

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 795 entitled

3 “An act relating to victim’s compensation and restitution procedures”

4 respectfully reports that it has considered the same and recommends that the

5 bill be amended by striking out all after the enacting clause and inserting in

6 lieu thereof the following:

7 Sec. 1. 13 V.S.A. § 5362 is amended to read:

8 § 5362. RESTITUTION UNIT

9 (a) A Restitution Unit is created within the Center for Crime Victim
10 Services for purposes of ~~assuring~~ ensuring that crime victims receive
11 restitution when it is ordered by the Court.

12 (b) The Restitution Unit shall administer the Restitution Fund established
13 under section 5363 of this title.

14 (c) The Restitution Unit shall have the authority to:

15 (1) Collect restitution from the offender when it is ordered by the ~~court~~
16 Court under section 7043 of this title.

17 (2) ~~Bring an action to enforce~~ Enforce a restitution obligation as a civil
18 judgment under section 7043 of this title. The Restitution Unit shall enforce
19 restitution orders issued prior to July 1, 2004 pursuant to the law in effect on
20 the date the order is issued.

1 (3)(A) Share and access information, including information maintained
2 by the National Criminal Information Center, consistent with Vermont and
3 federal law, from the Court, the Department of Corrections, the Department of
4 Motor Vehicles, the Department of Taxes, ~~and~~ the Department of Labor, and
5 law enforcement agencies in order to carry out its collection and enforcement
6 functions. The Restitution Unit, for purposes of establishing and enforcing
7 restitution payment obligations, is designated as a law enforcement agency for
8 the sole purpose of requesting and obtaining access to information needed to
9 identify or locate a person, including access to information maintained by the
10 National Criminal Information Center.

11 (B) Provide information to the Department of Corrections concerning
12 supervised offenders, including an offender's restitution payment history and
13 balance, address and contact information, employment information, and
14 information concerning the Restitution Unit's collection efforts.

15 (C) The Restitution Unit is specifically authorized to collect, record,
16 use, and disseminate Social Security numbers as needed for the purpose of
17 collecting restitution and enforcing restitution judgment orders issued by the
18 Court.

19 (4) Investigate and verify losses as determined by the Restitution Unit,
20 including losses that may be eligible for advance payment from the Restitution
21 Special Fund, and verify the amount of insurance or other payments paid to or

1 for the benefit of a victim, and reduce the amount collected or to be collected
2 from the offender or disbursed to the victim from the Crime Victims'
3 Restitution Special Fund accordingly. The Restitution Unit, when appropriate,
4 shall submit to the ~~court~~ Court a proposed revised restitution order stipulated to
5 by the victim and the unit, with copies provided to the victim and the offender.
6 No hearing shall be required, ~~and the Court shall amend the judgment order to~~
7 ~~reflect the amount stipulated to by the victim and the Restitution Unit.~~

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

10 (6) Report offenders' payment histories to credit reporting agencies;
11 provided that the Unit shall not report information regarding offenders who are
12 incarcerated. The Unit shall not make a report under this subdivision until
13 after it has notified the offender of the proposed report by first class mail or
14 other like means to give actual notice, and provided the offender a period not
15 to exceed 20 days to contest the accuracy of the information with the Unit.

16 The Unit shall immediately notify each credit bureau organization to which
17 information has been furnished of any increases or decreases in the amount of
18 restitution owed by the offender.

19 (7) Enter into a repayment contract with a juvenile or adult accepted into
20 a diversion program and to bring a civil action to enforce the contract when a
21 diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

1 (8) Contract with **one or more** sheriff's departments for the purposes of
2 servicing process, warrants, demand letters, and **mittimus** in restitution cases,
3 and contract with **one or more** law enforcement agencies or other investigators
4 for the purpose of investigating and locating offenders and enforcing
5 restitution judgment orders.

6 (9) Collect from an offender subject to a restitution judgment order all
7 **fees and costs** incurred by the Restitution Unit as a result of enforcing the order
8 and investigating and locating the offender.

9 Sec. 2. 13 V.S.A. § 5363 is amended to read:

10 § 5363. CRIME VICTIM'S RESTITUTION SPECIAL FUND

11 * * *

12 (d)(1) The Restitution Unit is authorized to advance up to **\$10,000.00**
13 **\$5,000.00** to a victim or to a deceased victim's heir or legal representative if
14 the victim:

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

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

18 (C) has not been reimbursed under subdivision (2) of this
19 subsection; and

20 (D) is a natural person and has been referred to the Restitution Unit
21 by a diversion program pursuant to 3 V.S.A. § 164a.

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

3 (A) A victim service agency approved by the Restitution Unit if the
4 agency has advanced monies which would have been payable to a victim under
5 subdivision (1) of this subsection.

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

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

11 (4) An advance under this subsection shall not be made to a victim who:

12 (A) fails to provide the Restitution Unit with the documentation
13 necessary to support the victim's claim for restitution; ~~or~~

14 (B) violated a criminal law of this State which caused or contributed
15 to the victim's material loss; or

16 (C) has crime-related losses that are eligible for payment from the
17 Victim Compensation Special Fund.

18 (5) An advance under this subsection shall not be made for the amount
19 of cash loss included in a restitution judgment order.

20 (6) An advance under this subsection shall not be made for jewelry,
21 precious metals, or coin collections ~~or other collectibles.~~ OR luxury items and

1 collectibles identified in rules adopted by the Unit pursuant to subdivision
2 5362(c)(5) of this title.

3 * * *

4 Sec. 3. 13 V.S.A. § 7043 is amended to read:

5 § 7043. RESTITUTION

6 * * *

7 (e)(1) An order of restitution shall establish the amount of the material loss
8 incurred by the victim, which shall be the restitution judgment order. In the
9 event the offender is unable to pay the restitution judgment order at the time of
10 sentencing, the Court shall establish a restitution payment schedule for the
11 offender based upon the offender's current and reasonably foreseeable ability
12 to pay, subject to modification under subsection (k) of this section.

13 Notwithstanding 12 V.S.A. chapter 113 or any other provision of law, interest
14 shall not accrue on a restitution judgment.

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

16 (i) include the offender's name, address, telephone number, and
17 Social Security number;

18 (ii) include the name, address, and telephone number of the
19 offender's employer; and

20 (iii) require the offender, until his or her restitution obligation is
21 satisfied, to notify the Restitution Unit within 30 days if the offender's address,

1 telephone number, or employment changes, including providing the name,
2 address, and telephone number of each new employer.

3 (B) [Repealed.]

4 (3) An order of restitution may require the offender to pay restitution for
5 an offense for which the offender was not convicted if the offender knowingly
6 and voluntarily executes a plea agreement which provides that the offender pay
7 restitution for that offense. A copy of the plea agreement shall be attached to
8 the restitution order.

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

17 (2) The Department of Corrections shall work collaboratively with the
18 Restitution Unit to assist with the collection of restitution. The Department
19 shall provide the Restitution Unit with information about the location and
20 employment status of the offender.

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

3 (2)(A) If restitution was not requested at the time of sentencing, or if
4 expenses arose after the entry of a restitution order, ~~the State may file a motion~~
5 ~~with the sentencing court to reopen the restitution case in order to consider a~~
6 ~~the victim may request for~~ restitution payable from the Restitution Fund.
7 Restitution ordered paid under this subdivision shall be payable from the
8 Restitution Fund and capped at \$1,000.00, and shall not be payable by the
9 offender.

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

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

15 (i)(1) ~~The court~~ Court shall transmit a copy of a restitution order and the
16 plea agreement, if any, to the Restitution Unit, which shall make payment to
17 the victim in accordance with section 5363 of this title.

18 (2) To the extent that the Victims Compensation Board has made
19 payment to or on behalf of the victim in accordance with chapter 167 of this
20 title, restitution, if imposed, shall be paid to the Restitution Unit, which shall
21 make payment to the Victims Compensation Fund.

1 (j) The Restitution Unit may bring an action, including a small claims
2 procedure, to **[[? On a form approved by the Court Administrator??]]**
3 enforce a restitution judgment order entered by the Criminal Division of the
4 Superior Court against an offender in the Civil Division of the Superior Court
5 of the unit where the offender resides or in the unit where the order was issued.
6 ~~In an action under this subsection, a~~ A restitution order issued by the Criminal
7 Division of the Superior Court shall be enforceable in the Civil Division of the
8 Superior Court or in a small claims procedure in the same manner as a civil
9 judgment, and it shall not be necessary to file a separate action to enforce the
10 judgment. Superior and Small Claims Court filing fees shall be waived for an
11 ~~action enforcement proceedings~~ brought under this subsection, ~~and for an~~
12 ~~action to renew a restitution judgment.~~

13 * * *

14 (m)(1) If the offender fails to pay restitution as ordered by the ~~court~~ Court,
15 the Restitution Unit may file an action to enforce the restitution order in
16 Superior or Small Claims Court. ~~After an enforcement action is filed, any~~
17 ~~further proceedings related to the action shall be heard in the court where it~~
18 ~~was filed. The court shall set the matter for hearing and shall provide notice to~~
19 ~~the Restitution Unit, the victim, and the offender.~~ the Restitution Unit may file
20 a show cause motion with the Civil Division of the Superior Court. The Court
21 shall set the matter for hearing and provide notice to the Restitution Unit, the

1 victim, and the offender. The Court may order the defendant to appear at the
2 show cause hearing and disclose assets and liabilities and produce any
3 documents the Court deems relevant. If the ~~court~~ Court determines the
4 offender has failed to comply with the restitution order, the ~~court~~ Court may
5 take any action the Court deems necessary to ensure the offender will make the
6 required restitution payment, including:

7 ~~(1)~~(A) amending the payment schedule of the restitution order;

8 ~~(2)~~(B) ordering, in compliance with the procedures required in Rule 4.1
9 of the Vermont Rules of Civil Procedure, the disclosure, attachment, and sale
10 of assets and accounts owned by the offender;

11 ~~(3)~~(C) ordering the offender's wages withheld pursuant to subsection (n)
12 of this section; or

13 ~~(4)~~(D) ordering the suspension of any recreational licenses owned by the
14 offender.

15 (2) If the Court finds that the offender has an ability to pay and willfully
16 refuses to do so, the offender may be subject to civil contempt proceedings
17 under 12 V.S.A. chapter 5.

18 * * *

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

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

