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October 30, 2017

The Honorable Robert B. Bell, Chairman
Virginia State Crime Commission
Patrick Henry Building
1111 East Broad Street
Suite B036
Richmond, Virginia 23219

Re: Report on the Recommendations for the Enhancement of the
Collection of Restitution

Dear Chairman Bell:

By letter dated January 26, 2017, you advised me that the Crime Commission had endorsed a recommendation that the Office of the Executive Secretary (OES) convene representatives from the Clerks' Offices, Department of Criminal Justice Services, Department of Corrections, Department of Motor Vehicles, Department of Taxation, Virginia Association of Commonwealth's Attorneys, Virginia Indigent Defense Commission, the Virginia Victim Assistance Network and any other entities as appropriate to develop recommendations for enhancing the collection of restitution and to report such recommendations to you as Chair of the Crime Commission by November 1, 2017.

The Office of the Executive Secretary convened a Work Group with judges, clerks and these stakeholders to discuss and review various issues associated with the collection of restitution. Though the primary purpose of the Work Group was to explore and develop recommendations for enhancing the collection of restitution, the Crime Commission had also endorsed a recommendation that the OES develop best practice guidelines for managing the restitution process. Accordingly, the Work Group presented an opportunity for the OES to discuss and coordinate with these stakeholders the development of the *Best Practices for the Collection of Restitution* for the court system.

Please find enclosed the report of the Work Group's recommendations for the enhancement of the collection of restitution. In addition, I am also enclosing for your information, a copy of the *Best Practices for the Collection of Restitution* for the courts developed by the OES.

Letter to The Honorable Robert B. Bell
October 30, 2017
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The OES will provide the report and the *Best Practices for the Collection of Restitution* to all judges and clerks of the circuit, general district and the juvenile and domestic relations district courts. Discussion of the guidelines also will be incorporated into the regular educational opportunities provided to judges and clerks, as appropriate. Although the best practice guidelines were not complete at the time of the annual judicial conferences, a presentation on the new restitution legislation and issues regarding restitution was included at both judicial conferences.

Lastly, the amount of restitution owed is currently included in the total amount owed set forth on the payment notice generated by the clerks. Should the OES determine in the future that other changes to the Financial Accounting System (FAS) would assist in the management of restitution, those changes would be made accordingly.

If you have any questions regarding the report, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'K R Hade', written in a cursive style.

Karl R. Hade

KRH:jrp
Enclosures

cc: Kristin Howard, Executive Director, Virginia State Crime Commission

**Report to the Virginia State Crime Commission
on the
RECOMMENDATIONS FOR THE ENHANCEMENT OF THE
COLLECTION OF RESTITUTION**

**Office of the Executive Secretary
Supreme Court of Virginia
October 2017**

RECOMMENDATIONS FOR THE ENHANCEMENT OF THE COLLECTION OF RESTITUTION

**Office of the Executive Secretary, Supreme Court of Virginia
October 2017**

I. INTRODUCTION AND BACKGROUND

The Virginia State Crime Commission (VSCC) conducted a study on restitution in 2016, and as a result, the members endorsed both legislative and administrative recommendations to improve Virginia's restitution process. These recommendations were made in recognition of the need for improved uniformity, efficiency, management, and collection of restitution statewide. Among the administrative recommendations were several that involved action by the Office of the Executive Secretary, and a letter (attached) was sent by Delegate Robert B. Bell, Chair of the VSCC to Karl R. Hade, Executive Secretary of the Supreme Court of Virginia, addressing those recommendations.

One of the recommendations included in the letter was that the Office of the Executive Secretary (OES) should convene stakeholders to "develop recommendations for enhancing the collection of restitution and to report findings and recommendations to the Chair of the Crime Commission by November 1, 2017." A second recommendation was that the Office of the Executive Secretary, in coordination with other stakeholders involved in the restitution process, should "develop best practices for managing the restitution process."

A Work Group was convened to accomplish the above tasks. The objectives of the Work Group were to

1. Develop best practice guidelines for managing restitution to improve uniformity, efficiency, management, and collection of restitution statewide; and
2. Develop recommendations to enhance the collection of restitution among stakeholders.

This report addresses the second of these two objectives in accordance with the letter from Delegate Bell as Chair of the VSCC. The best practice guidelines, which are focused on the court system, will be shared with the VSCC in a separate document.

II. WORK GROUP MEMBERS

The letter from the VSCC specified various entities to participate in the development of recommendations to enhance the collection of restitution. Included were representatives from "the Clerks' Offices, Department of Criminal Justice Services, Department of Corrections, Department of Motor Vehicles, Department of Taxation, Virginia Association of Commonwealth's Attorneys, Virginia Indigent Defense Commission, and the Virginia Victim Assistance Network." In accordance with this request, the following Work Group members were assembled:

- The Hon. Jack S. Hurley Jr., Judge, Tazewell Circuit Court, Work Group Chair
- Ms. Anne Barker, Virginia Department of Corrections
- Ms. Robin Bostic, Virginia Victim Assistance Network
- The Hon. Francis W. Burkart III, Judge, Roanoke City General District Court
- Ms. Amy K. Burnham, Clerk, Arlington Juvenile and Domestic Relations District Court
- The Hon. Richard B. Campbell, Judge, Richmond Juvenile & Domestic Relations District Court
- Dr. Tama Celi, Virginia Department of Corrections
- Ms. Cathy Day, Virginia Criminal Injuries Compensation Fund
- Ms. Millicent Ford, Virginia Department of Motor Vehicles
- Ms. Paula Harpster, Virginia Department of Criminal Justice Services
- The Hon. Sarona S. Irvin, Clerk, Shenandoah Circuit Court, Virginia Court Clerks' Association
 - The Hon. John T. Frey, Clerk, Fairfax Circuit Court, Virginia Court Clerks' Association¹
- Ms. Kathy Lohr, Virginia Department of Taxation
- Ms. Wilnet Miller, Virginia Department of Taxation
- The Hon. Eric L. Olsen, Virginia Association of Commonwealth's Attorneys
 - Ms. Amy Casey, Esq., Assistant Commonwealth's Attorney, Stafford County²
 - Ms. Marilyn Dufrat, Stafford County Victim/Witness Assistance Program
- Ms. Ashley Shapiro, Esq., Virginia Indigent Defense Commission
- Ms. Mindy Stell, Virginia Victim Assistance Network
- Ms. Amanda Nicole Taylor, Clerk, Page General District Court
- Mr. Antonio Terry, Virginia Department of Taxation

Guests: Colin L. Drabert, Esq., Virginia State Crime Commission
 David A. Stock, Esq., Virginia State Crime Commission

III. WORK GROUP MEETINGS

The Work Group held three four-hour meetings between June and September of 2017, during which members outlined potential best practices, identified problems currently faced in managing restitution, and suggested potential changes that could enhance the collection process.

At the first meeting of the Work Group, Mr. Colin Drabert, Senior Staff Attorney with the VSCC, provided an overview of the VSCC's study of restitution in 2016, including their findings and recommendations. Mr. Drabert explained that with restitution the focus was on four

¹ Mr. Frey attended one of the meetings on behalf of Ms. Irvin due to a conflict in which Ms. Irvin could not attend a meeting.

² Both Ms. Casey and Ms. Dufrat attended the first two meetings on behalf of Mr. Olsen who was unable to attend. Mr. Olsen attended the last meeting on September 19, 2017.

areas: uniformity of processes, collection of restitution, monitoring of compliance and disbursement.

In addition to understanding the background of the VSCC's restitution study and its recommendation that OES further study the topic, it was important for Work Group participants to understand the recent changes to Virginia's statutes related to restitution. OES staff presented a summary of these changes at the Work Group's first meeting. Particular attention was paid to recent legislative changes from the 2017 Session of the General Assembly, specifically House Bill 1855/Senate Bill 1284 and House Bill 2338.

The primary function of the Work Group was to explore and develop recommendations for enhancing the collection of restitution; however, it also presented an opportunity for OES to coordinate with other stakeholders involved in the restitution process to discuss possible best practices guidelines for the court system for managing the restitution process. As such, for purposes of the first meeting, the Work Group members were divided into two subcommittees, the Best Practice Guidelines Subcommittee and the Enhancements Subcommittee. For the second and third meetings, the Work Group met as a whole to discuss further ideas raised in the subcommittee meetings.

IV. DISCUSSION AND RECOMMENDATIONS

A. Itemization of Restitution and Other Issues Related to the Criminal Injuries Compensation Fund

The Criminal Injuries Compensation Fund (CICF) raised various issues for the Work Group's consideration. As explained by the CICF staff, one issue is that it is difficult for them to know what expenses or costs are being compensated by the court-ordered restitution, unless those expenses are itemized in the order. By law, the Fund may only pay for certain expenses of the victim. Va. Code § 19.2-368.11:1. Without the restitution being itemized, it is time-consuming, and sometimes impossible, for the CICF staff to make a determination as to whether the CICF is entitled to any of the restitution ordered to be paid to the victim, if the CICF has already made payments to or on behalf of the victim.

Additional issues raised by the CICF regarding the CICF's involvement in the restitution process were also discussed by the Work Group.

RECOMMENDATION 1:

A standardized, optional worksheet that itemizes and classifies the components of the total restitution ordered to be paid to each victim should be made available to the circuit courts.

- The worksheet would itemize the expenses and the amounts allocated for each type of injury each victim has suffered (e.g. \$1,500 allocation for medical bills, \$2,000 for property damage, etc.).
 - The worksheet would assist the CICF in determining whether the entire amount of restitution ordered, or only a portion, should be paid to the CICF instead of to the victim as a result of the CICF having made payments to or on behalf of the victim.
 - The worksheet would also assist the clerk when a letter is received from the CICF in determining whether any of the ordered restitution should be provided to the CICF instead of to the victim in accordance with Virginia Code § 19.2-305.1(I).
- The worksheet would be helpful primarily in more complex cases in circuit court to clarify the nature of the restitution ordered where multiple victims exist and/or where multiple types of injuries and costs are awarded to one victim.
- The worksheet could be completed by the Commonwealth's Attorney in appropriate cases if the Commonwealth's Attorney is involved in a particular circuit court case.³ The Work Group concluded that the clerk should not complete the worksheet as it is not an appropriate role for the clerk given the nature of the worksheet.

RECOMMENDATION 2:

There should be improved communication between the Commonwealth's Attorney's office/local Victim Witness program and the CICF to determine prior to sentencing what expenses the victim has incurred that the CICF has already paid or anticipates paying so that the Commonwealth's Attorney has more complete information on the appropriate restitution to request at sentencing on behalf of the victim.

³ Mr. Olsen, as a representative of the Virginia Association of Commonwealth's Attorneys expressed strong opposition to Recommendation 1. He expressed concern that "an 'optional' worksheet would quickly become a 'mandatory' worksheet and that they do not have the resources, the time or the ability to meet this obligation." Rather than submitting the total amount of restitution owed in a case, Mr. Olsen asserts that "this recommendation would require the CA or V/W to submit an itemized list of every expense that makes up the total amount of restitution so that CICF can subsequently analyze each victim's restitution amount." Mindy Stell and Robin Bostic, on behalf of the Virginia Victim Assistance Network, expressed similar concerns "that the form will become mandatory, not optional. Providing the service of completing an additional form would take away from services that are required by the Crime Victims' Bill of Rights as provided for in the Code of Virginia. Additionally, [they] have a very limited number of staff that are not involved in all criminal matters."

RECOMMENDATION 3:

Additional training for clerks is recommended with respect to adding the CICF as a recipient for restitution if the CICF advises the court in writing that the CICF has made payments to or on behalf of the victim that were included in the restitution order, and as such, is requesting to be paid all or a portion of the restitution received in accordance with Virginia Code § 19.2-305.1(I).

B. Use of Restitution Reports

Effective July 1, 2017, pursuant to Virginia Code § 19.2-349, every circuit court and district court clerk is required to submit a quarterly report to the Commonwealth's Attorney and any probation office serving the county or city with a list of all defendants who have an outstanding restitution balance. The report includes delinquent and non-delinquent accounts and is to include the original restitution amount ordered, the amount of restitution unpaid and the last date of payment. A second quarterly report is also required to be provided that includes a list of all delinquent accounts in which more than 90 days have passed since an account was sent to collection and no payments towards fines, costs, forfeitures, penalties or restitution have been made.

RECOMMENDATION 4:

Commonwealth's Attorneys should be encouraged to incorporate the restitution reports into their regular use to assist them in their efforts to enforce the restitution orders and to collect restitution.

- In using the restitution report that includes all defendants who have an outstanding restitution balance, both delinquent and non-delinquent accounts, the Commonwealth's Attorney should be mindful that when restitution is ordered to be paid jointly and severally to a victim by co-defendants, the report will attribute any payment by one co-defendant to all co-defendants. This occurs because the payment by one co-defendant acts to decrease the sum total owed by each co-defendant in order to give full effect to the nature of a joint and several restitution order.
- In deciding whether to request a show cause to be issued for failure to pay restitution, a Commonwealth's Attorney might consider checking Vinelink to determine if the defendant is currently incarcerated, which may explain why restitution payments have not been made.

RECOMMENDATION 5:

Jurisdictions should consider establishing policies regarding the suggested use of the restitution reports and the setting of threshold amounts as a guide for purposes of initiating show cause or probation violation proceedings for failure to pay restitution.

- The rationale behind setting a threshold amount as a guide for the issuance of a show cause summons or a probation violation is that priority should be given to restitution cases in which the defendant has made no payments or there is still a significant amount of restitution outstanding. Cases where the restitution amount ordered is minimal, or where payments have been made and the outstanding balance is a small amount are still important to enforce; however, resources to enforce restitution orders are limited.
- Any threshold amount should be established by the court locally according to the community's standards and expectations.
- Even with a threshold amount as a guide to when enforcement proceedings might be initiated, should a victim who is owed outstanding restitution below the threshold amount wish to request enforcement, the threshold would not be a bar to initiation of enforcement proceedings.
- A meeting of the Community Criminal Justice Board (CCJB) might provide a convenient forum for reviewing some of these issues.

C. Improving Restitution Collections

1. Restitution to be paid to clerk of the court

Virginia Code § 19.2-305.1(D) requires the court order to specify that restitution be paid to the clerk, specifically, “[t]he order shall specify that sums paid under such order shall be paid to the clerk, who shall disburse such sums as the court may, by order, direct.” In some jurisdictions, the probation officers are collecting it rather than the clerk. This was discussed by the Work Group as problematic because probation officers are not bonded to accept and disburse restitution payments. Some courts, where probation officers previously handled restitution, are transitioning to collection by the clerk's office. The practice of probation officers accepting restitution payments probably developed as a convenience to defendants. The defendant gave the restitution payment to the probation officer when the defendant met with the probation officer instead of requiring the defendant to go to the court to make the payment. This practice, while understandable, is contrary to statute.

RECOMMENDATION 6:

Having envelopes or printed labels with the clerk's office address on them, available at the probation office, would be particularly helpful for localities that are transitioning from probation offices accepting restitution payments to clerks doing so. Having pre-printed envelopes, or labels that can be affixed to envelopes, might assist defendants who lack transportation to the clerk's office, internet access, or a credit card with which to make an online payment.

- It was acknowledged that even with pre-printed envelopes or labels to provide to defendants that the sending of cash restitution payments should still be discouraged.

2. Review Hearings

Defendants who are ordered to pay restitution may benefit from additional contact with the court, particularly those who are not on probation, to reinforce the importance of paying restitution and to increase their accountability to the court. Scheduling violation hearings, appointing defense counsel where appropriate, notifying the Commonwealth's Attorney and summoning a defendant who has violated the set restitution terms is typically more inefficient and time consuming than having a pre-scheduled review hearing to determine whether restitution has been paid by the required due date or whether the defendant is making the required payments in accordance with a payment plan. At the review hearing, a court may choose to issue a show cause summons, for example, if the court is not satisfied with the reason given for the unpaid restitution. Having a scheduled review hearing to determine the status of restitution payment might be more effective in the long term in encouraging a defendant to pay the restitution ordered because of the increased accountability directly to the court.

Currently, defendants are able to inform their probation officer, if one is assigned, that a situation has arisen that affects their ability to pay restitution. Defendants who are not assigned to a probation officer often have no scheduled interactions with the court where they can inform a judge of a substantial change in circumstances that affects their ability to pay. The defendant may be able to provide a reasonable explanation at the review hearing as to why the restitution has not been paid by the required due date or why the required restitution payments have not been made. Rather than initiating violation proceedings, in those situations, it might be appropriate to continue the review hearing to another date to check the status of payment. According to courts that do schedule review hearings, this is often an

effective tool in encouraging the defendant to pay the ordered restitution without the necessity of initiating violation proceedings.

RECOMMENDATION 7:

Courts should be encouraged at a minimum to hold restitution review hearings at or soon after the due date, where judges can be updated on a defendant's progress in paying the ordered restitution.

- Use of restitution review hearings should be optional for each court. A determination of whether to establish such hearings should be made locally based on need and available resources.
- The review hearings may be scheduled as a separate docket.
- A defendant may be advised by the court at sentencing, when the review hearing is scheduled, that attendance is not required at the review hearing if the restitution obligation has been satisfied, or if the defendant is in compliance with the restitution order or the payment plan entered into with the clerk.

3. Accepting Credit or Debit Payments

Pursuant to Virginia Code § 19.2-353.3, a district court is required to accept personal checks and credit or debit cards for the payment of fines, costs and restitution ordered in criminal or traffic cases in district court; however, a circuit court clerk is only required to accept personal checks for the payment of fines, costs and restitution, and has the discretion to decide whether or not to accept credit or debit cards. For all general district court criminal and traffic cases, payments can be made online. As of September 14, 2017, online payments can be made for circuit court cases in 28 jurisdictions.

RECOMMENDATION 8:

Circuit Court Clerks who currently do not accept credit or debit cards for the payment of fines, costs and restitution should be encouraged to do so. In addition, accepting online payments should also be encouraged.

4. Docketing of Restitution Orders

There are additional methods of collecting restitution that can be used if the restitution order is civilly docketed in circuit court. For instance, the defendant's

paychecks can be garnished. The Work Group discussed the various issues and hurdles for having a seamless process for the docketing and releasing of restitution orders, and also the reasons why ordering the docketing of a restitution order may not be beneficial.

RECOMMENDATION 9:

Courts ordering a defendant to pay restitution could consider ordering that the restitution order be docketed civilly as a judgment in circuit court. Pursuant to Virginia Code § 19.2-305.2, an order of restitution may be docketed as a civil judgment when ordered by the court or upon written request of the victim.

- Docketing a restitution order will not limit a court's ability to pursue criminal enforcement mechanisms. This was clarified by legislation enacted by the General Assembly in 2017, and the relevant provision can be found in Virginia Code § 19.2-305.2.
- Localities in which restitution orders entered by a district court are sometimes ordered to be docketed civilly in the circuit court may need to establish specific procedures for that jurisdiction by which this information is communicated by the district court to the circuit court.
- Clerks have received training on the initial docketing process. However, where the restitution order was issued by a district court and the district court is collecting the restitution, processes may need to be developed for communicating the satisfaction of the restitution order and the subsequent releasing of a docketed judgment in circuit court.
- The process for release of civilly docketed restitution orders is not specifically set forth in the Code of Virginia. As such, it is not clear who is responsible for requesting the release of the judgment in circuit court when a district court orders that a restitution order be docketed and whether that is dependent upon whose motion it was to docket the restitution order as a civil judgment.
- When restitution is ordered by a circuit court, any civilly docketed restitution order should be automatically released if the restitution balance is shown as "0" in the circuit court criminal case.

RECOMMENDATION 10:

Due to some of the challenges discussed regarding docketing restitution orders as civil judgments in circuit court and their subsequent release, it is recommended that OES provide judges and clerks with any training or guidance OES deems appropriate to assist the courts in handling this process.

5. Application of Funds Received through Tax Setoff

Currently, when funds are received through the Virginia Department of Taxation's Set-Off Program for payment of court debt, court cases that were received first are paid first. There has been discussion about the new statutory priority of restitution over fines and costs and the effect of that change on how the Department of Taxation handles these cases. The Department of Taxation will make the necessary changes to allocate the funds it receives for court debt first to restitution, regardless of the age of the case. Changes will be made by OES to facilitate the transfer of case information to Taxation that will enable it to implement these changes.

D. Recommendations Requiring Legislation

1. Reducing the Amount of Restitution Owed Post-Sentencing

A victim, particularly a relative of the defendant, may request at some point after sentencing that the court reduce the amount of restitution ordered to be paid to the victim by the defendant. This may be problematic when the victim requests a decrease in the amount owed more than 21 days after sentencing, as arguably the amount of restitution will no longer be within the court's jurisdiction; however, there is an argument to the contrary that authority for this does exist.

Another scenario that sometimes occurs is that after sentencing, the CICF negotiates with a health care provider, for example, to reduce or write off in full a medical bill expense for which the defendant was specifically ordered to pay restitution to the victim. As the goal of restitution is to reimburse the victim for some or all of the expenses or damages incurred as a result of the crime committed against the victim, the Work Group had some discussion about what impact, if any, the reduced or written off expense should have on the amount of restitution ordered to be paid by the defendant to the victim since the incurred expense has been reduced or eliminated.

RECOMMENDATION 11 (Legislative):

The Code of Virginia could be amended to clarify that the court has the authority to reduce the amount of restitution owed by the defendant, or the restitution amount could be marked as satisfied, when such action is requested by the victim during any period in which all or part of the restitution is outstanding. In addition, the Code of Virginia could be revised to allow a court to amend the restitution amount when the court has been informed by the CICF that the expense owed has been negotiated to a reduced amount or the expense has been written off in full. Such an amendment would be an exception to Supreme Court Rule 1:1.

- Any amendment to the Code of Virginia should allow for the reduction or satisfaction of the restitution amount to be done with or without a court hearing.
- Any request by the victim to reduce or mark as fully satisfied any restitution ordered to be paid to the victim should be in writing and include the victim's signature. In addition, any notice provided by the CICF regarding a reduced or written off expense should also be in writing.
- An order documenting the reduction in or satisfaction of the restitution ordered to be paid by the defendant should be entered by the judge whether or not a hearing is held.
- When the defendant has paid an amount towards restitution that is above the lesser amount that is thereafter negotiated, any amount of overpayment should be credited towards the defendant's fines and court costs.

2. Victim Contact Information

With respect to the issue of victims not advising the court of a change in address, the Work Group discussed the idea of including the victim's email address and cell phone numbers on the DC-317, Order for Restitution, so that the clerk's office would have additional information to contact the victim if a restitution check is returned to the clerk's office as undeliverable. The Work Group believed that email addresses and cell phone numbers are more likely to remain unchanged even when a victim moves. The thought initially was that these items could be included on the restitution form without a statutory amendment; however, after further discussion, the Work Group concluded that an amendment to the Code of Virginia might be appropriate in order to ensure that the victim's email address and cell phone number

are included in the information that is protected from disclosure if so requested by the victim.

RECOMMENDATION 12 (Legislative):

The Code of Virginia could be amended to set forth that a victim's email address and cell phone number are not to be disclosed if the victim requests confidentiality of their personal information in accordance with statute. Statutes in the Crime Victim and Witness Rights Act and other statutes that address the confidentiality of victims' personal information, such as the protective order statutes, would need to be amended.

3. **Addressing Uncollectible Restitution**

Once restitution is ordered, the records of the restitution obligation remain in the court's financial system until it is paid in full or the court receives satisfactory evidence that the defendant is deceased. Restitution is not deleted from the court's financial system as "bad debt" or after a certain period of time because there is no statutory authority to do so. As a result, even with the 2017 legislation requiring that restitution be paid first and any additional steps taken to enhance the collection of restitution, the sum total of outstanding restitution will continue to grow. Because of these various issues, the total restitution outstanding as reflected in the court's financial systems does not currently provide nor will it be able to provide in the future an accurate picture of outstanding collectible restitution. As is the case with a business that writes off uncollectible debt, allowing courts to write off restitution as uncollectible after a certain period of time would allow for a more reasonable assessment of the amount of outstanding restitution.

Recommendation 13 (Legislative):

It is recommended that the Code of Virginia be revised to provide that if restitution ordered by a district court remains outstanding 20 years after it was ordered, then that restitution can be written off as uncollectible and deleted from the court's financial system, except for good cause shown. Furthermore, if restitution ordered by a circuit court remains unpaid 40 years after it was ordered, that restitution could likewise be deleted.

- A certain portion of the current outstanding restitution was ordered to be paid by defendants who are now deceased and may have been for years; however, the court was not advised by anyone that the defendant had died and as such, this outstanding restitution has not been deleted from the court's financial systems. Allowing restitution that has remained unpaid for either the 20-year period or the 40-year period as detailed above to be

written off would include many cases in which the defendant is deceased and the restitution would be written off but for the fact that the court simply has no knowledge that the defendant is deceased.

- Any outstanding restitution written off after 20 years in district court or 40 years in circuit court that was docketed as a civil judgment in circuit court prior to it being written off could continue to be enforced as a civil judgment in circuit court within the current statutory-prescribed procedures and time periods.

IV. IDEAS DISCUSSED BUT NOT SUPPORTED

The following proposals were considered but not supported by the Work Group:

- **Access to juvenile case files by the CICF**

The workgroup discussed a possible statutory change that would allow the CICF to access juvenile court records for the purpose of obtaining detailed restitution information. After discussion, the Work Group ultimately decided not to move forward with this proposal because there were more costs than benefits, and the CICF was in agreement with withdrawing it from consideration.

- **Wage Withholding**

One proposal for improving restitution collection that was raised was to allow wage withholding for defendants who owe restitution. After discussion, it was determined that clerks' offices simply do not have the necessary staff and funding to make this a viable option. Colin Drabert advised the Work Group that the Division of Child Support Enforcement (DCSE) currently does wage withholding for child support, but noted that DCSE receives a substantial amount of federal funding to support this practice. He also indicated that the Virginia State Crime Commission considered this idea as part of the restitution study, but concluded that it was not feasible.

- **Asset Forfeiture**

There was discussion about implementing asset forfeiture of items of personal property like cell phones, jewelry, etc. to satisfy restitution obligations. However, it was acknowledged that asset forfeiture is already being done in some criminal cases for reasons unrelated to restitution collection and there is likely to be resistance from the current recipients of those funds. There was also concern that personal asset forfeiture should not include items that would prevent defendants from working or providing for their family. The law currently protects certain "necessary" assets from forfeiture.

- **Restitution Website**

The idea of a restitution website that would identify individuals who are delinquent in their payment of restitution was proposed to the Work Group. There were concerns about the privacy aspects of this website, and that it could have a negative impact on restitution collection as the individuals could lose their jobs or be prejudiced when seeking employment. It was also unclear who would be responsible for creating and updating this website and its attendant costs.

- **Limitations of Courts' Financial Systems**

The workgroup discussed the challenges that arise when managing defendants' payments when there are different due dates for restitution and for fines and costs. There are similar challenges when managing restitution accounts for co-defendants in different courts or in different jurisdictions when there is joint and several liability. While the courts' financial systems, including the new Financial Accounting System (FAS), are essential in managing the courts' financial records; the current systems cannot be easily altered to allow for multiple due dates or to link accounts between courts and between jurisdictions. These changes would require a re-design of these systems, which is not feasible at this time due to a lack of available resources.

- **Community Service**

The workgroup contemplated recommending a statutory change to allow restitution to be satisfied through the performance of community service that would be considered "paid" at an hourly rate in the same way that fines and costs can currently be satisfied. However, as judges currently have the statutory authority to order restitution and/or community service pursuant to Virginia Code § 19.2-305.1, the Work Group concluded that in cases where the victim was requesting that community service be ordered in lieu of restitution, that it was more appropriate to only order community service.

- **Retired Judges**

Initially, the Work Group discussed the use of retired judges to hold restitution review hearings as a solution to docket management concerns. However, this would require review hearings to be consolidated into one docket, which is contrary to the goal of scheduling them on or near the due date for restitution, which varies in each case. The Work Group concluded that this idea also was not feasible because of the fiscal impact and because of the difficulty in obtaining available retired judges to handle these review hearings.

Best Practices for the Collection of Restitution

In 2016, the Virginia State Crime Commission completed an extensive study of the restitution process in Virginia. The study findings revealed a need for “improved uniformity, efficiency, management and collection of restitution statewide.”¹

As a result of the study findings, the Crime Commission endorsed several legislative and non-legislative recommendations for improving the restitution process in Virginia. Among the non-legislative recommendations was a recommendation that the Office of the Executive Secretary of the Supreme Court of Virginia, in coordination with other stakeholders involved in the restitution process, develop best practice guidelines for handling the restitution process. The Office of the Executive Secretary convened a work group with judges, clerks and relevant stakeholders to discuss and review various issues associated with restitution.

The information in this document includes best practices for consideration by the courts, as well as possible practical approaches to some common restitution issues not specifically addressed by statute. It is recognized that some ideas might be more easily implemented in certain courts than in other courts, due to the unique nature of each court and the particular stakeholders involved in the restitution process in each jurisdiction.² Except for those provisions that are statutorily required, the information provided should be viewed as a helpful tool to the courts, with the ultimate goal being a more consistent, improved restitution process throughout Virginia.

I. THE ORDERING OF RESTITUTION

A. Restitution is to be paid to the clerk of the court.

Virginia Code § 19.2-305.1(D) specifically requires that an order entered by the court addressing restitution shall direct that any money paid towards restitution shall be paid to the clerk. “The court shall specify that sums paid under such order *shall be paid to the clerk*, who shall disburse such sums as the court may, by order, direct.” Va. Code § 19.2-305.1 (emphasis added).

The statutory requirement that the court order restitution to be paid to the clerk was passed by the General Assembly in 2002. Prior to 2002, a court had the discretion to decide whether to order the payment of restitution to the clerk. With the 2002 amendment to § 19.2-305.1, that discretion was eliminated.

¹ Letter dated January 26, 2017, from The Honorable Delegate Robert B. Bell, Chairman of the Virginia State Crime Commission, to The Honorable Karl R. Hade, Executive Secretary of the Supreme Court of Virginia.

² In particular, the uniqueness of cases involving juveniles alleged to have committed a delinquent act is recognized. Although this document uses language such as “defendant” and “incarceration,” some of the guidance is still intended to be applicable to juvenile delinquency cases, such as those items related to the processing of restitution by the clerk’s office and the court ordering that restitution be paid to the clerk of the court, among others.

Considerations:

1. If payment of restitution is not ordered to be paid to the clerk, the court's financial systems will not reflect restitution payments made. As a result, any unpaid restitution will not be sent to collection when a defendant's account is delinquent, since the amount of outstanding restitution will not be known to the court. This most likely will result in victims receiving less restitution.
2. Another rationale for ordering the payment of restitution to the clerk is that clerks are bonded to accept and disburse payments, while other entities or persons are not likewise bonded. For example, probation officers are not bonded, thus creating a liability issue in the event that a restitution payment received by a probation officer is not ultimately delivered to the clerk or sent to the victim.
3. Requiring payment of restitution to the clerk ensures the most accurate record of a defendant's restitution payments and the outstanding restitution balance owed, which is to the benefit of both the victim and the defendant.
4. If a defendant is ordered to pay restitution directly to the victim instead of to the clerk, there will be continuing contact between the defendant and the victim, which may not be desirable or appropriate, and which may result in a dispute about actual restitution payments made by the defendant.

B. Determining an appropriate due date for restitution.

If appropriate in a particular case, when determining a due date by when the defendant is to pay the restitution ordered, the victim's right to receive the restitution in a timely manner should be balanced against when the defendant might realistically be able to pay the restitution. Pursuant to Virginia Code § 19.2-305.1(E), the court is required to order the date by when the defendant is required to have paid all of the restitution.

Considerations:

1. Before setting the due date for the payment of restitution in the pending case, it might be helpful to inquire as to whether the defendant has been ordered to pay restitution in any other cases so as to consider the total obligation and set a realistic due date.
2. When a defendant's incarceration release date is unknown because the defendant has multiple convictions or is going to be incarcerated for a lengthy period of time, and the court places the defendant on supervised

probation, consideration might be given to setting the restitution due date as a date just prior to the end of the probation period. If the defendant is placed on indefinite probation, consider setting the restitution due date as a date just prior to the expiration of the maximum sentence that the defendant could have served for the particular conviction.

C. Awarding interest on restitution.

The facts and circumstances in a particular case should be taken into account when deciding whether to order interest on restitution. Pursuant to Virginia Code § 19.2-305.4, the court has discretion to order interest in a particular case. Under that statute, if interest is ordered, interest accrues from the date of the loss or damage, unless the court selects a different date.

Considerations:

1. In determining whether to order interest on restitution in a pending case, it might be helpful to know that some large corporations and insurance companies are reportedly unable or unwilling to accept interest on restitution because they cannot account for it in their financial systems. Because these large corporations sometimes contact the court to advise that they are unable to account for and accept interest payments, it is suggested that a clerk's office keep a list of those corporations who have so advised the court to try to avoid interest being ordered on restitution in the future in cases involving the particular corporation. Such a list could be periodically updated and distributed by the clerk to the judges in that particular jurisdiction.
2. The Criminal Injuries Compensation Fund ("CICF") has indicated that it prefers to not receive interest on its share of any of the restitution ordered to be paid to the victim in accordance with Virginia Code § 19.2-305.1(I).
3. In deciding whether to order interest on restitution in a particular case, it is recommended that consideration be given to the amount of restitution ordered and the length of any period of incarceration the defendant is ordered to serve. Similarly, a defendant's ability to pay and/or the defendant's indigency status might also be given consideration. If a large amount of restitution is ordered, or the defendant will serve a lengthy incarceration, a court might consider not ordering interest on restitution because any payments made may go only towards interest with little or no decrease in the actual restitution principal owed.

4. If there are multiple victims in one case and interest is ordered for one victim, interest will also accrue on the restitution ordered to the other victims. In addition, the date from which interest accrues must be the same for all victims' restitution ordered in one case. These issues should be kept in mind when deciding whether to order interest in cases involving multiple victims.

D. Establishing an appropriate payment plan for restitution.

After establishing the amount of restitution and determining an appropriate due date for payment, if the court chooses to order a specific payment schedule for the payment of restitution, a payment schedule that is both realistic for the defendant and fair to the victim should be sought.

Considerations:

1. If the court orders a specific payment schedule, the payment schedule should be tailored to that particular defendant as opposed to using a uniform payment schedule.
2. Instead of ordering a specific payment schedule just for restitution, in an appropriate case, it might be advisable to order the defendant to pay restitution as part of an approved payment agreement entered with the clerk pursuant to Virginia Code §§ 19.2-354 and -354.1 for the payment of any fines, costs and restitution owed. Should a judge choose to do this, a due date for restitution must still be included on the restitution order.

The advantage to ordering that restitution be paid in accordance with a payment plan that also includes fines and costs is that the defendant then has only one payment plan, and if the plan is followed, the defendant's driver's license will not be suspended for failure to pay.

In the alternative, the disadvantage to ordering a payment schedule specifically for restitution on the restitution order is that if the defendant also enters into a payment plan with the clerk solely for fines and costs, then arguably the defendant would be required to make payments under two separate payment plans. The two plans would most likely contain different periodic amounts, and any payment plan entered into with the clerk for fines and costs cannot override a specific restitution payment schedule set forth by the judge in the restitution order. The defendant might be confused about his obligations and might even think that he is paying in accordance with one payment schedule, while he is in fact not abiding by the second payment schedule. In this scenario with two separate payment schedules, it is highly

likely that when the defendant is actually making payments he is either in violation of the restitution order for failing to pay in accordance with that payment schedule and may be subject to a criminal show cause as a result, or he is not paying in accordance with the payment plan set up with the clerk for fines and costs which will result in his driver's license being suspended.

If the judge orders a specific restitution payment schedule on the restitution order, the clerk should be mindful of the restitution schedule in setting up a payment plan with the defendant for the payment of fines and costs. If appropriate, the clerk might consider giving the fines and costs payment plan the same required periodic payment amount as the restitution payment schedule.

E. Ordering restitution when the amount of restitution is unknown.

Virginia Code § 19.2-305.1 requires that “[a]t the time of sentencing, the court shall determine the amount to be repaid by the defendant and the terms and conditions thereof.” In addition, “[a]t the time of sentencing, the court shall enter the amount of restitution to be repaid by the defendant, the date by which all restitution is to be paid, and the terms and conditions of such repayment on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia.” Va. Code § 19.2-305.1 (emphasis added).

Considerations:

1. If the full amount of restitution is not known at sentencing or the attorney for the Commonwealth is not prepared to present evidence at sentencing as to the amount of restitution, the entire sentencing proceeding should be continued for a reasonable period of time so that the restitution information can be obtained. The sentencing should not be continued for a lengthy period of time, as it is important for there to be finality of judgment for all parties.
2. In cases where a victim's personal injuries are more extensive and require medical treatment over a period of time, it may not be appropriate to continue the sentencing until the full extent of the medical expenses is known. In this scenario, the criminal case is probably not the appropriate forum for addressing full restitution for this particular victim; rather, the victim might instead need to seek redress by filing a civil suit. It might also be helpful to keep in mind that for future medical expenses of the victim that cannot be determined when restitution is ordered at sentencing, the Criminal Injuries Compensation Fund might be able to assist the victim in paying these future medical expenses.

3. If a plea agreement is presented to the judge that specifies restitution is “to be set,” this plea agreement should not be accepted by the judge without discussing with the parties when the restitution will be addressed in court. It is recommended that the determination of restitution should either be made at that hearing by the judge or the entire sentencing should be continued. Pursuant to statute, the judge is required to determine the amount of restitution. This statutory authority to determine restitution cannot be delegated to others, e.g., the clerk or a probation officer. Va. Code § 19.2-305.1.

F. Addressing joint and several liability.

Ordering restitution to be paid jointly and severally by multiple defendants is probably most appropriate and feasible when all the co-defendants are being tried together or their trials are on the same day, or when all the co-defendants are being sentenced on the same day even if they were tried on different days. Ordering restitution jointly and severally in other situations presents some challenges and it is recommended that those challenges be considered when deciding whether to order joint and several liability for restitution.

Considerations:

1. It is recommended that a defendant be ordered to pay restitution jointly and severally only with those co-defendants who have already been convicted or adjudicated delinquent. On the restitution order required to be used by Virginia Code § 19.2-305.1, DC-317, ORDER FOR RESTITUTION, only those co-defendants who have been convicted or adjudicated delinquent should be listed on the form. For other co-defendants where that is not the case, one approach would be to indicate that the defendant is ordered to pay restitution jointly and severally with any co-defendants convicted in the future.
2. Ordering a defendant to pay restitution jointly and severally with a co-defendant being tried in a different court in the same jurisdiction or in a court in a different jurisdiction presents significant challenges from an accounting and tracking perspective. In order to ensure that joint and several liability is appropriately tracked in the court’s case management and financial systems, co-defendants’ cases are “linked” so that a payment made by one co-defendant is reflected by a reduction of the total owed by each co-defendant, which is the very essence of joint and several liability. The systems are only able to link cases that are heard in the same court, thus creating difficulties in record keeping if the cases are heard in different courts or in different jurisdictions and joint and several liability is ordered.

3. When a co-defendant is a juvenile who has been adjudicated delinquent, that juvenile co-defendant should be listed on a defendant's restitution order using only the juvenile's initials and the juvenile's case number. By doing so, confidentiality issues regarding the juvenile will be properly addressed.
4. Where feasible, when co-defendants' cases are tried on different days, it is recommended that the sentencing phase for one of the co-defendants be continued to the day of the other co-defendant's trial so that the issue of restitution can be addressed at the same time with both co-defendants present.
5. It is recommended that joint and several liability for restitution be ordered only when the amount of restitution ordered is the same for each co-defendant.
6. When there are co-defendants, one restitution order should be issued for each defendant as the restitution terms and conditions for each defendant could be different depending upon the individual circumstances of each defendant. Even when the restitution terms and conditions are identical, one order should be issued for each defendant.

G. Ensuring accurate defendant and victim contact information.

Having the correct contact information for the defendant and for the victim on the restitution order form increases the likelihood that the defendant and/or the victim can be contacted or located should there be a need to do so in the future.

Considerations:

1. It is recommended that the judge confirm the defendant's contact information when completing the restitution order, particularly when a defendant will not be monitored by probation. The defendant's address may be incorrect on the warrant or the defendant's address may have changed since the warrant was issued. If the defendant fails to pay restitution as ordered, the likelihood increases that the defendant can be located to be served with a show cause or other process if the defendant's contact information on the restitution order is correct.
2. If the victim is present in the courtroom at the time restitution is ordered, this presents an opportunity for the court to remind the victim that it is important for the victim to keep the court informed about any change in address so that any restitution payments received can be sent to the victim.

H. Difficulties associated with “micro-checks.”

“Micro-checks” can occur when a defendant makes a small payment towards restitution, and this small payment is then subsequently divided among multiple victims, resulting in checks written for minimal amounts. The issue with micro-checks is that it is common for victims, especially large corporations, not to cash these micro-checks.

Considerations:

1. Where appropriate, in ordering restitution, the court might consider prioritizing the victims for payment purposes so that one victim is paid fully before the other, as opposed to having each victim receive a percentage of each payment, thus reducing the likelihood of micro-checks. This might be particularly appropriate to do in a case when one victim is an individual and the other victim is a large corporation, due to the pattern of large corporations not cashing micro-checks. If interest on restitution is ordered, however, it may not be appropriate to prioritize the victims as this may mean, realistically, that only the first victim will ever receive payments because only the interest is being paid.

I. Ordering community service in lieu of ordering restitution.

In certain circumstances, such as when the victim does not request restitution, the court might consider ordering community service instead of ordering restitution. For example, in a case involving the damage of a city’s property, the city as the victim might not request restitution, but indicate to the court that the city prefers that the defendant perform community service for the city instead of paying for the damage. This is currently allowable under the statutes and in this scenario, the court would not enter an order of restitution but simply order community service instead.

II. THE PROCESSING OF RESTITUTION

A. Entering restitution into the court’s Financial Management System (FMS) or Financial Accounting System (FAS).

In documenting the amount of restitution ordered and any payments made towards restitution, the clerk should enter those amounts into the court’s automated financial system and not in a paper ledger book only.

Considerations:

1. Only those restitution amounts entered into the court's automated financial system will be included on the collection report that is sent to the collection agent when a defendant's account is in default.

B. Disbursing funds to the victim.

When restitution payments are received by the clerk's office, it is recommended that if payment is received by check, credit card or money order, the clerk should wait for a period of at least 20 days before disbursing a check to the victim to ensure that the funds are actually available for disbursement. When the clerk receives a payment in cash, it is not necessary to wait 20 days before disbursement to the victim.

C. Addressing "micro-checks."

Micro-checks present an issue because of a clerk's time involved, not only in initially disbursing the restitution checks to the victims, but also in processing the checks when the micro-checks are not cashed by the victim(s) because of their minimal amount. The additional time spent by a clerk processing the checks might also include sending the funds to the Criminal Injuries Compensation Fund pursuant to Virginia Code § 19.2-305.1(H). Not immediately disbursing restitution funds to the victim when the check would be a micro-check might be an option to alleviate the time burden on the clerk in handling those funds, and might also increase the likelihood that the checks would be cashed.

Considerations:

1. A clerk is not required to wait to disburse restitution funds received to avoid the writing of micro-checks. Should a clerk choose to immediately disburse the restitution funds received regardless of the amount of the check, that is an acceptable and appropriate way to handle restitution funds.
2. If a clerk wishes to hold restitution funds received for a particular period of time or until the restitution funds equal a specific amount in order to avoid the disbursement of micro-checks, the clerk should have a written policy or a court order detailing how that will occur. The written policy or court order should include information about the cumulative amount at which the restitution funds will be disbursed or for what time period the funds will be held until disbursement. Should a clerk choose to not immediately disburse restitution funds upon receipt, the funds should be held for no longer than 6 months, regardless of the total amount held and whether or not the disbursements to the victims result in micro-checks.

D. Documenting joint and several liability.

When restitution is ordered to be paid by co-defendants jointly and severally, the co-defendants accounts should be “linked” in the court’s financial system. The linking of the accounts ensures that the joint and several liability ordered is properly accounted for in the system. To give effect to the order of joint and several liability, each co-defendant’s account is charged with the full restitution amount, with any payments made by a co-defendant reducing the total owed by each co-defendant.

Considerations:

1. The linking of accounts when joint and several liability for restitution is ordered should not occur until the co-defendant has been convicted or adjudicated delinquent and ordered to pay the restitution jointly and severally with the first defendant. Linking the co-defendant’s account before the co-defendant has been convicted or adjudicated delinquent will result in a legal liability being imposed on the co-defendant without a court having entered a restitution order for that particular co-defendant.
2. Any other guidance currently provided to the clerks’ office on how to handle joint and several liability for restitution in the court’s financial system should continue to be followed.

E. Handling cases where the Criminal Injuries Compensation Fund is involved.

If the Criminal Injuries Compensation Fund (“CICF”) sends a written request to the clerk’s office after a restitution order has been entered advising the court that the Fund has made payments to or on behalf of a victim, the CICF should be listed as a recipient for restitution purposes in the court’s financial system. The basis for this is set forth in Virginia Code § 19.2-305.1(G).

Considerations:

1. The CICF has indicated that if it is listed as a recipient for restitution funds because it made a payment to or on behalf of a particular victim, the CICF has agreed that restitution funds can be sent to it after other victims in the case have been paid in full.
2. Existing recommendations provided to the clerks’ offices on how unclaimed restitution should be handled should continue to be followed.

F. Issues when the victim cannot be located.

Mailing restitution checks to victims only to have those checks returned to the clerk's office because the victim has not advised the court of a change in address continues to be an issue. The clerk's office should take the necessary steps to ensure that the victim's address that was provided to the court is the address to which the restitution check is actually mailed.

Considerations:

1. In the event that a restitution check is returned to the clerk's office as undeliverable, the clerk should verify from the court file that the restitution check was mailed to the victim's address provided to the court. In addition, if a telephone number for the victim was included on the restitution form as required, it is recommended that the clerk attempt to contact the victim at that number in order to obtain an updated address.
2. Before forwarding any unclaimed restitution to the CICF, the clerk might consider providing a list of victims who cannot be located and their former addresses to any local victim witness program and the Commonwealth's Attorney's office in case either of those offices has more current addresses for those victims.
3. It is recognized that clerk's offices do not have the resources to try to determine new addresses for victims who cannot be located and that it is the victim's responsibility to advise the court of any change of address. It is recommended that clerks not use the Internet or social media to locate a victim as these resources cannot be reasonably relied upon for determining a correct address. Mailing a restitution check to an address located by these means presents a risk that the restitution check will be mailed to an incorrect address. If, however, the clerk's office is provided with another address by a local victim witness program, for example, who has confirmed the victim's new address, it is reasonable to rely upon that information in mailing a restitution check.

G. Accepting restitution payments.

Pursuant to Virginia Code § 19.2-353.3, a district court is required to accept personal checks and credit or debit cards for the payment of fines, costs and restitution ordered in criminal or traffic cases in district court; however, a circuit court clerk is only required to accept personal checks for the payment of fines, costs and restitution, and has the discretion to decide whether or not to accept credit or debit cards.

Considerations:

1. It is recommended that circuit courts accept credit or debit cards for the payment of fines, costs and restitution as some defendants do not have the ability to pay by personal check, but may have the ability to pay by credit or debit cards. In addition, defendants are now able to pay fines, costs and restitution for circuit court cases online through the judicial system's website using credit or debit cards in some circuit courts, with the expectation that the number of circuit courts where payment can be made online will increase. Allowing defendants to pay restitution by credit or debit cards, whether in person or online, will likely result in an increase in the amount of restitution paid.
2. In the event that a clerk's office is informed by a credit or debit company that the defendant is contesting a payment that was made to the clerk's office using a credit or debit card and the clerk has already sent a restitution check to the victim in the case, the clerk should add any amount paid to a victim for restitution from the now contested payment as an unpaid item on the defendant's account, with the clerk's office listed as the future payee.

H. Following other guidance and recommendations regarding restitution.

Any currently recommended procedures for processing restitution should continue to be followed by the clerks' offices.

III. THE ENFORCEMENT OF RESTITUTION

A. Review hearings for restitution.

Accountability is an important aspect of encouraging the defendant to pay the ordered restitution. In order to ensure that accountability is included as part of the restitution process, it is recommended that when restitution is ordered at sentencing in a particular case, at a minimum, judges should consider scheduling a review hearing for the restitution due date or soon after to determine if restitution has been paid in full. In the alternative, a court could establish a restitution review docket at which the status of restitution payment for several cases can be set at the same time.

Considerations:

1. While it is recognized that setting restitution review hearings may be more challenging in larger jurisdictions because of the number of cases or in smaller jurisdictions where fewer court dates are available on which to set review hearings, courts that currently set review hearings have concluded

that it is an effective tool to increase the payment of restitution.

Nonetheless, a determination of whether to schedule a review hearing in a particular case or in any cases in that court should be made at the local level by the court based upon feasibility and available resources.

2. While it is recommended that review hearings be scheduled on or soon after the restitution due dates, setting interim review hearings to determine if the defendant is in compliance with an ordered payment schedule would also increase accountability.
3. Scheduling restitution review hearings might be most appropriate and effective in cases involving adult defendants who are not on probation. It is recognized that review hearings are already often set in delinquency cases and other criminal cases.
4. Setting restitution review hearings might be more feasible in district court cases due to the likelihood of smaller restitution amounts ordered in comparison to the amounts ordered in circuit courts. In the circuit courts, the restitution amounts ordered are typically greater, and the defendant is more likely to be incarcerated and less likely to be able to pay restitution as a result.
5. A review date can be set as an administrative hearing date at which the court may not require counsel for the defendant to appear. While requiring the defendant's attendance at this administrative review hearing is an acceptable practice, a court also might consider advising the defendant that he is not required to appear at the restitution review date if restitution has been paid in full or the required payments are being made.
6. The purpose of the restitution review hearing is to inquire as to the status of the restitution payment. If restitution has not been paid in full by the ordered due date or the required payments are not being made, the court would have the opportunity to ask the defendant why the restitution has not been paid. Should the defendant provide a reasonable explanation as to why it has not been paid, the court could set another review date without issuing a show cause. This might be appropriate, for example, when the defendant indicates that the restitution can be paid in full with a little extra time. On the other hand, at the review hearing, the court could issue a show cause against the defendant for failure to pay the restitution if the court feels that it is appropriate to do so. The court would then schedule a show cause hearing for another date, appoint counsel for an unrepresented indigent defendant, and provide notice of the show cause hearing to defendant's counsel and the attorney for the Commonwealth.

IV. THE COORDINATION OF THE RESTITUTION PROCESS

A. Local meetings with stakeholders regarding restitution.

It is recommended that judges consider having local meetings with the various stakeholders involved in the restitution process to discuss how the collection of restitution can be improved in the future.

Considerations:

1. It is recommended that judges in a particular court in a circuit or district meet to determine if a common approach towards restitution can be established so that how restitution is handled in that court is consistent among the various judges. It is, however, recognized that judges have much discretion in ordering restitution, and that obtaining consensus on a particular approach may not be feasible.



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Delegate Robert B. Bell, *Chairman*

Senator Mark D. Obenshain, *Vice-Chairman*

Executive Director
Kristen J. Howard

January 26, 2017

The Honorable Karl R. Hade, Executive Secretary
Office of the Executive Secretary
100 North Ninth Street
Richmond, Virginia 23219

Dear Mr. Hade:

As part of the Crime Commission's 2016 study on restitution, members unanimously endorsed both legislative and administrative remedies to improve the overall restitution process in the Commonwealth. We truly appreciate all of the time and assistance your office provided during the course of this study.

As you are aware, study findings pointed to a need for improved uniformity, efficiency, management and collection of restitution statewide. In order to address these concerns, the Crime Commission unanimously endorsed the following recommendations:

- I. The Office of the Executive Secretary of the Supreme Court, in coordination with other stakeholders in the restitution process, should develop best practice guidelines for managing the restitution process.
 - The guidelines should address such practices as: developing a local plan for the collection, monitoring and disbursement of restitution; addressing repeat offenders; handling joint and several orders; determining how payments are applied when the defendant owes fines, costs and restitution; addressing issues surrounding micro-checks for restitution; issues involving collections when the victim is a large corporation or insurance company; how to handle unclaimed restitution; options for locating the victim for disbursement; availability of payment options, including credit and debit cards and online payment; feasibility of developing a uniform payment schedule for restitution, similar to the child/spousal support model; and, defining when a case is closed for purposes of collection and monitoring.
 - If the Court later determines that some of these items would be better addressed by legislation, they will notify Crime Commission staff.

2. The Office of the Executive Secretary of the Supreme Court should provide training to clerks and judges on the best practice guidelines for managing the restitution process.
3. The Office of the Executive Secretary of the Supreme Court should enhance the Financial Accounting System (FAS) to allow clerks the ability to generate a payment notice, as is the practice with fines and costs, along with any other capabilities that would improve the management of restitution.

The final recommendation was initially set forth as a legislative recommendation for the Department of Taxation to explore the possibility of accepting payments for delinquent restitution and upgrading current software to allow for a more streamlined approach to restitution collection. This proposed recommendation added a second enactment clause requiring a number of agencies to develop recommendations for enhancing restitution collection and to report these to the Chair of the Crime Commission. However, Crime Commission members instead endorsed that this matter be handled by a letter request to your office, as follows:

4. The Office of the Executive Secretary should convene representatives from the Clerks' Offices, Department of Criminal Justice Services, Department of Corrections, Department of Motor Vehicles, Department of Taxation, Virginia Association of Commonwealth's Attorneys, Virginia Indigent Defense Commission, Virginia Victim Assistance Network, and any other entities as appropriate to develop recommendations for enhancing the collection of restitution and to report findings and recommendations to the Chair of the Crime Commission by November 1, 2017.

Thank you again for all of your help with our study. Please do not hesitate to contact me or Ms. Howard if you have any questions or if staff can be of assistance implementing these recommendations.

Sincerely,



Delegate Robert B. Bell, Chair

cc: Kristen Howard, Executive Director