

RESTITUTION POLICIES¹

1) SDSC JUV-790 and JUV-791

Forms: The JUV-790 is a San Diego Superior Court form. It is the Order for Restitution and is signed by the court. The JUV-791 is also a San Diego Superior Court form. It is the Abstract of Judgment and is issued by the court clerk.

When the JUV-790 and JUV-791 should be signed: Payment of restitution will be made a condition of probation. Normally the minor will be given an opportunity to pay the restitution during the term of probation and the JUV-790 and JUV-791 will not be signed at the time the restitution order is made. In an unusual case where the circumstances warrant it, the JUV-790 and JUV-791 may be signed at the time the restitution order is made. In any case the victim may request that the JUV-790 and JUV-791 be signed before the termination of probation, and the court will comply with such a request. The DA or Probation may calendar a special hearing to address restitution and the JUV-790/JUV-791. In every case, a JUV-790 and JUV-791 will be signed before jurisdiction is terminated, if restitution is still owed and the JUV-790/JUV-791 have not already been signed. Probation will prepare the JUV-790 and JUV-791 for the hearing at which jurisdiction is to be terminated, but it is the responsibility of the DA to make sure the JUV-790 and JUV-791 are signed before the judge terminates jurisdiction. This is extremely important, since many cases are sealed upon termination of jurisdiction. The DA may release the JUV-790 and/or JUV-791 to the victim, even after the case has been sealed.

What amount should be entered: If the JUV-790/JUV-791 are signed at the time restitution is ordered, the full amount of restitution will be entered. If the JUV-790/JUV-791 are signed at some later date, the amount of restitution still due will be entered. The prior restitution order will be vacated at the time the JUV-790/JUV-791 are signed and a new restitution order in the amount due at that time will be entered. The amount and the date on the JUV-790/JUV-791 should be the new amount and the new date.

¹ In October of 2006, the Delinquency Policy Group formed a committee to work on restitution issues. The committee had several goals. The most important were to ensure victim restitution is paid as quickly as possible and to give minors and their families a realistic opportunity to pay restitution before a restitution judgment is entered. The committee's proposed policies were approved by the Delinquency Policy Group on 6/1/07. The committee was reconstituted in 2009. The new committee consisted of Judge George Clarke, Shannon Miller, Mary Ann Ramirez, and Beth Brown (Juvenile Court); Scott Countryman and Lisa Sawin (Probation); Michele Linley and Joanne Evoy (DA); and Jo Pastore (PD). Representatives from Revenue and Recovery participated in the discussions. The revised policies were approved by the Delinquency Policy Group on 8/6/10. Representatives of each agency continue to update the policies as necessary.

Name of victim on the JUV-790/JUV-791: Revenue and Recovery needs a full name to open an account. In most cases, the name of the victim is not confidential. The victim's full name should be on line 3a of the JUV-790. If a minor victim's name is confidential, the full name(s) of the victim's parent(s) should be on line 3a of the JUV-790.

Completion of the JUV-791: The JUV-791 is an Abstract of Judgment. Although an abstract can be issued at any time, the preferred procedure is for the JUV-791 to be submitted at the same time as the JUV-790. The JUV-791 is a "snapshot" of the Order for Restitution. All names on the JUV-791 must match exactly the corresponding names on the JUV-790. The amount and date of judgment on the JUV-791 must match exactly the amount and date on the JUV-790. The Probation Department will submit the completed JUV-790 and JUV-791 to the court. The judge's back office clerk will review the documents to make sure they have been completed correctly. After the judge signs the JUV-790, the courtroom clerk will sign the JUV-791 and put the court's seal on it. A copy of the JUV-791 will be kept in the court file with the original JUV-790. The original JUV-791 will be provided to the victim with a certified copy of the JUV-790.

How the victim should obtain the JUV-790/JUV-791: The DA or Probation will assist the victim in obtaining the JUV-790/JUV-791. Ultimate responsibility to ensure that the JUV-790/JUV-791 are presented to the court for signature lies with the DA. Probation will send a notice to the victim when probation is terminated that explains how to obtain and enforce the restitution judgment. The victim will be provided with the JUV-790/JUV-791 upon request at the Juvenile Court Business Office, with photo identification. Alternatively, the judge may order the court clerk to mail the JUV-790 and JUV-791 via certified mail to the victim. In such a case, the victim's address will be provided to the court clerk but will be placed in a confidential envelope immediately after the JUV-790/JUV-791 are mailed. Under no circumstances will the victim's address be made part of the court file.

2) 654.2 cases: A JUV-790/JUV-791 should be used in a WIC 654.2 case only if the minor has agreed to their use. (See In re K.C. (2013) 220 Cal.App.4th 465.) The WIC 654 contract in San Diego County does include an agreement by the minor that any unpaid restitution will become a civil judgment. If restitution is more than \$1,000, a minor is not eligible for informal supervision unless the court makes a finding that it is an unusual case where the interests of justice would best be served by allowing informal supervision and specifies on the record the reasons for that decision. The period of informal supervision may be extended to allow for payment of restitution but may not be extended beyond twelve months from the date the petition was filed. The court may find that the minor has successfully completed the program of supervision if the minor has completed all of the

requirements of the program and has made a good faith effort to pay the restitution. A "good faith effort" means consistent payments that are reasonable based upon the minor's financial situation. The DA will prepare the JUV-790 and JUV-791 for the hearing at which jurisdiction is to be terminated.

3) DEJ cases: A JUV-790/JUV-791 can be used in a DEJ (WIC 790) case. (See In re J.G. (2019) 6 Cal.5th 867.) The court may find that the minor has performed satisfactorily during the period in which deferred entry of judgment was granted if the minor has made a good faith effort to pay the restitution. A "good faith effort" means consistent payments that are reasonable based upon the minor's financial situation.

4) 730.5 fines: When the court imposes a fine pursuant to WIC 730.5, the court must make a finding that the minor has the financial ability to pay the fine. If the minor does have the financial ability to pay a fine, the court will not stay the fine. If it appears to Probation that the minor does not have the financial ability to pay or if the minor establishes that he/she does not have the financial ability to pay, the court will not impose the fine. For a misdemeanor, the 730.5 fine will be \$60. For a felony, the 730.5 fine will be \$126. These amounts include the penalty assessment pursuant to Penal Code section 1464 and the surcharge pursuant to Penal Code section 1465.7. The amounts will be reviewed annually.

5) Revision of codes to name parent: The minute order stating that the minor's parent/guardian is jointly and severally liable for restitution will specify the parent/guardian by name. Specifying the parent/guardian by name on the order will enable Revenue and Recovery to add the parent/guardian to the minor's account. With this information, Revenue and Recovery will apply payments from the parent/guardian to victim restitution first.

6) Payment of restitution: Probation will recommend the full amount of restitution. As a general rule, all payments will be made through Revenue and Recovery. In an appropriate case, the court may order that restitution be paid directly to the victim unless there is a specific objection. Payments will be applied first to victim restitution, then to fines, and then to any other fees that may be due to the county.

7) Referral to victim/offender mediation program: When the victim is willing to participate with the minor in a victim/offender mediation program and the court finds that it would be appropriate, the court will order the parties to participate in such a program. The court will order restitution in addition to ordering the mediation program. If the mediation program is successfully completed, the court will issue a new order amending the amount of restitution as agreed in the mediation.

8) Dismissed counts: Restitution can be imposed with or without a “Harvey” waiver. The only situation in which restitution cannot be imposed is if a charge is dismissed based upon insufficiency of the evidence or lack of evidence.

9) Ex parte restitution status reviews: A restitution status review hearing will be set if the court finds that insufficient efforts have been made to contact the victim about restitution or if the court otherwise concludes that a hearing is appropriate. In all other cases, restitution status reviews may be done ex parte. Either party may set a special hearing to address restitution at any time.

10) Parental liability: A parent or guardian who has joint or sole legal and physical custody and control of a minor is rebuttably presumed to be jointly and severally liable with the minor for restitution, up to a statutory maximum. (WIC 730.7.) A parent or guardian found to be jointly and severally liable will be named in the minute order. That person will also be named on the JUV-790 at 1b. If the parent/guardian's liability is less than that of the minor, the liability limit for the parent/guardian will also be put on the JUV-790 at 1b. The current liability limit can be found in Appendix B to the California Rules of Court. The relevant date is the date of the minor's offense.

1/1/05 = \$32,200

1/1/07 = \$34,700

2/18/09 = \$37,100

1/1/11 = \$37,400

7/1/13 = \$39,300

7/1/15 = \$40,600

7/1/17 = \$42,100

7/1/19 = \$45,000