

MICHIGAN DEPARTMENT OF CORRECTIONS <b>POLICY DIRECTIVE</b>	EFFECTIVE DATE 11/01/08	NUMBER 04.02.107
	SUBJECT COLLECTION OF VICTIM RESTITUTION/COURT-ORDERED PAYMENTS	
SUPERSEDES 04.02.107 (12/19/03)		AUTHORITY MCL 600.2963; 600.5511; 780.766; 791.203; 791.220h; 791.236; 791.268; Administrative Rule 791.4425
ACA STANDARDS NONE		PAGE 1 OF 5

**POLICY STATEMENT:**

The Department shall collect court-ordered victim restitution, fees, costs, and child support from prisoners and parolees as set forth in this policy.

**RELATED POLICY:**

04.02.105 Prisoner Funds

**POLICY:**

GENERAL INFORMATION

- A. MCL 791.220h requires the Department to remove funds from a prisoner's trust account to pay victim restitution upon receipt of a court order requiring payment of victim restitution by the prisoner. In addition, the Department may remove funds from a prisoner's trust account to pay court-ordered fees/costs, including filing fees and costs in a civil action and fees/costs relating to the prisoner's criminal conviction; state courts also may require the Department to remove funds to pay child support owed by the prisoner. Except when otherwise specifically ordered by the court, this policy and PD 04.02.105 "Prisoner Funds" shall apply when removing funds from a prisoner's trust account for any of these purposes.
- B. Requirements set forth in this policy for the collection of funds to pay victim restitution apply only to the following orders:
  - 1. Orders received by the Department which were issued on or after June 1, 1997. These orders remain effective until satisfied in full.
  - 2. Orders received by the Department which were issued between July 10, 1985 and May 31, 1997. These orders remain effective for two years after the prisoner's discharge on the offense for which restitution was ordered or discharge from parole, unless a shorter period of time is provided for in the order.
- C. Court orders received in a Correctional Facilities Administration (CFA) institution which require a prisoner to pay victim restitution, require the Department to remove funds from a prisoner's trust account to pay court-ordered fees/costs or child support, or assess costs against a prisoner in a civil case shall be referred to the local litigation coordinator for review and forwarding to the Region III Regional Business Office; however, if the court order is the Judgment of Sentence remanding the prisoner to the Department's custody, it shall instead be referred directly to the Record Office Supervisor who shall forward a copy of the order to the Region III Regional Business Office. Similar orders received in Central Office shall be forwarded to the Manager of the Litigation Section in the Office of Legal Affairs, who shall forward to the Region III Regional Business Office, as appropriate.
- D. Any court orders received which require a prisoner in Community Residential Program (CRP) or a parolee to pay victim restitution, except for the Judgment of Sentence remanding the prisoner to the Department's custody, or to pay court-ordered fees/costs in a civil case shall be forwarded to the CRP Record Office, Field Operations Administration (FOA) field agent, or, if on parole to another state, Manager of the Lifer, Litigation, and Violation Section, as appropriate. When a prisoner in CRP paroled,

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the orders shall be forwarded to the supervising FOA field agent or, if paroled to another state, the Manager of the Lifer, Litigation, and Violation Section in the Office of the Parole Board.

### CFA

- E. In conjunction with the Automated Data Systems Section, Office of Research and Planning, in the Planning and Community Development Administration, the Manager of the Finance Division in the Bureau of Fiscal Management, Operations Support Administration, shall be responsible for ensuring that the Trust and Accounting Payroll System (TAPS) is maintained to allow for the accurate collection of funds from CFA prisoners pursuant to this policy and state and federal law. The Region III Administrative Officer shall ensure that a manual record-keeping system also is maintained. This shall include ensuring that a Court Order Collection Record (CRX-173) is maintained for each prisoner from whom funds are being collected pursuant to this policy. The form shall be completed in accordance with instructions issued by the Region III Administrative Officer.
- F. Except if the Judgment of Sentence, original orders shall be retained by the Region III Regional Business Office while the prisoner is incarcerated unless otherwise directed by the Region III Administrative Manager. Whenever there is an outstanding balance to be collected, the Court Order Collection Record and the applicable orders shall transfer as follows:
1. If filing fees or costs remain to be collected for a prisoner who transfers to CRP, copies of the Record and court orders shall be forwarded within ten business days to the CRP Record Office.
  2. If filing fees or costs remain to be collected for a prisoner who paroles, copies of the Record and court orders shall be forwarded within ten business days to the appropriate FOA field agent or, if paroled to another state, the Manager of the Lifer, Litigation, and Violation Section.
  3. If victim restitution remains to be collected for a prisoner who transfers to CRP, copies of the Record and court orders shall be forwarded within ten business days to the CRP Record Office, FOA field agent or, if paroled to another state, the Manager of the Lifer, Litigation, and Violation Section, as appropriate, only if the order requiring payment of restitution is not the Judgment of Sentence remanding the prisoner to the Department's custody.
  4. The Record and court orders shall be retained in the prisoner's Record Office file if the prisoner discharges from the Department's jurisdiction or dies.

### VICTIM RESTITUTION

- G. Upon receipt of a copy of the order which requires the prisoner to pay restitution, the Region III Administrative Officer shall ensure that a debt is created for the amount of victim restitution ordered to be paid so that 50% of funds received by the prisoner in excess of \$50 per month is collected to satisfy the debt in the manner set forth in PD 04.02.105. If there is more than one victim to whom restitution is owed, payments shall be divided equally between or among the victims. If written verification is received directly from the court that payments have been received from other than the Department, the debt shall be reduced accordingly. If an order is received prohibiting the Department from removing funds from the trust account, the debt shall be removed only after notifying the court of the statute requiring the Department to remove funds from the trust account and confirmation is received that it is the court's intent to order the Department not to comply with that statute. Whenever a debt is removed, it shall be noted on the Court Order Collection Record.
- H. Funds collected pursuant to Paragraph G shall be sent to the victim in care of the appropriate court whenever the amount collected exceeds \$100. Funds of \$100 or less shall be sent only when the full amount owed has been collected or the prisoner paroles, transfers to CRP or the Special Alternative Incarceration Program (SAI), discharges, or dies. An explanation of the circumstances under which the funds are being sent to the court shall be included with the funds.

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## FEES AND COSTS

### Filing Fees

- I. A CFA prisoner filing a civil action who claims s/he is indigent and therefore cannot pay the required filing fee is required by federal and state law to provide the court with a certified copy of his/her trust account history. The history must identify the prisoner's current balance in the trust account and deposits to and withdrawals from the trust account for either 12 months if in state court or six months if in federal court. Whenever a prisoner requests a history of his/her trust account for litigation, the prisoner also shall be provided a Certificate of Prisoner Account Activity (CSJ-277) unless another form is required by the court. The trust account history and the Certificate shall be sent to the prisoner within five business days after receipt by the institution's business office of a request, provided it contains the information required to prepare the history and Certificate. The prisoner shall not be charged for providing this documentation. The prisoner must identify the court and name of the case, and any additional verification requested, before the trust account history and Certificate are provided.
- J. The court will determine the amount of filing fees that the prisoner will be required to pay at the time of filing based on information contained in the Certificate of Prisoner Account Activity and the trust account history. In state court, the prisoner must pay the filing fee in the amount determined by the court within 21 calendar days or the civil action will not be accepted for filing. In federal court, the Department may be required to remove funds from the prisoner's trust account to pay the fee. If a state or federal court determines that less than the entire filing fee must be paid at the time of filing, the court may order the Department to remove funds from the prisoner's trust account to pay the outstanding balance owed.
- K. If a prisoner completes a disbursement to have funds removed from his/her trust account to pay court filing fees and clearly indicates that on the disbursement, the disbursement shall be processed in accordance with OP CFA 05.03.118 "Processing of Prisoner Legal Mail and Court Filing Fees", provided that the prisoner has sufficient funds to pay the fee. Funds shall not be loaned for this purpose.

### All Court-Ordered Payments of Fees/Costs or Child Support

- L. Upon receipt of a court order which requires the Department to remove funds from a prisoner's trust account to pay court-ordered civil or criminal fees/costs or child support, or receipt of a court order assessing costs against a prisoner in a civil case, the Region III Administrative Officer shall ensure that a debt is created for the amount required to be paid so that the funds are removed from the trust account in accordance with this policy and PD 04.02.105, unless otherwise specifically directed by the court as to filing fees/costs in a civil action. If there is more than one order, the orders shall be paid in chronological order based on the date each order was received. Whenever the court orders the Department to remove funds for payment of filing fees/costs in a civil action by a specific date and sufficient funds have not been collected by that date, the Region III Administrative Officer or designee shall notify the court of the amount collected and that the Department will continue to collect funds pursuant to the order until notified to do otherwise by the court. If written verification is received directly from the court that payments have been received from other than the Department, the debt shall be reduced accordingly. The debt shall be removed if the court notifies the Department that funds should no longer be collected.
- M. Once the funds have been paid in full or when the prisoner transfers to CRP or SAI, paroles, discharges from the jurisdiction of the Department, or dies, the funds collected shall be sent to the court that issued the order explaining the circumstances under which the funds are being sent. If the prisoner transfers to another CFA institution and the total amount ordered to be removed has not been collected, collection shall continue until the total amount owed is collected.

### FOA

- N. The FOA Deputy Director shall establish a minimum amount or percentage prisoners in CRP shall be required to pay toward court-ordered victim restitution and civil filing fees/costs and how those payments shall be collected.

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- O. The FOA Deputy Director shall ensure that a record-keeping system is maintained for each FOA prisoner and parolee required to pay court-ordered victim restitution or civil filing fees/costs pursuant to this policy.
- P. Whenever a prisoner in CRP or on parole who has an outstanding balance to pay court-ordered victim restitution or civil filing fees/costs is reclassified to a CFA institution, copies of any orders received while in CRP or on parole with a balance owed and a statement of the balance owed on all court-ordered restitution and filing fees or costs shall be forwarded to the CFA Region III Regional Business Office within ten business days.

#### PAROLE

- Q. Pursuant to State law, the Parole Board shall require as a special condition of parole that a parolee who owes court-ordered victim restitution or civil filing fees/costs make payments toward the restitution and fees/costs owed while on parole. Whenever an FOA field agent or the Manager of the Lifer, Litigation, and Violation Section becomes aware that a parolee under his/her supervision or on parole to another state, as appropriate, has an unpaid balance, s/he shall verify with the court that issued the order the amount then owed by the parolee. Once verified, the FOA field agent or Manager of the Lifer, Litigation, and Violation Section shall notify the Parole Board that a special condition of parole needs to be added to require the parolee to make the required payments while on parole.
- R. Whenever a parolee is ordered to pay court-ordered victim restitution as a special condition of parole, the supervising field agent shall review the case at least every six months to ensure restitution is being paid as ordered. The final review shall be conducted not less than 60 calendar days prior to the scheduled parole discharge date. If it is determined that restitution was not being paid as ordered, the agent shall notify the Parole Board in writing of the amount not paid and any reason for the non-payment that is known by the agent. The Parole Board shall provide this information to the sentencing court, the prosecuting attorney and the victim unless the parole period is extended.
- S. When submitting a report pursuant to Paragraph R for a parolee not scheduled to discharge on his/her maximum sentence, the field agent also shall provide the Parole Board with specific information on the parolee's employment status, earning ability, financial resources, the wilfulness of the parolee's failure to pay and any other special circumstances that may have a bearing on the parolee's ability to pay. Absent compelling reasons to the contrary, the field agent shall recommend to the Parole Board that it extend the parole period whenever a parolee has wilfully failed to pay court-ordered restitution.
- T. The Parole Board may extend the parole period of a parolee who wilfully fails to pay court-ordered victim restitution and/or civil filing fees/costs owed pursuant to a special condition of parole. The Parole Board may revoke the parole of a parolee who has the resources to pay the restitution owed pursuant to a special condition of parole and has not made a good faith effort to do so. In determining whether to revoke parole for non-payment of restitution, the Parole Board shall consider the information provided by the field agent pursuant to Paragraphs R and S and any other relevant information in making this determination.

#### PROCEEDS FROM JUDGMENTS OR SETTLEMENTS

- U. MCL 791.220h and MCL 600.5511 require that all proceeds from a judgment or settlement in a lawsuit by or on behalf of a prisoner or parolee against the Department or its employees be used to pay various debts of the prisoner or parolee, including court-ordered victim restitution, fees, and costs. Prior to authorizing the payment of a judgment or settlement to any prisoner or parolee in such a lawsuit, the Manager of the Litigation Section of the Office of Legal Affairs or designee shall determine whether the Department has received an order from a court requiring the payment of restitution, fees, or costs by the prisoner or parolee. If an order has been received, the Manager of the Litigation Section shall ensure that the appropriate court is contacted to determine the balance owed prior to sending the funds to the court. If there is more than one victim to whom restitution is owed, payments shall be divided equally between or among the victims. If there is more than one order requiring payment of fees

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or costs, the orders shall be paid in chronological order based on the date each order was received in the appropriate business office. The Manager of the Litigation Section shall ensure that the appropriate business office or, if the prisoner is in CRP or is on parole, Bureau of Fiscal Management staff are notified of the amount sent to the court so that Department records are adjusted accordingly.

#### PROCEDURE

- V. Wardens and the FOA Deputy Directors shall ensure that operating procedures are developed as necessary to implement requirements set forth in this policy directive; this shall be completed within 60 calendar days after the effective date of the policy directive. This requirement includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed. Facility procedures shall not conflict with procedures issued by the Director.

#### AUDIT ELEMENTS

- W. A Primary Audit Elements List has been developed and will be provided to the Administrator of the Office of Legal Affairs, Wardens, Region III Regional Prison Administrator, and FOA Regional Administrators to assist with self audit of this policy, pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

APPROVED: PLC 10/07/08