

State of Vermont Restitution Unit

Restitution Unit Rules

**Administrative Rules Governing the Crime Victims' Restitution
Special Fund and Related Policies**



Authority. These Restitution Unit Rules are promulgated pursuant to the authority granted in 13 V.S.A. §5362(c)(5) and 3 V.S.A. §831(a).

The Restitution Unit Rules (referred to herein as "RUR") are intended to govern payment of amounts to the victims of crime whose offenders have been required to pay restitution as part of their sentence or rehabilitation, particularly:

- Advance payment of restitution from the Special Restitution Fund,
- Investigations of and adjustments to the amount of restitution ordered,
- Donations to the Restitution Special Fund,
- Approval of Victim Service Agencies,
- Determinations of acts and actors involved in a Crime Spree,
- Setoff procedures employed by the Restitution Unit, and
- The appeals of determinations made by the Restitution Unit.



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Defined Terms.

- (a) When used in these Rules, the following words and phrases shall have the meaning attributed to them below:

Administrative Hearing	The phrase "Administrative Hearing" means the hearing portion of an Administrative Review conducted by the Restitution Unit Hearing Panel.
Administrative Review	The phrase "Administrative Review" means the process by which parties aggrieved by a determination made by the Restitution Unit may request that the Restitution Unit reconsider such determination.
Advance Factor	The phrase "Advance Factor" means the mathematical factor by which advance payments to be made to Victims affected by a Crime Spree are to be reduced.
Advance Payment	The phrase "Advance Payment" means a payment of restitution to a Victim from the Restitution Special Fund made without regard to the Offender's payment.
Advance	The word "Advance" means the maximum amount a Victim is eligible to receive from the Restitution Special Fund (the lesser of the amount of restitution ordered or \$10,000.00).
Appeal	The word "Appeal" means the process by which an aggrieved party may challenge a determination by the Restitution Unit as provided by Section X - Administrative Review.
Board of Directors	The phrase "Board of Directors" means the Board of Directors of the Victim Compensation Fund, unless another group of individuals is duly appointed to serve as a board of directors for the Restitution Unit.
Crime Spree	The phrase "Crime Spree" as used in these Rules means one or more criminal acts, perpetrated by one or more persons, that result in uninsured financial losses suffered by multiple victims, when the acts are so related in time, or by their nature, as to indicate an underlying common scheme or plan.
Donation	The word "Donation" means any amounts deposited in the Restitution Special Fund that have been determined to be donations under RUR III.



Investigation	The word "Investigation" means the process by which the Restitution Unit examines Restitution claims.
Offender	The word "Offender" means an individual who has been required to pay restitution under 13 V.S.A. §7043.
Restitution Special Fund	The phrase "Restitution Special Fund" means the Crime Victims' Restitution Special Fund established by 13 V.S.A. §5363.
Restitution	The word "Restitution" is used in its most restrictive sense and means only money that is required to be paid by an Offender to the Restitution Unit pursuant to 13 V.S.A. §7043.
Rules	The word "Rules" means these Restitution Unit Rules (or RUR).
Setoff	The word "Setoff" means the process by which the Restitution Unit intercepts monies owed by the State of Vermont to Offenders who have unpaid Restitution so that the monies may be applied to satisfy the Offender's Restitution obligations.
Special Fund Balance	The phrase "Special Fund Balance" means the amount of money in the Restitution Special Fund that is available for Advance Payment to Victims.
Victim Service Agency	The phrase "Victim Service Agency" means an organization that has been approved by the Restitution Unit pursuant to RUR IV.
Victim	The word "Victim" means a person that has incurred a "material loss" (as defined in 13 V.S.A. §7043).



II General Procedures.

(a) *Orders to Pay Restitution*

(1) Orders to pay restitution shall be processed as follows:

(A) Upon receipt of an order for Restitution, the Restitution Unit shall:

- (i) Identify and classify the Victims to determine whether they are eligible to receive an Advance Payment of Restitution from the Restitution Special Fund, and
- (ii) If the Victim is determined to be eligible to receive an Advance, the Restitution Unit may make an Advance Payment of Restitution from the Restitution Special Fund.

(B) An order for restitution shall be deemed to have been received by the Restitution Unit when:

- (i) a Restitution Judgment Order, or other acceptable court order, has been transmitted by a District Court, or other authorized entity, and is received by the Restitution Unit, and
- (ii) a Restitution Report, or other acceptable information identifying the Victim, is received by the Restitution Unit, and
- (iii) a signed certification has been returned from the Victim verifying that the Victim is entitled to receive the amount ordered.

(b) *Advance Payment of Restitution.*

(1) Prior to disbursement of an Advance Payment, the Restitution Unit shall:

- (A) Make a determination that the Victim is eligible to receive an Advance,
- (B) Make a determination that the Victim's claim for restitution does not appear to meet the grounds for investigation set forth in RUR III.
- (C) Receive verification from the Victim that no one else has paid and that no one else has an obligation to pay for the claim,
- (D) Confirm that the Restitution to be paid is not intended to be a Donation,
- (E) Verify that the case under which the Victim is entitled to receive Restitution is not part of a Crime Spree, and
- (F) Verify that there are no other circumstances under which an Advance Payment would be inappropriate.

(c) *Disbursement of Payments Received.*





- (1) For Restitution not wholly compensated by an Advance Payment from the Restitution Special Fund, the Restitution Unit shall, to the extent reasonably practicable, disburse payments collected from Offenders to the appropriate Victim in a timely fashion.



III Investigation

- (a) This section governs the procedures employed by the Restitution Unit in investigating restitution claims and the subsequent adjustment of any claim based upon the results of the Investigation.
- (b) *Grounds for an Investigation.* The Restitution Unit may commence an Investigation when the Restitution Unit has reason to believe that a request for Restitution is:
 - (1) Substantially overstated, or
 - (2) Has been or will be compensated, in whole or in part, by a third-party, or
 - (3) Has been fraudulently presented, or
 - (4) Is otherwise an attempt to either inappropriately benefit from or deplete the Restitution Special Fund.
- (c) *Supervision of Investigation.* All Investigations shall be conducted under the supervision of an attorney employed by the Restitution Unit.
- (d) *Investigators.* Investigations may only be conducted by employees of the Restitution Unit or persons specifically contracted to carry out an Investigation by the Restitution Unit.
- (e) *Termination of an Investigation.* Once commenced, an Investigation may only be terminated by:
 - (1) Completion of the Investigation, or
 - (2) A determination that the Investigation should be discontinued. Only the supervising attorney, with the concurrence of the Unit Director, may make a determination that an Investigation should be discontinued.
- (f) Upon completion of an Investigation, a report shall be provided to the supervising attorney who shall make a recommendation to the Unit Director.
- (g) An Investigation shall not be deemed to be complete until the investigator has provided his or her report to the supervising attorney, the supervising attorney has accepted the report, and the supervising attorney has submitted a recommendation to the Unit Director.
- (h) *Adjustment of Amounts.* If the Restitution Unit determines that the amount of Restitution a Victim is entitled to should be less than the amount ordered, the Restitution Unit shall:
 - (1) Prepare and file a Notice with the District Court, with copies sent to any parties entitled to notice, reporting the substantive facts supporting the determination, and





- (2) Withhold all or a portion of the Advance Payment to the Victim pending court action.
 - (i) *Contested Determinations.* A Victim aggrieved by a determination made by the Restitution Unit resulting from an Investigation, may challenge the determination in accordance with Section X - Administrative Review.



IV Donations

- (a) This section shall govern donations to the Restitution Special Fund.
- (b) *Determination that Monies are a Donation.* Monies received by the Restitution Unit shall be considered to be Donations to the Restitution Special Fund:
 - (1) If after diligent inquiry the Restitution Unit cannot identify the Victim to whom the Restitution is to be paid,
 - (2) If after diligent inquiry the Restitution Unit cannot locate the Victim to whom the Restitution is to be paid,
 - (3) If a Victim has provided evidence of his or her intention that monies collected by the Restitution Unit from that Victim's Offender should be retained in the Restitution Special Fund as a Donation,
 - (4) If a court has ordered an Offender, or another criminal justice entity has required a participant, to pay a Donation to the Restitution Unit or the Restitution Special Fund, or
 - (5) If received with instructions that the monies are intended to be a donation to the Restitution Special Fund.
- (c) *Contested Determinations.* If a Victim contests a determination that monies that would otherwise be due to the Victim are a Donation to the Restitution Special Fund, the Victim shall provide notice to the Restitution Unit which shall then, to the extent practicable, reverse the determination and remit the monies to the Victim.



V Approval of Victim Service Agencies

- (a) This section shall govern the process for approving Victim Service Agencies to become eligible to receive advances from the Restitution Special Fund.
- (b) *Requirements.* In order to be approved by the Restitution Unit, an organization must:
 - (1) Be organized and existing in accordance with Vermont law,
 - (2) Not be organized for profit,
 - (3) Operate primarily to serve victims of crime,
 - (4) Provide individuals with financial assistance that compensates victims for a loss incurred as a result of crime, and
 - (5) Provide assistance to crime victims without regard to the victim's age, color, citizenship status, creed, gender identity, disability, height, marital status, national origin, political persuasion, race, religion, religious affiliation, sex, sexual orientation, veteran status, weight, or any other protected status,
- (c) *Determination.* Organizations that certify compliance with (b)(1) through (b)(5) above shall be presented to the Board of Directors, which shall then make a determination whether the organization is or is not approved.
- (d) *Contested Determinations.* After the Restitution Unit has provided written notice to an organization that it has not been approved, the organization shall have the right to request Administrative Review in accordance with these Rules.
- (e) *Review of Determinations.* An organization may annually request that the Restitution Unit reconsider a prior determination that an organization does not qualify as an approved Victim Service Agency.
- (f) At any time, the Restitution Unit may undertake a discretionary review of any prior determinations.



VI Crime Spree

- (a) Unless otherwise ordered by a court of competent jurisdiction, this section shall govern the Restitution Unit's determination of the particular acts and actors included within the scope of a Crime Spree and the effect upon Advance Payments.
- (b) *Requirements.* In order to reach a determination that a limitation upon Advance Payments should be imposed under this section, the Restitution Unit shall determine:
- (1) The actor or actors have engaged in one or more criminal acts that resulted in financial losses for which Restitution is requested, and
 - (2) The criminal acts are substantially related in time or in nature, and
 - (3) The combined Advance Payments of Restitution to Victims would exceed \$50,000.00.
- (c) *Effect Upon Payments.* Upon the Restitution Unit's determination that Advance Payments are to be limited under this section:
- (1) The "Crime Spree Cap" shall be determined by multiplying the Special Fund Balance, as of the most recent fiscal year end (June 30), by .05 (or 5%).
 - (2) The amount of Advance Payment each Victim is eligible to receive in connection with the Crime Spree shall be added together to arrive at a Combined Advance Payable.
 - (3) The Combined Advance Payable shall be compared with the Crime Spree Cap. If the Combined Advance Payable is less than or equal to the Crime Spree Cap, the Combined Advance Payable shall be disbursed to the Victims in accordance with these Rules and Restitution Unit Procedures. Otherwise, the Combined Adjusted Advance Payable shall be determined by subtracting the Crime Spree Cap from the Total Advance Payable.
 - (4) The Advance Factor shall be determined by dividing the Combined Adjusted Advance Payable by the Combined Advance Payable.
 - (5) The Adjusted Advance Payment to each Victim shall be determined by multiplying the amount of Advance each Victim is eligible to receive by the Advance Factor.
 - (6) Each Victim remains eligible to receive the amount of Advance not yet paid ("the Outstanding Advance"). The Outstanding Advance shall be determined by subtracting the Adjusted Advance Payment from the Advance the Victim is eligible to receive.
 - (7) The Total Outstanding Advance shall be the sum of all Outstanding Advances in the case.



- (d) *Additional Advance Payments in Subsequent Years.* Every twelve months after the initial Advance Payment made pursuant to this section, the Victims are entitled to receive an additional Advance Payment in accordance with the following:
- (1) The Crime Spree Cap for the current year and the unpaid Total Outstanding Advance shall be compared. If the unpaid Total Outstanding Advance is less than or equal to the Crime Spree Cap, the Total Outstanding Advance shall be disbursed to the Victims in accordance with these Rules and Restitution Unit Procedures. Otherwise, the Adjusted Advance Payable for the current year shall be determined by subtracting the Crime Spree Cap from the unpaid Total Outstanding Advance.
 - (2) The Current Year Advance Factor shall be determined by dividing the Adjusted Advance Payable for the current year by the Total Outstanding Advance.
 - (3) The Advance Payment to each victim shall be reduced by the Current Year Advance Factor.
 - (4) The Current Year Adjusted Advance Payment to each Victim shall be determined by multiplying the amount of the unpaid Advance each Victim is eligible to receive by the Current Year Advance Factor.
 - (5) Each Victim remains eligible to receive the amount of Advance not yet paid ("the Outstanding Advance"). The Outstanding Advance shall be determined by subtracting the sum of all Adjusted Advance Payments from the Advance the Victim is eligible to receive.
 - (6) The Total Outstanding Advance shall be determined by adding all Outstanding Advances in the case.
- (e) *Contested Determinations.* A Victim aggrieved by a determination made by the Restitution Unit in connection with a Crime Spree, may challenge the determination in accordance with Section X - Administrative Review.



VII Subrogation

- (a) This section shall govern the Restitution Unit's subrogation procedures.
- (b) The Restitution Unit may assert its subrogation rights in any case in which the Victim is, or in which the Restitution Unit reasonably believes the Victim may be, entitled to receive payments from a party other than the Offender.
- (c) *Contested Action.* As soon as reasonably practicable, the Restitution Unit shall provide written notice to the Victim that the Restitution Unit intends to assert a subrogation claim and the Victim shall have the right to request Administrative Review in accordance with these Rules.



VIII Setoff Rules

- (a) These Setoff Rules govern the Restitution Unit's setoff procedures and policies.
- (b) *Scope of Setoff.* Any monies owed by the State of Vermont to an Offender who owes restitution shall be Setoff by the Restitution Unit and used to pay the Restitution. The Restitution Unit will Setoff the maximum amount available, regardless of any payment schedules or plans.
- (c) *Notice of Setoff.* The Restitution Unit shall send a Notice of Intent to Setoff to an Offender's last known mailing address. The Notice of Intent to Setoff shall contain the following information:
 - (1) The date of the Restitution Order,
 - (2) The current balance owed under the Restitution Order,
 - (3) The source of funds for the intended Setoff,
 - (4) The amount intended to be Setoff by the Restitution Unit, and
 - (5) A date, no later than 30 days after the date of the Notice of Intent to Setoff, by which the Offender must notify the Restitution Unit that the Offender contests the amount owed under the Restitution Order.
- (d) *Agreement to Setoff.* An Offender may consent to the Setoff by providing written notice to the Restitution Unit. The Setoff may then take place immediately.
- (e) *Failure to Contest Setoff.* If an Offender does not contest the amount owed under the Restitution Order, the Restitution Unit shall apply the amount setoff to the Restitution owed on the next business day after the deadline in the Notice of Intent to Setoff, Notice of Intent to Setoff Tax Refund, or the Notice of Intent to Setoff Lottery Winnings.
- (f) *Contested Setoff.* If an Offender contests the amount owed under the Restitution Order, the Offender shall notify the Restitution Unit by completing, signing, and filing a Request for Administrative Review on or before the deadline in the Notice of Intent to Setoff.
- (g) Special Rules for Vermont Department of Taxes Setoffs
 - (1) The following Special Rules shall supercede the Setoff Rules set forth above when appropriate in cases when the Setoff relates to amounts to be refunded to Offenders by the Vermont Department of Taxes:
 - (A) The Restitution Unit shall mail a Notice of Intent to Setoff Tax Refund to any Offender whose name is on the proposed list of tax setoffs informing the Offender that the Restitution Unit intends to certify the amount indicated on the Notice of Intent to Setoff Tax Refund of any tax overpayment refund. The Notice of Intent to Setoff Tax Refund shall inform the Offender that the Offender has



30 days for the Offender to contest the amount that remains unpaid under a Restitution Order by requesting an Administrative Review. An Offender may request an Administrative Review by completing, signing, and filing a Request for Administrative Review with the Restitution Unit within 30 days of the date of the Notice of Intent to Setoff Tax Refund.

- (B) The Notice of Intent to Setoff Tax Refund shall inform the Offender that:
 - (i) If the Offender has filed a joint return and only one of the filers is obligated under a Restitution Order, the joint filer may petition the Vermont Department of Taxes in writing for a return of the portion of the refund attributable to the joint filer who is not obligated under the Restitution Order, and
 - (ii) That the Offender has 30 days to request a hearing to contest the amount owed by completing, signing, and filing a Request for Administrative Review; otherwise, the Offender will waive any right to contest the Setoff.
- (2) Except as expressly modified by VIII(g)(1)(A) and VIII(g)(1)(B), the Setoff Rules shall remain in full force and effect.
- (h) Special Rules for Vermont Lottery Setoffs
 - (1) The following Special Rules shall supercede the Setoff Rules set forth above when appropriate in cases when the setoff relates to amounts to be paid to an Offender as lottery winnings of \$500.00 or more:
 - (A) The Restitution Unit shall notify the Offender of the setoff prior to payment to the Victim by sending a Notice of Intent to Setoff Lottery Winnings and give the Offender a period of 20 days from the date of the Notice of Intent to Setoff Lottery Winnings for the Offender to contest the amount that remains unpaid under a Restitution Order by requesting an Administrative Review. An Offender may request an Administrative Review by completing, signing, and filing a Request for Administrative Review with the Restitution Unit within 20 days of the Notice of Intent to Setoff Lottery Winnings.
 - (B) The Notice of Intent to Setoff Lottery Winnings shall inform the Offender that the Offender has 20 days to request a hearing to contest the amount owed by completing, signing, and filing a Request for Administrative Review; otherwise, the Offender will waive any right to contest the Setoff.
 - (2) Except as expressly modified by VIII(h)(1)(A) and VIII(h)(1)(B), the Setoff Rules shall remain in full force and effect.



IX Appeals

- (a) Any person aggrieved by a determination made by the Restitution Unit under these Rules, may challenge the determination only in accordance with Section X - Administrative Review.
- (b) If no procedure is specified, the Restitution Unit Hearing Panel may employ such procedures as the Panel deems prudent to afford aggrieved parties due process rights to which the party may be entitled and to achieve a fair and equitable resolution.



X Administrative Review

- (a) *Administrative Review Rules.* The following rules shall govern the Restitution Unit Administrative Review process.
- (b) *Procedures for Administrative Review.* Any determinations made by the Restitution Unit that are subject to Administrative Review shall be reviewed in accordance with the procedures set forth in these Rules.
- (c) *Determinations Not Subject to Review.* Unless specifically provided for by these Rules, or required by law, determinations made by the Restitution Unit shall not be subject to Administrative Review. Specific exclusions from Administrative Review include, but are not limited to, employment policies and practices, employment disciplinary and termination actions.
- (d) *Request for Administrative Review.* All requests for review of determinations made by the Restitution Unit that are subject to Administrative Review shall be made in writing within 30 days of the date of the determination challenged.
- (e) *Requirements for Request for Administrative Review.* The written Request for Administrative Review must contain the information required by these Rules. If a Request for Administrative Review does not comply with these Rules, the Restitution Unit Hearing Panel may dismiss the Request for Administrative Review, enter the party's default, or provide an extension of time for amendment of the Request for Administrative Review.
- (1) A Request for Administrative Review must:
- (A) Be received by the Restitution Unit before the deadline to contest a determination by the Restitution Unit has passed,
 - (B) Reasonably identify the determination that is being challenged,
 - (C) Contain the name of the person or persons whom are contesting the determination,
 - (D) Contain a concise statement describing the objection to the determination,
 - (E) Include any documentary evidence supporting the Request for Administrative Review,
 - (F) Contain a statement of the relief requested, and
 - (G) Be signed by the person or persons contesting the determination.
- (2) Every Request for Administrative Review shall be directed to the Unit Director, with a copy provided to the attorney for the Restitution Unit.
- (f) *Management Review.* Prior to convening the Restitution Unit Hearing Panel, the Unit Director, or other individual delegated by the Executive Director or Board of Directors, shall review the Request for Administrative Review in order to determine if the complaint is based on an accounting



or other record keeping error that may be resolved by correcting Restitution Unit records or certify the Request for Administrative Review for hearing.

- (1) The individual conducting the review shall be an individual who has not been actively involved in the matter.
- (g) *Restitution Unit Hearing Panel.* Administrative Review shall be conducted by a group nominated and appointed by the Board of Directors that shall be organized and directed by a Chairperson that shall be appointed or elected by the Board.
- (h) *Administrative Review Hearings.* If an Offender completes, signs, and timely files a Request for Administrative Review, and the individual appointed to conduct the management review required by these procedures certifies the Request for Administrative Review for hearing, the Restitution Unit Hearing Panel shall conduct an Administrative Hearing.
 - (1) Whenever feasible, Administrative Hearings shall be conducted by telephone.
 - (2) Administrative Hearings shall be conducted in Waterbury, Vermont in accordance with the requirements of 3 V.S.A. §§809-813 and these Rules.
 - (3) All parties shall be given an opportunity to respond and present evidence and argument on all issues involved.
 - (4) Unless precluded by law, informal disposition may be made of any contested issue by stipulation, agreed settlement, consent order, or default.
 - (5) The Restitution Unit Hearing Panel shall maintain a record in all contested cases, which shall include:
 - (A) All pleadings, motions, intermediate rulings,
 - (B) All evidence received or considered,
 - (C) A statement of matters officially noticed,
 - (D) Questions and offers of proof, objections, and rulings thereon,
 - (E) Proposed findings and exceptions, and
 - (F) Any decision, opinion, or report.
 - (6) Oral proceedings or any part thereof shall be transcribed upon request of any party subject to other applicable provisions of law, and upon payment by the requesting party of the reasonable costs thereof.
 - (7) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.





- (8) The Chairperson of the Restitution Unit Hearing Panel, or a licensed attorney representing a party before the Restitution Unit Hearing Panel may, whether or not specifically authorized in any other provision of law, compel, by subpoena, the attendance and testimony of witnesses and the production of books and records. Subpoenas issued under this Section shall comply with 3 V.S.A. §809a and 809b.

