field Services is completing a pre-sentence investigation on the above named defendant concerning the offense of (name offense) on or about (date). This matter is currently pending in the (name of court).

To assist the Court in this process, it is your legal right to provide input concerning the offense, its financial and emotional impact on you, your opinion on sentencing and other information that is relevant to the defendant's sentence.

Your input can be provided by a written response either in a letter or the attached form, a phone call to my office or you can make arrangements for an appointment to meet with me. Matters pertaining to the financial losses that are to be considered for restitution must, however, be done in writing. In order to include your input into the report; please respond to the address listed above within two weeks from receipt of this letter.

Your input during this investigation does not change any rights you have to provide input at the sentencing hearing. Should you have any questions about this process, please contact me at 271-2268.

It is your responsibility to advise us of any change of address in order not to jeopardize any reimbursement that may be ordered.

Sincerely,

CC: File

Division of Field Services
105 Pleasant Street
PO Box 368
Concord, NH 03302-0368

NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS

VICTIM IMPACT & RESTITUTION INFORMATION

RE: STATE VS.

1. Your Name: _____

Mailing Address: _____

Phone Number(s): _____

2. It is your legal right to give input to the NH Department of Correction. In your own words, you may express the **Physical Impact** of the injuries suffered, medical care received or expected to need in the future. **Emotional Impact:** how the crime impacted your life and those close to your. Your feelings about what happened, any affect the crime had in your ability to work, got to school, relationships with others or other activities. **Financial Impact:** expenses (money paid or owed) or losses as a direct result of the crime (attach additional sheets as needed)

3. Medical or mental health treatment received:

Total Medical Bills: _____
Insurance Covered: _____
Total Paid by You: _____

4. Property Damage/Loss (Please complete page 2)

5. Recommendations: You may provide your own view about what you believe to be an appropriate sentence for the defendant. This is important for the Court to consider.

6. If you do not wish to provide any information, please indicate that preference and return this form. (Please be advised that the NH Department of Corrections will not be able to collect any court ordered restitution unless you provide the amounts to us.)

PLEASE NOTE: SHOULD RESTITUTION BE ORDERED CHECKS WILL BE MAILED TO YOU AS THE MONEY IS COLLECTED AT \$25 INCREMENTS. IF YOU HAVE ADDRESS CHANGE, YOU MUSTE INFORM US SO THAT THE CHECKED CAN BE MAILED TO YOUR NEW ADDRESS.

VICTIM IMPACT & RESTITUTION INFORMATION - PAGE TWO
RE: STATE VS.

1. If you incurred property damage, please list all items stolen, damaged or destroyed.
2. If insurance reimbursement for losses has been received, please indicate below.
3. If you are aware that stolen items are currently in custody of the investigating law enforcement agency and are expected to be returned to you in an acceptable form, check "recovered" box.
4. If items are currently missing, please check "missing" box.
5. Please attach copies of all documentation verifying value of items and/or cost to repair (i.e. appraisals, bills, and estimates).

Items Stolen or Damaged	Value	Repair Cost	Recovered	Missing

Total losses/damages: \$ _____

Insurance Reimbursement: \$ _____

Insurance Deductible: \$ _____

Name of Insurance Company: _____

Address: _____

Phone number: _____

Claim # _____

I CERTIFY THAT THE ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE.

SIGNATURE: _____

DATE: _____

PLEASE BE ADVISED THAT RESTITUTION ORDERED BY THE COURT THROUGH THE DEPARTMENT OF CORRECTIONS WILL BE DISBURSED IN ACCORDANCE WITH THE DEPARTMENT BUSINESS RULES AND PAYMENTS MAY BE REGULAR OR IRREGULAR IN ACCORDANCE WITH THE PAYER'S EMPLOYEMENT STATUS AND COMPLIANCE WITH THE COURT ORDER.

Restitution

Section 651:62

651:62 Definitions. – As used in this subdivision, unless the context otherwise indicates:

- I. "Claimant" means a victim, dependent, or any person legally authorized to act on behalf of the victim.
- II. "Dependent" means any person who was wholly or partially dependent upon the victim for care and support when the crime was committed.
- III. "Economic loss" means out-of-pocket losses or other expenses incurred as a direct result of a criminal offense, including:
 - (a) Reasonable charges incurred for reasonably needed products, services and accommodations, including but not limited to charges for medical and dental care, rehabilitation, and other remedial treatment and care including mental health services for the victim or, in the case of the death of the victim, for the victim's spouse and immediate family;
 - (b) Loss of income by the victim or the victim's dependents;
 - (c) The value of damaged, destroyed, or lost property;
 - (d) Expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured or deceased victim would have performed, if the crime had not occurred, for the benefit of the victim or the victim's dependents;
 - (e) Reasonable expenses related to funeral and burial or crematory services for the decedent victim.
- IV. "Offender" means any person convicted of a criminal or delinquent act.
- V. "Restitution" means money or service provided by the offender to compensate a victim for economic loss, or to compensate any collateral source subrogated to the rights of the victim, which indemnifies a victim for economic loss under this subdivision.
- VI. "Victim" means a person or claimant who suffers economic loss as a result of an offender's criminal conduct or the good faith effort of any person attempting to prevent or preventing the criminal conduct.

Source. 1981, 329:2. 1994, 190:1, eff. Sept. 21, 1994. 1996, 286:7, eff. July 1, 1997.

Restitution

Section 651:63

651:63 Restitution Authorized. –

I. Any offender may be sentenced to make restitution in an amount determined by the court. In any case in which restitution is not ordered, the court shall state its reasons therefor on the record or in its sentencing order. Restitution may be ordered regardless of the offender's ability to pay and regardless of the availability of other compensation; however, restitution is not intended to compensate the victim more than once for the same injury. A restitution order is not a civil judgment.

II. Restitution ordered shall be in addition to any other penalty or fine and may be a condition of probation or parole. Restitution, if ordered, may also be a condition of any work release program administered under RSA 651:19 or RSA 651:25.

III. The making of a restitution order shall not affect the right of a victim to compensation under RSA 21-M:8-h, except to the extent that restitution is actually collected pursuant to the order. The offender shall reimburse the victims' assistance fund for any payments made by the fund to the victim pursuant to RSA 21-M:8-h after the restitution order is satisfied. Refused or unclaimed restitution payments shall be made to the victims' assistance fund.

IV. The court's determination of the amount of restitution shall not be admissible as evidence in a civil action. The court shall reduce any civil damage awards by restitution ordered and paid to the victim. Restitution orders shall survive bankruptcy.

V. The court shall add 17 percent to the total restitution payment as an administrative fee to be paid by the offender. Such administrative fee shall be divided into the following components, to be designated as follows: 15 percent shall be continually appropriated to a special fund for the division of field services, department of corrections, \$22,500 of which shall lapse to the general fund at the end of each quarter should that amount be received, to maximize restitution collections, directly or through agents of contractors selected by the department; and 2 percent for the victims' assistance fund. Unexpended account balances in the special fund for the division of field services in excess of \$50,000 at the end of the fiscal year shall lapse to the general fund. Administrative fees shall be paid by the offender in addition to and when each restitution payment is made.

VI. Restitution, administrative fines and fees, and other fees collected, except for supervision fees pursuant to RSA 504-A:13, shall be allocated on a pro-rata basis by the commissioner of corrections or his or her designee when payments are insufficient to cover the full amount due for each of these balances, except that restitution to victims shall have priority over all other allocations.

VII. On or before July 1, 1997, and each year thereafter until July 1, 2000, the division of field services, department of corrections, shall submit an annual budget plan to the joint legislative fiscal committee. The division of field services, department of corrections, shall have the authority to hire temporary personnel and to procure equipment and expend relevant operating expenses as may be necessary to implement this chapter.

Source. 1981, 329:2. 1996, 286:7, eff. July 1, 1997; 286:19. 1999, 261:6. 2001, 176:1, eff. July 5, 2001. 2008, 120:33, eff. Aug. 2, 2008.

Restitution

Section 651:64

651:64 Time and Method of Restitution. –

I. The time and method of restitution payments or performance of restitution services shall be specified by the department of corrections. Monetary restitution may be by lump sum, or by periodic installments in any amounts. The court shall not be required to reduce the total obligation as a result of the offender's inability to pay. The offender shall bear the burden of demonstrating lack of ability to pay. Restitution shall be paid by the offender to the department of corrections unless otherwise ordered by the court. Monetary restitution shall not bear interest. Restitution shall be made to any collateral source or subrogee, if authorized by that source and after restitution to the victim, and to the victims' assistance fund, if applicable, has been satisfied. Restitution shall be a continuing obligation of the offender's estate and shall inure to the benefit of the victim's estate, provided that no indebtedness shall pass to any heir of the offender's estate.

II. The department of corrections shall have continuing authority over the offender for purposes of enforcing restitution until the restitution order is satisfied.

III. The department may garnish the offender's wages for the purpose of ensuring payment of victim restitution.

Source. 1981, 329:2. 1994, 190:2. 1996, 286:7, eff. July 1, 1997.

Restitution

Section 651:65

651:65 Civil Actions. – This subdivision does not bar, suspend, or otherwise affect any right or liability for damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in such civil action constitutes an economic loss. Any restitution ordered and paid shall be deducted from the amount of any judgment awarded in a civil action brought by the victim or other authorized claimant against the offender based on the same facts. If the restitution ordered and made was work restitution, the reasonable value of the services may be deducted from any such judgment.

Source. 1981, 329:2, eff. Aug. 16, 1981.