

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee
Hon. Steven Z. Perren, Chair
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DATE: September 23, 2004

SUBJECT: Criminal Sentencing: New Restitution Collection Forms (approve forms CR-118 and CR-119) (Action Required)

Issue Statement

Recent legislation, designed to increase restitution collection, requires courts to enter and stay income deduction orders in any case where restitution is ordered and the court finds the defendant has the ability to pay. (Pen. Code, § 1202.42(a).) The court is also to “furnish to the defendant a statement of his or her rights, remedies, and duties in regard to the income deduction order.” (Pen. Code, § 1202.42(e).) Several courts have indicated that it would be helpful to have statewide Judicial Council forms satisfying these requirements.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2005, approve forms CR-118, *Information Regarding Income Deduction Order* and CR-119, *Order for Income Deduction* to establish statewide forms concerning the entry of income deduction order for collection of restitution.

The text of the proposed forms are attached at pages 4–6.

Rationale for Recommendation

Legislation designed to increase restitution collection requires courts to enter and stay income deduction orders and to provide the defendant with certain notices regarding the income deduction order. (Pen. Code, § 1202.42(a).) Courts have suggested that it would be helpful if there were statewide forms for the courts to enter these income deduction

orders. These optional forms would assist courts in complying the statutory requirements regarding income deduction orders.

Penal Code section 1202.42 provides that courts are to enter income deduction orders in any case where restitution is ordered and the court finds the defendant has the ability to pay. (Pen. Code, § 1202.42(a).) When entered, the order is stayed “until the agency in the county responsible for collection of restitution determines that the defendant has failed to meet his or her obligation under the restitution order and the defendant has not provided the agency with good cause” for failing to comply with the restitution order. (Pen. Code, § 1202.42(b)(1).) The agency responsible for restitution collection is then to inform the defendant and the court of the unexcused failure to pay, and if the defendant does not appeal the determination that the failure to pay was unexcused, the stay is to be lifted and the income deduction order is to be served on the employer. (Pen. Code § 1202.42(b)(2) and (f).)

The proposed form CR-119, *Order for Income Deduction* contains the information necessary for the employer to comply with the court order. Specifically, it includes identifying information about the defendant (including the last four digits of the social security number), the amount of restitution, the amount to be deducted from each paycheck, and where the money is to be forwarded.

At the time the income deduction order is entered and stayed, the court is to provide the defendant with “a statement of his or her rights, remedies, and duties in regard to the income deduction order.” (Pen. Code, § 1202.42(e).) That code section specifies the contents of the notice, which is recited in the proposed form CR-118.

Alternative Actions Considered

As the legislation does not require the Judicial Council to implement forms in this area, the committee considered not proposing adoption of the forms.

Comments From Interested Parties

Five comments were received. Of those, two agreed with the proposal and three agreed if the proposal were modified. Of the suggested modifications, the first appears to disagree with Penal Code section 1202.42, but the Judicial Council is not responsible for that policy decision. The second suggested modification was to add a statutorily mandated provision to the information sheet informing the defendant of his or her rights. The proposal is well taken and the committee has modified the form. The third response had minor suggested modifications, which the committee declined to adopt for various reasons set forth in the responses section of the comment chart.

A chart summarizing the comments is attached at pages 7–9.

Implementation Requirements and Costs

Implementation costs for the forms would be limited to the cost of copying forms.

Attachments

Notice to Employer re: Order for Income Deduction (Pen. Code, § 1202.42)

1. You are required to deduct the amount specified in the *Order for Income Deduction* from the employee's income and to pay that amount to the clerk of the above entitled court or its agent.
2. The order is to be implemented no later than the first payment date that occurs more than 14 days after the date of service of the order.
3. *Within two days after each payment date*, forward the amount deducted and a statement about whether the amount totally or partially satisfies the periodic amount specified in the income deduction order.
4. If you fail to deduct the proper amount from the employee's income, you are liable for the amount you should have deducted, plus costs, interest, and reasonable attorney fees.
5. You may collect up to five dollars (\$5) against the employee's income to reimburse you for administrative costs for the first deduction and up to one dollar (\$1) for each deduction thereafter.
6. This order and notice are binding until further notice by the court or until you no longer provide income to the employee.
7. When you no longer provide income to the employee, you must notify the clerk of the above entitled court and provide the employee's last known address and the name and address of the employee's new employer, if known. If you violate this provision, you are subject to a civil penalty not to exceed two hundred fifty dollars (\$250) for the first violation or five hundred dollars (\$500) for any subsequent violation.
8. You must not discharge, refuse to employ, or take disciplinary action against the employee because of an income deduction order. If you violate this provision, you are subject to a civil penalty not to exceed two hundred fifty dollars (\$250) for the first violation or five hundred dollars (\$500) for any subsequent violation.
9. If you receive income deduction orders for two or more employees sent by the same court, you may combine the amounts that are to be paid in a single payment, but you must identify the portion of the payment that is attributable to each employee.
10. If you receive two or more income deduction orders against the same employee, you must contact the above entitled court for further instructions.

SPR04-18
Forms for Income Deduction Orders to Collect Unpaid Restitution in Criminal Cases
(approve forms CR-118 and CR-119)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Linda Finn Deputy Executive Officer Superior Court of California, County of Ventura Ventura	A	N	Agree with proposed changes.	No response necessary.
2.	B. Gilbert Court Operations Supervisor Superior Court of California, County of Butte Oroville	A	N	No comments submitted.	No response necessary.
3.	Ms. Kim Hubbard President Orange County Bar Association Irvine	AM	N	<p>Agree with proposed changes only if modified.</p> <p>The proposed forms do nothing more than set up an automatic system for getting the salary of a defendant who fails to pay, but the automatic nature of this system could lead to worse consequences for the victims than otherwise if the defendant is forced to leave his job by reason of employer reaction or an unfair salary taking.</p> <p>First, this is so because disclosure of the defendant's probationary status and the added administrative burden to the employer of complying with the court order could cause the employer to fire the defendant. The penalty for doing this that is built into the statute—a few hundred dollars, would likely seem negligible to the employer. For this reason, it is good that this is an optional use form.</p> <p>Second, and more important for purposes of this comment, if the failure to pay the initial restitution</p>	<p>Disagree.</p> <p>The procedure is provided for by statute and the order will not be served upon the employer until stay is lifted.</p>

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				<p>amount is excusable, and the defendant therefore needs more of his salary to support himself, automatically taking salary away through the use of these forms could cause the defendant to leave his employment, since he would no longer be able to support himself sufficiently to keep the job.</p> <p>It is therefore recommended that there be another optional form—and ORDER form, that can go to the employer that directs the employer to stay and/or lift the income deduction order. Without such a form, there is a risk that the income deduction order will unfairly remain in effect during the time that the defendant is seeking his hearing on the issue, or afterward, when the restitution order has changed due to a finding of good cause at the hearing. It can never be in the victim’s interest for an income deduction order to unfairly applied, since the unintended consequence of a defendant losing his incentive to work would tend to lessen the amount of restitution collected.</p>	
4.	Sharon Ngim Staff Liaison to the Standing Committee on the Delivery of Legal Services The State Bar of California	AM	Y	<p>Agree with proposed changes only if modified.</p> <p>Proposed Forms 118 and 119 conform to the statute with one exception. In order to comply with Penal Code section 1202.42, subdivision (e)(4), Form CR-118 should contain the following additional language:</p> <p><u>A copy of the income deduction order will be served on each of your employers or payers.</u></p>	Agree. Form has been so modified.

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5.	Jody Patel Court Executive Officer Superior Court of California, County of Sacramento Sacramento	AM		<p>Agree with proposed changes only if modified.</p> <p>Our court utilizes the local Department of Revenue Recovery to determine a defendant’s ability to pay restitution upon grants of probation. We propose making the language in Form CR-118, No.1, more generic to accommodate this process by removing the language “...found that you have the ability to pay restitution....”</p> <p>In addition, we suggest modifications to No. 2 to accommodate the use of any collecting agency by adding a check box with the language “Amount of which to be determined after an assessment by the Court’s collecting agency.”</p> <p>Clarification to No. 2(c) could be made by adding language to advise the defendant to notify the collecting agency of any changes in their address or employment.</p> <p>Item 2(e) can also be further clarified to indicate who exactly would be providing the defendant with notice of a lifting of the stay order (court or collecting agency).</p>	<p>Disagree. Penal Code section 1202.42(a) requires court to find ability to pay.</p> <p>Disagree. Form as drafted allows flexibility.</p> <p>Disagree. Penal Code section 1202.42(e)(6) states court is to be informed.</p> <p>Disagree. Notice may vary county to county and current language allows flexibility.</p>