

79 A.L.R.3d 976 (Originally published in 1977)

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ALR3d

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Propriety of condition of probation which requires defendant
convicted of crime of violence to make reparation to injured victim

TABLE OF CONTENTS

[Article Outline](#)

[Index](#)

[Table of Cases, Laws, and Rules](#)

[Research References](#)

ARTICLE OUTLINE

I Prefatory Matters

§ 1[a] Introduction—Scope

§ 1[b] Introduction—Related matters

§ 2[a] Summary and comment—Generally

§ 2[b] Summary and comment—Practice pointers

II General principles

§ 3 Constitutional validity of condition; generally

§ 4 As involving imprisonment for debt

§ 5 As subjecting probationer to state of peonage

§ 6 Requirement that purpose and terms of condition must be prescribed by sentencing court

§ 6.5 Other issues

III Factors governing amount of reparations properly assessed

§ 7[a] Basis for fixing amount—View that amount must be liquidated or easily measurable

§ 7[b] Basis for fixing amount—View that disputed amount need not be liquidated or easily measurable

§ 7.5 Burden of proving amount

§ 8 Influence of maximum fine authorized for offense

§ 9 Amount chargeable to one where damage caused by several

§ 10 Effect of victim's civil action for damages

IV Damages for which reparations may be ordered

§ 11 Medical expenses

§ 12[a] Pain and suffering—Considered proper

§ 12[b] Pain and suffering—Considered improper

§ 13 Loss of wages

§ 14 Orthopedic devices

§ 15[a] Payment toward support of dependents—Considered proper

§ 15[b] Payment toward support of dependents—Considered improper

§ 16[a] Payment of "damages"—Considered proper

§ 16[b] Payment of "damages"—Considered improper

§ 17 Victim's funeral expenses

V Persons to whom reparations can properly be ordered

VI Application to particular offenses for which condition imposed

§ 22[a] Offenses involving homicide or attempt at homicide—Condition held valid

§ 22[b] Offenses involving homicide or attempt at homicide—Condition held invalid

§ 23[a] Assault—Condition held valid

§ 23[b] Assault—Condition held invalid

§ 24 Driving while intoxicated

§ 25[a] Reckless driving—Condition held valid

§ 25[b] Reckless driving—Condition held invalid

§ 26 Other

Research References

INDEX

Aggrieved party, individual to receive restitution payment § 7[a]

Alteration of probation order concerning restitution payments § 10

Amount of reparations properly assessed, factors governing §§ 7- 10

Appropriate compensation recovered in a civil action case § 22[b]

Assault, application of reparations to charge of § 23

Automobile

damages recovered by owner § 16[a]

driving application of reparations to offenses in driving. Driving, *infra*

Basis for fixing amount of reparation § 7

Bond guaranteeing payment of damages to injured party, condition for suspended judgment § 4

"Broad interpretation", statute susceptible to § 7[a]

Civil action, victim exercised valid right to § 22[a]

Damages

generally §§ 11- 17

amount chargeable to one where caused by several § 9

effect of victim's civil action for § 10

payment of § 16

Decedent's contributory negligence, defendant's view of § 7[b]

Department of probation, advisory capacity § 22[b]

Dependents, payment toward support of § 15

"Doctor and hospital bills", reimbursement to victims for § 11

Driving

intoxicated, driving while §§ 16[a], 24

reckless driving § 25

Evidence adduced at the trial of an offense § 7[a]

Expiration of probationary period, condition imposed after § 25[a]

Fact witnesses in alleged crime § 21

Fine in excess of maximum penalty for crime § 8

Fixing amount of reparations, basis for § 7

"For the use of" the victim, reparations to victim of crime § 16[a]

Funeral expenses of victim § 17

General principles §§ 3- 6

Homicide or attempt at homicide, offenses involving § 22
Imprisonment
 debt, imprisonment for § 4
 failure to pay amounts of restitution § 23[a]
Inability to pay fine by defendant § 23[b]
Insurance company reimbursing injured victim, reparations to § 20
Intoxicated persons, application to particular offense § 24
Introduction § 1
Liquidated or easily measurable damages to victim §§ 7, 12[b]
Loss of family, compensation for § 22[b]
Loss of wages, reparations ordered for § 13
Maximum fine authorized for offense, influence of § 8
Mob disturbance, share of damages assessed § 9
Mother of victim, support in which victim "might have given her" § 15[a]
Option of defendant to serve sentence or accept conditions imposed § 4
Orthopedic devices, reparations ordered for § 14
Other persons to whom reparations can be applied § 21
"Out-of-pocket medical and hospital expenses", reimbursement to victims for § 11
Pain and suffering, reparations for § 12
Parents of person killed claiming reparations § 19
Particular offenses for which condition imposed, application to §§ 22- 25
"Payable as determined by the probation department" § 6
Peonage, condition as subjecting probationer to state of § 5
Percentage of probationer's earnings to victim § 5
Persons to whom reparations can properly be ordered §§ 19- 21
Petition to set aside sentence § 16[a]
Practice pointers § 2[b]
Prefatory matters §§ 1- 2
Probation department, manner of payment decided by rather than court §§ 6, 7[b]
"Probation without a verdict", court granting defendant § 24
Proximate cause of damages, contended by defendant § 7[b]
Purpose and terms of condition prescribed by sentencing court § 6
Rational relationship to the purposes of probation § 18
Reckless driving § 25
Reimburse victim for one pair of orthopedic shoes § 7[b]
Related matters § 1[b]
Repairing defined § 7[a]
Restitution
 defendant convicted of homicide required to make § 6
 defined § 7[a]
Revocation of probation by trial court § 16[b]
Scope of annotation § 1[a]
Sentencing court prescribing purpose and terms of condition §§ 6, 7[b]
Serving sentence outside the confines of place of detention § 24
Set-off ordered for money already received by victim § 10
Sodomy § 26
Stairway, victim falling down § 14
Summary and comment § 2
Suspension of defendant sentenced on condition § 22[a]

Trial judge's liberty to amend or alter condition of probation § 16[a]
Unjust compensation arrived at § 15[b]
Validity of condition §§ 3- 5
Verdict, condition of probation without finding § 8
Victim's civil action for damages, effect of § 10
Wages, loss of, reparations ordered for § 13
Willful and wanton disregard for safety of persons §§ 16[b], 25[b]

Table of Cases, Laws, and Rules

Second Circuit

U.S. v. Tiler, 602 F.2d 30 (2d Cir. 1979) — 16[a], 26

Alaska

Haynes v. State, 15 P.3d 1088 (Alaska Ct. App. 2001) — 6.5

Arizona

Shenah v. Henderson, 106 Ariz. 399, 476 P.2d 854 (1970) — 2[b], 7[b], 22[a]
State v. Cummings, 120 Ariz. 69, 583 P.2d 1389 (Ct. App. Div. 1 1978) — 3
State v. Garner, 115 Ariz. 579, 566 P.2d 1055 (Ct. App. Div. 1 1977) — 7[b], 8

Arkansas

Dickson v. State, 230 Ark. 491, 323 S.W.2d 432 (1959) — 11, 23[a]

California

People v. Alexander, 182 Cal. App. 2d 281, 6 Cal. Rptr. 153 (1st Dist. 1960) — 2[b]
People v. Baumann, 176 Cal. App. 3d 67, 222 Cal. Rptr. 32 (4th Dist. 1985) — 3
People v. Clark, 130 Cal. App. 3d 371, 181 Cal. Rptr. 682 (3d Dist. 1982) — 15[a]
People v. D'Elia, 73 Cal. App. 2d 764, 167 P.2d 253 (2d Dist. 1946) — 16[a], 23[a]
People v. Escobar, 235 Cal. App. 3d 1504, 1 Cal. Rptr. 2d 579 (6th Dist. 1991) — 25[b]
People v. Goss, 109 Cal. App. 3d 443, 167 Cal. Rptr. 224 (5th Dist. 1980) — 26
People v. Hodgkin, 194 Cal. App. 3d 795, 239 Cal. Rptr. 831 (5th Dist. 1987) — 24
People v. Kay, 36 Cal. App. 3d 759, 111 Cal. Rptr. 894, 73 A.L.R.3d 1235 (1st Dist. 1973) — 9, 23[b]
People v. Landen, 243 Cal. Rptr. 3d 487, 362 Ed. Law Rep. 1053 (Cal. App. 2d Dist. 2019) — 26
People v. Rahbari, 232 Cal. App. 4th 185, 181 Cal. Rptr. 3d 220 (1st Dist. 2014) — 6.5
People v. Rugamas, 93 Cal. App. 4th 518, 113 Cal. Rptr. 2d 271 (3d Dist. 2001) — 6.5
People v. Snow, 205 Cal. App. 4th 932, 141 Cal. Rptr. 3d 41 (3d Dist. 2012) — 6.5

Colorado

People v. Deadmond, 683 P.2d 763 (Colo. 1984) — 11, 17

Florida

Blincoe v. State, 371 So. 2d 595 (Fla. 1st DCA 1979) — 6
Brown v. State, 645 So. 2d 1066 (Fla. 1st DCA 1994) — 11
Drye v. State, 691 So. 2d 1168 (Fla. 1st DCA 1997) — 11
State v. Maddex, 159 So. 3d 267 (Fla. 4th DCA 2015) — 6.5

Georgia

Biddy v. State, 138 Ga. App. 4, 225 S.E.2d 448 (1976) — 7[a], 8, 23[a]
Cannon v. State, 246 Ga. 754, 272 S.E.2d 709 (1980) — 3
Day v. State, 188 Ga. App. 648, 374 S.E.2d 87 (1988) — 2[a]
Henry v. State, 77 Ga. App. 735, 49 S.E.2d 681 (1948) — 16[a], 24

Jones v. State, 246 Ga. App. 857, 542 S.E.2d 584 (2000) — 6.5
O'Quinn v. State, 121 Ga. App. 231, 173 S.E.2d 409 (1970) — 7[a], 16[a], 23[a]
Roberts v. State, 41 Ga. App. 364, 152 S.E. 921 (1930) — 16[a], 24

Idaho

State v. Parker, 143 Idaho 165, 139 P.3d 767 (Ct. App. 2006) — 16[b]

Illinois

People v. Prell, 299 Ill. App. 130, 19 N.E.2d 637 (1st Dist. 1939) — 2[b], 16[b], 25[b]
People v. Stacy, 64 Ill. App. 2d 157, 212 N.E.2d 286 (1st Dist. 1965) — 10, 11, 22[a]
People v. Valek, 69 Ill. App. 3d 759, 26 Ill. Dec. 132, 387 N.E.2d 962 (2d Dist. 1979) — 11, 23[a]

Indiana

Carswell v. State, 721 N.E.2d 1255 (Ind. Ct. App. 1999) — 11
Sales v. State, 464 N.E.2d 1336 (Ind. Ct. App. 1984) — 26

Kansas

State v. Hargis, 5 Kan. App. 2d 608, 620 P.2d 1181 (1980) — 11
State v. Hymer, 271 Kan. 716, 26 P.3d 63 (2001) — 6.5

Louisiana

State v. Counts, 747 So. 2d 617 (La. Ct. App. 2d Cir. 1999) — 6
State v. Jarratt, 299 So. 3d 1202 (La. Ct. App. 2d Cir. 2020) — 11
State v. Portie, 22 So. 3d 213 (La. Ct. App. 4th Cir. 2009) — 26
State v. Stephenson, 755 So. 2d 373 (La. Ct. App. 2d Cir. 2000) — 6.5

Maine

State v. O'Donnell, 495 A.2d 798 (Me. 1985) — 26

Maryland

Commissioner of Motor Vehicles v. Lee, 254 Md. 279, 255 A.2d 44 (1969) — 8, 24
Lindsey v. State, 218 Md. App. 512, 98 A.3d 340 (2014) — 6.5
Watson v. State, 17 Md. App. 263, 301 A.2d 26 (1973) — 5, 15[b], 22[b]

Michigan

People v. Good, 287 Mich. 110, 282 N.W. 920 (1938) — 2[b], 3, 6, 7[b], 10, 22[b], 25[a]
People v. Marks, 340 Mich. 495, 65 N.W.2d 698 (1954) — 3, 10, 16[a], 25[a]
People v. Pettit, 88 Mich. App. 203, 276 N.W.2d 878 (1979) — 24
People v. Wager, 129 Mich. App. 819, 342 N.W.2d 619 (1983) — 7[b], 15[a], 22[a], 24
People v. Williams, 57 Mich. App. 439, 225 N.W.2d 798 (1975) — 3, 23[a]

Minnesota

State v. Fader, 358 N.W.2d 42 (Minn. 1984) — 7[a]

Mississippi

Ellison, In re, 245 B.R. 361 (Bankr. W.D. Mo. 1999) (applying Miss law) — 3

Montana

State v. Muhammad, 2002 MT 47, 309 Mont. 1, 43 P.3d 318 (2002) — 7.5

Nebraska

State v. Behrens, 204 Neb. 785, 285 N.W.2d 513 (1979) — 11, 12[a]
State v. Papke, 240 Neb. 50, 480 N.W.2d 209 (1992) — 7[a]
State v. Sampson, 203 Neb. 786, 280 N.W.2d 81 (1979) — 10, 23[a]

New Mexico

State v. Mottola, 84 N.M. 414, 1972-NMCA-161, 504 P.2d 22 (Ct. App. 1972) — 7[b], 13, 14, 23[a]

New York

People v. Page, 266 A.D.2d 733, 698 N.Y.S.2d 774 (3d Dep't 1999) — 3

North Carolina

Myers v. Barnhardt, 202 N.C. 49, 161 S.E. 715 (1932) — 4, 23[a], 25[a]

State v. Butcher, 10 N.C. App. 93, 177 S.E.2d 924 (1970) — 11, 23[a]

State v. Byrd, 23 N.C. App. 63, 208 S.E.2d 216 (1974) — 11, 23[a]

State v. Green, 29 N.C. App. 574, 225 S.E.2d 170 (1976) — 3, 22[a]

State v. Simmington, 235 N.C. 612, 70 S.E.2d 842 (1952) — 2[b], 4, 16[a], 25[a]

Ohio

State v. Bush, 83 Ohio App. 3d 717, 615 N.E.2d 709 (12th Dist. Clermont County 1992) — 11

State v. Emonds, 11 Ohio Op. 258, 26 Ohio L. Abs. 410, 3 Ohio Supp. 207, 1938 WL 1564 (C.P. 1938) — 15[a], 22[a]

State v. Mueller, 122 Ohio App. 3d 483, 702 N.E.2d 139 (1st Dist. Hamilton County 1997) — 23[b]

State v. Shenefield, 122 Ohio App. 3d 475, 702 N.E.2d 134 (10th Dist. Franklin County 1997) — 11

State v. Walker, 164 Ohio App. 3d 114, 2005-Ohio-5592, 841 N.E.2d 376 (2d Dist. Greene County 2005) — 7[b]

Oregon

State v. Rose, 45 Or. App. 879, 609 P.2d 875 (1980) — 26

State v. Stalheim, 275 Or. 683, 552 P.2d 829, 79 A.L.R.3d 969 (1976) — 1[a], 2[a], 2[b], 7[a], 12[b], 22[b]

State v. Sullivan, 24 Or. App. 99, 544 P.2d 616 (1976) — 1[a], 7[a], 22[b]

State v. Usher, 26 Or. App. 489, 552 P.2d 1345 (1976) — 26

Pennsylvania

Com. v. Darush, 279 Pa. Super. 140, 420 A.2d 1071 (1980) — 26

Com. v. Hall, 622 Pa. 396, 80 A.3d 1204 (2013) — 7[a], 15[a]

Com. v. Hall, 2010 PA Super 79, 994 A.2d 1141 (2010) — 22[b]

Com. v. Jackson, 218 Pa. Super. 357, 280 A.2d 422 (1971) — 3, 23[b]

Com. v. Kelly, 2003 PA Super 416, 836 A.2d 931 (2003) — 7.5

Com. v. Nuse, 2009 PA Super 125, 976 A.2d 1191 (2009) — 26

Com. v. Popow, 2004 PA Super 34, 844 A.2d 13 (2004) — 23[b]

Com. v. Walton, 483 Pa. 588, 397 A.2d 1179 (1979) — 23[a]

M.W., In re, 555 Pa. 505, 725 A.2d 729 (1999) — 6

South Carolina

State v. Wilson, 274 S.C. 352, 264 S.E.2d 414 (1980) — 3

Tennessee

State v. Irick, 861 S.W.2d 375 (Tenn. Crim. App. 1993) — 16[b]

Texas

Bradley v. State, 478 S.W.2d 527 (Tex. Crim. App. 1972) — 23[a]

Flores v. State, 513 S.W.2d 66 (Tex. Crim. App. 1974) — 11, 23[a]

Greathouse v. State, 33 S.W.3d 455 (Tex. App. Houston 1st Dist. 2000) — 6.5

Simpson v. State, 772 S.W.2d 276 (Tex. App. Amarillo 1989) — 7[a], 11, 26

Smith v. State, 957 S.W.2d 881 (Tex. App. Texarkana 1997) — 22[a]

Taylor v. State, 419 S.W.2d 647 (Tex. Crim. App. 1967) — 3, 24

Thompson v. State, 557 S.W.2d 521 (Tex. Crim. App. 1977) — 25[a]

Vermont

State v. Dwight, 208 Vt. 29, 2018 VT 73, 194 A.3d 1163 (2018) — 6.5

Virginia

Bazemore v. Commonwealth, 25 Va. App. 466, 489 S.E.2d 254 (1997) — 7.5

Washington

State v. Gunderson, 74 Wash. 2d 226, 444 P.2d 156 (1968) — 8, 22[a]

State v. Morgan, 8 Wash. App. 189, 504 P.2d 1195 (Div. 2 1973) — 2[b], 3, 11, 12[a], 13, 23[a]

State v. Summers, 60 Wash. 2d 702, 375 P.2d 143 (1962) — 17, 22[a]

Wisconsin

State v. Handley, 173 Wis. 2d 838, 496 N.W.2d 725 (Ct. App. 1993) — 23[b]

State v. Torpen, 2001 WI App 273, 248 Wis. 2d 951, 637 N.W.2d 481 (Ct. App. 2001) — 6.5

I. Prefatory Matters

§ 1[a] Introduction—Scope

This annotation¹ collects and analyzes those cases which have discussed the propriety of a condition of probation which requires a defendant who has been convicted of a crime of violence to pay reparations to an injured victim of that crime. As used in this annotation, "crime of violence" is any criminal offense which might reasonably be expected to result in physical injury to others,² and "probation" includes the suspension of imposition of sentence as well as the suspension of execution of the sentence.

"Injured victim" as used in this annotation includes any person whom the court considers sufficiently injured by the defendant's crime of violence to warrant the award of reparation payments. The distinction between "restitution" and "reparation" is by no means generally recognized.³ Although courts have occasionally attempted to distinguish the two terms,⁴ in most of the cases discussed in this annotation no such attempt is made, and any technical difference that may exist between the two terms has had no effect upon the law insofar as this annotation is concerned. Since it is the purpose for which the payment is assessed which is the controlling factor, this annotation includes cases where the court has referred to payments to the victim as "restitution."

Since relevant statutory provisions are expressed herein only to the extent that they are reflected in the reported cases falling within the scope of this annotation, the reader is advised to consult the latest enactments in the jurisdiction of interest.

§ 1[b] Introduction—Related matters

Related Annotations are located under the [Research References](#) heading of this Annotation.

§ 2[a] Summary and comment—Generally

[Cumulative Supplement]

As the cases discussed in this annotation demonstrate, many courts make no effort to distinguish between "reparation" and "restitution." However, where the effort is made, most jurisdictions would agree with the distinction drawn by the court in *State v. Stalheim* (1976, Or) 552 P.2d 829, 79 ALR3d 969. In that case the court construed the term "restitution" as meaning the return of a sum of money, an object, or the value of an object which a defendant wrongfully obtained in the course of committing the crime, while "reparation" was defined as a repairing or a restoration to good condition. Under this definition, the reimbursement of a victim of a crime of violence for any injuries he might have received to his person or any damage to his property would amount to reparations. It is in this sense that the term "reparation" has been used in this annotation.

Speaking generally, when a court is sentencing a defendant who has been convicted of a crime of violence, it may properly require, as a condition of probation, that the defendant pay reparations to the victim of that crime. Such a condition has been considered constitutionally valid.⁵ And in view of the recent interest in requiring governments to pay reparations to the victims of crimes,⁶ it is generally favored in the law provided that the defendant has the ability to pay.⁷ Moreover, where the question has been raised, the courts have held that this condition does not involve the possibility of imprisoning a defendant for debt as prohibited in state constitutions.⁸ But a condition that requires the defendant to pay as reparations a portion of any salary he might earn has been considered as possibly subjecting the defendant to a state of peonage where no limits were placed on the requirement.⁹ And it has been held that in order for such a probation condition to be valid, the purpose and terms of the reparation payments must be prescribed by the sentencing court and not left up to the probation authorities.¹⁰

The courts have experienced some difficulty in fixing the amount of reparations that can properly be assessed as a condition of probation.¹¹ Some jurisdictions require that the amount assessed must not be in dispute or must be adjudicated.¹² Others do not require this, permitting the assessment of amounts that remain in dispute.¹³ It has also been held that the amount of reparations that can be ordered as a condition of probation need not be limited to the amount of the maximum fine that can be imposed for the particular criminal offense involved.¹⁴

Even though the exact amount of damages for injuries inflicted upon the victim of a crime of violence is readily ascertainable, where the crime has been committed by two or more persons, and a court desires to impose a reparation conditioned upon one of those persons, a question arises as to the amount of reparations that can be assessed against that one person. Where the issue was presented, the court seemed to hold that a defendant could not be assessed more than his share of the total damage inflicted, and in the absence of a showing otherwise, each participant must be presumed to have inflicted an equal share of the total damage.¹⁵

The right of a victim of a crime of violence to institute a civil action for damages against a criminal has been held to have no effect upon, and not to be affected by, a requirement that the criminal pay reparations to the victim as a condition of probation, although, if the victim recovers, some jurisdictions may require a setoff for the money already received by the victim under the probation condition.¹⁶

The payment of reparations as a condition of probation has been ordered for a variety of injuries,¹⁷ the most common being for medical expenses.¹⁸ But defendants have also been required, as a condition of probation, to reimburse the victim for pain and suffering,¹⁹ loss of wages,²⁰ and orthopedic devices.²¹ It has been held proper to require a defendant to make payments toward the support of a deceased victim's dependents,²² but it has also been held improper.²³ Some courts have upheld probation conditions that assessed the defendant a particular amount simply for the victim's "damages,"²⁴ but one court has held this to be improper.²⁵ Finally, it has been held proper to require the defendant to pay the victim's funeral expenses as a condition of probation when he died at the hands of the probationer.²⁶

A crime of violence may, and often does, cause injuries of one kind or another to persons other than those who are directly caught up in the offense. This has made it necessary for some courts to decide whether they will allow reparations to be ordered to victims other than those directly injured, and if so, whether it is proper to require reparations to any person who has suffered a loss as a result of the crime. One court has refused to allow a sentencing court to require the payment of reparations, as a condition of probation, to any victim other than the person directly injured by the defendant while the defendant was committing the criminal offense.²⁷ But other jurisdictions have permitted sentencing courts to require defendants to pay reparations to the parents²⁸ of persons killed by the defendant, to an insurance company²⁹ that has reimbursed the victim for injuries received

when the victim was assaulted by the defendant, as well as to others.³⁰ And the condition has been imposed upon defendants who have been convicted of a variety of violent crimes.³¹

CUMULATIVE SUPPLEMENT

Cases:

Before restitution can be made condition of probation, court must conduct hearing and make written finding. [Day v State \(1988\)](#) 188 Ga App 648, 374 SE2d 87.

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 2[b] Summary and comment—Practice pointers

The prosecuting attorney may find it a good policy to encourage the court to use the reparations condition when placing defendants on probation, especially at this time when states are becoming aware of the neglected victim and are adopting measures allowing public funds to be used to pay reparations to these victims of crime.³² Ordinarily, if the defendant pays, the government does not have to.

The judge who wishes to require a defendant, as a condition of probation, to pay reparations to a victim of the defendant's crime is well advised to clearly show how he arrived at the amount which he assesses.³³ He should also fix the terms of the condition, such as the time and amount of the payments, the conditions under which payment might be postponed or canceled, the defendant's responsibilities if payment becomes impossible, etc.³⁴ When imposing the condition, the sentencing judge should also explain how the requirement is related to the rehabilitative purposes of probation so as to prevent the condition from being invalidated on appeal.³⁵

A probation condition which requires the defendant to pay reparations to a victim of the defendant's crime, if it is to be challenged at all, should be challenged immediately, and all grounds which might possibly apply should be raised in the sentencing court so as to preserve the argument for use on appeal. Some appellate courts have refused to consider arguments against the condition when they were not raised in the sentencing court.³⁶ Moreover, it has been held that if the defendant does not appeal the judgment which imposed the requirement to pay reparations, he cannot contest it when the probation is revoked because he failed to make the payments.³⁷

Some courts place upon the defendant the burden of showing that the condition is improper, and if the defendant acquiesces in the condition without objection or fails to demonstrate that the condition is improper, he will not be permitted to attack it later. Thus, where the amount required to be paid as reparations is not supported by indisputable evidence such as hospital bills, and the defendant believes the amount to be higher than warranted, he should make his objection known in the sentencing court at the time that the condition is imposed, demanding a hearing to fix the amount. Unless he does so, the appellate court may accept the amount as proper even though there is no evidence in the record to substantiate it.³⁸

II. General principles

§ 3. Constitutional validity of condition; generally

[\[Cumulative Supplement\]](#)

Virtually all of the cases discussed in this annotation by some implication, if not expressly, recognize that given the proper circumstances, a sentencing court violates no constitutional provisions when granting a defendant probation on the condition that he pay reparations to the victim of the crime for which the defendant was convicted. It appears that in one jurisdiction, the courts had no power to impose such a condition prior to 1970, however.³⁹

Some courts have expressly ruled that the condition does not violate the constitutional rights of a defendant,⁴⁰ while one court has refused to rule on the constitutional validity of the condition as presented because it was not properly raised, although this court did uphold the conditions in the case at hand.⁴¹

CUMULATIVE SUPPLEMENT

Cases:

Defendant's fundamental rights were not violated by sentencing court order granting probation on condition that defendant pay reparations to victim of prior burglary. [State v Cummings \(1978, App\) 120 Ariz 69, 583 P2d 1389.](#)

Requirement that defendant make restitution for embezzled funds, as condition of probation, including funds not involved in count to which defendant pleaded guilty, was not abuse of discretion where defendant had signed waiver as condition of dismissal of other counts allowing consideration of facts involved therein. [People v Baumann \(1985, 4th Dist\) 176 Cal App 3d 67, 222 Cal Rptr 32.](#)

Statute which authorized imposition of restitution as condition of probation following conviction for driving under influence, hit and run, and driving while license revoked did not deny due process in denying defendant hearing on damage issue, was not unconstitutional retrospective application of law, nor was it unconstitutional because it deprived defendant of jury trial on question of damages where constitutional guarantee applied only to civil damages cases and not to criminal penalties. [Cannon v State \(1980\) 246 Ga 754, 272 SE2d 709.](#)

Missouri law permits restitution as a condition of probation. [V.A.M.S. § 559.021, subd. 2\(1\). In re Ellison, 245 B.R. 361 \(Bankr. W.D. Mo. 1999\) \(applying Miss law\).](#)

Probation condition that defendant stay away from his former wife, except as authorized by Family Court when visiting their child, was permissible exercise of discretion, despite defendant's claim that there was no proof that in any way involved his ex-wife, and no nexus between the condition and the nature of the offenses, driving while intoxicated and aggravated unlicensed operation of a motor vehicle; court was aware that Family Court had previously entered a protective order in favor of defendant's ex-wife, and was concerned that his relationship with his ex-wife added stress to his life. [McKinney's Penal Law § 65.10, subds. 1, 5. People v. Page, 698 N.Y.S.2d 774 \(App. Div. 3d Dep't 1999\).](#)

Special condition of probationary sentence which required defendant, who had been convicted of discharging firearm into dwelling, to pay \$25 per week for five years as reparation to victim who was severely injured, was valid as condition of probation, but, evidentiary basis must exist for amount of reparation ordered by trial judge. [State v Wilson \(1980\) 274 SC 352, 264 SE2d 414.](#)

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 4. As involving imprisonment for debt

Where the question has been raised, the courts have held that a condition of probation which requires a defendant to pay reparations to the victim of a crime of violence for which the defendant was convicted does not involve the possibility of imprisoning the defendant for debt as prohibited in the particular state constitution. The courts so hold in the following cases.

Thus, where a defendant who had been convicted of reckless driving, and who had injured "a number of persons," was given a suspended sentence on the condition that he pay \$771.50 for the use of the injured persons, and where his prison sentence had been invoked for failure to continue the payments, in [State v Simmington \(1952\) 235 NC 612, 70 SE2d 842](#), it was held that when imprisoned, the defendant would be imprisoned for his breach of the criminal law and not for the failure to pay damages. Some 2 months after the sentencing, the defendant moved to be discharged, attacking the reparation condition. The motion was denied and the defendant was ordered into custody for failure to comply with the conditions. The case was then heard on certiorari where it was concluded that the conditions of the suspended sentence were valid. From this the defendant appealed. In affirming the judgment, the court explained that the sentencing court afforded him an opportunity to escape the service of the sentence pronounced by observing the conditions imposed, that he accepted and then withdrew his acceptance, rejecting the conditions, and that he thus furnished the grounds for invoking the original sentence. [Myers v Barnhardt \(1932\) 202 NC 49, 161 SE 715](#), was said by the court to be "clearly distinguishable," since in the Myers Case, according to the court, judgment had been suspended on condition that the defendant give a bond guaranteeing the payment of damages to the injured party, and the Myers court held that the condition on which the sentence was suspended was the execution of the bond, that when the bond was executed, approved, and filed, the condition imposed had been met and the power of the court in the criminal case terminated, and that thereafter the plaintiff was relegated to his right to recover on the bond.⁴² Returning to the case at hand, the court said that while the sentencing court was without jurisdiction to compel the defendant to pay the damages inflicted on penalty of imprisonment, this did not mean that it could not suspend the execution of the sentence of imprisonment on condition that the defendant compensate those whom he had injured, that such disposition of the case merely gave him the option to serve his sentence or accept the conditions imposed, that if he was not content, he had the right either to reject the condition or to appeal, and that not having appealed, he was relegated to his right to contest the execution of the sentence on the grounds that there was no evidence that the conditions imposed had been breached, or that the conditions were unreasonable and unenforceable or extended for an unreasonable length of time.

§ 5. As subjecting probationer to state of peonage

According to the court in the following case, a condition of probation that required a probationer who had been convicted of a crime of violence to indefinitely pay as reparations a specified portion of any salary he might earn, was possibly akin to subjecting the defendant to a state of peonage in violation of the state constitution.

Thus, where the sentencing court imposed a condition of probation which required the probationer to pay 40% of his earnings to, or on behalf of, two minor children of the probationer's rape and murder victim, in [Watson v State \(1973\) 17 Md App 263, 301 A2d 26](#), it was suggested that the condition placed the defendant in a state of peonage, the court holding that the sentencing court exceeded its authority in imposing the condition. The court determined that the condition failed to meet the requirements that probation conditions should be reasonable, have a rational basis, be clear, definite, and capable of being properly comprehended by the probationer and by those responsible for their enforcement, and that they not be the product of arbitrariness or capriciousness. The probationer, convicted of murder and rape on his guilty plea, had been sentenced to two consecutive life imprisonment terms, one for murder and the other for rape. The second term was suspended with the condition that the payments be made. On appeal from the judgment the court set aside the sentence for rape as imposed, and remanded the case for imposition of a proper sentence, pointing out that "arguably" the condition imposed was akin to subjecting the probationer to a state of peonage, a status which had been proclaimed by the state constitution as forever abolished.

§ 6. Requirement that purpose and terms of condition must be prescribed by sentencing court

[Cumulative Supplement]

When a sentencing court grants probation to a defendant who has been convicted of a crime of violence, and as a condition of that probation, requires that the defendant pay reparations to a victim of the crime, in order for the condition to be valid, according to the court in the following case, the sentencing court itself must also prescribe the specific purpose, terms, and conditions of that payment, and may not delegate the determination of these details to the probation department.

Where a sentencing court, as a condition of probation granted to a defendant who had been convicted of homicide resulting from the careless, reckless, or negligent operation of a motor vehicle, required the defendant to make "restitution" in the sum of \$385, "payable as determined by the probation department," in *People v Good* (1938) 287 Mich 110, 282 NW 920, it was held that the condition was invalid because it permitted the probation department to determine how "restitution" was to be made by the defendant. Pointing out that a state statute permitted courts to impose the conditions of probation including restitution, and the like, the court said that the statute contained no authorization for a delegation of this duty, in whole or in part, to the probation department, that the probation department could act in this matter in, at most, an advisory capacity, that the court should in any event include within its order the specific purpose, terms, and conditions of the payment of money by a defendant, if such payment was made a condition of probation, that the record was silent in this respect, and that, therefore, it was unable to say whether the payment ordered was or was not a proper condition of probation.

CUMULATIVE SUPPLEMENT

Cases:

Condition of probation for grand larceny defendant requiring restitution would be vacated and case remanded for hearing where no notice of restitution condition was provided defendant, defendant contested amount his employer claimed was stolen, and defendant was not afforded opportunity for hearing on amount of damage or loss. *Blincoe v State* (1979, Fla App D1) 371 So 2d 595.

Restitution may only be ordered as a condition of probation when the trial court suspends the imposition or execution of sentence. *LSA-Cr.P. arts. 895, subd. A(7), 895.1, subd. A(1). State v. Counts, 747 So. 2d 617 (La. Ct. App. 2d Cir. 1999).*

When imposed as sentence, injury to property or person for which restitution is ordered must directly result from crime; however, when restitution is ordered as condition of probation, requirement of nexus between damage and offense is relaxed, and sentencing court is accorded latitude to fashion probationary conditions designed to rehabilitate defendant and provide some measure of redress to victim. *18 Pa. C.S.A. § 1106(a); 42 Pa. C.S.A. § 9754(c)(8). In re M.W., 555 Pa. 505, 725 A.2d 729 (1999).*

[Top of Section]

[END OF SUPPLEMENT]

§ 6.5. Other issues

[Cumulative Supplement]

The following authority addressed other general principles not the subject of §§ 3-6 concerning the propriety of a condition of probation which requires a defendant convicted of a crime of violence to make reparation to the injured victim.

CUMULATIVE SUPPLEMENT

Cases:

The superior court has the authority to award restitution for drug buy money to the state both as a condition of probation and as part of a sentence. AS 12.55.015(a)(5), 12.55.045(a), 12.55.100(a)(2). [Haynes v. State](#), 15 P.3d 1088 (Alaska Ct. App. 2001).

Defendant who pled no contest to brandishing a weapon to avoid arrest was properly required, as a condition of probation, to pay restitution to police department for defendant's hospital bills, where hospitalization arose out of police shooting defendant with rubber bullets to prevent escape, and restitution served rehabilitative purpose of deterring defendant from disobeying lawful police orders in the future. [West's Ann. Cal. Penal Code § 1203.1. People v. Rugamas](#), 113 Cal. Rptr. 2d 271 (App. 3d Dist. 2001).

Court may impose victim restitution order as condition of probation regardless of whether or not defendant has been convicted of underlying crime. [Cal. Penal Code § 1203.1. People v. Rahbari](#), 2014 WL 6985090 (Cal. App. 1st Dist. 2014).

A court may impose a victim restitution order as a condition of probation regardless of whether the defendant has been convicted of the crime giving rise to the loss. [West's Ann. Cal. Penal Code § 1203.1\(j\). People v. Snow](#), 205 Cal. App. 4th 932, 2012 WL 1492838 (3d Dist. 2012), review filed, (May 14, 2012).

If restitution is made an original condition of a probation, the court can properly determine the amount of restitution at a later date. [State v. Maddex](#), 159 So. 3d 267 (Fla. 4th DCA 2015).

Sentence imposed on defendant for misuse of firearms while hunting, which provided that any restitution sums not paid in full during term of defendant's probation would be subject to lien, was error, where statute allowed for maximum imprisonment of 10 years, defendant was sentenced to 10 years, and court did not have authority to continue restitution payments or impose lien beyond expiration of probation. [O.C.G.A. §§ 16-11-108\(a\), 17-14-3. Jones v. State](#), 246 Ga. App. 857, 542 S.E.2d 584 (2000).

Statutory requirement that any restitution ordered as condition of probation be for damage or loss caused by defendant's crime for which probation was imposed and another subsection of probation statute, which provides courts with discretion to impose requirements on probation are construed in pari materia to preclude the sentencing judge from imposing as a condition of probation an unpaid order of restitution made in a prior case. [K.S.A. 21-4610\(c, d\). State v. Hymer](#), 26 P.3d 63 (Kan. 2001), as corrected, (July 25, 2001).

Probation that includes the payment of restitution must be reasonably related to defendant's rehabilitation and should not be so harsh that defendant is destined to fail from the outset. [State v. Stephenson](#), 755 So. 2d 373 (La. Ct. App. 2d Cir. 2000).

Written plea agreement did not preclude trial court from ordering offender to pay restitution as a condition of probation, such that trial court, when victim requested restitution at the sentencing hearing, should have received victim's medical bills into evidence, considered victim's presumptive right to restitution, and decided whether to order restitution; plea agreement called for a split sentence but was silent about probation, a period of probation had to be ordered for at least a portion of the suspended sentence, offender could not reasonably have expected that no period of probation would be imposed, and restitution was a standard, frequently imposed condition of probation. [West's Ann. Md. Code, Criminal Procedure, §§ 6-221, 6-222, 11-601\(g\), 11-603\(b\). Lindsey v. State](#), 218 Md. App. 512, 98 A.3d 340 (2014).

Trial judge must consider the ability of a defendant to make payments in ordering restitution, and the conditions of probation must be clear, explicit, and unambiguous, so that the defendant understands what is expected of him; the defendant must know with certainty what he is being asked to do. [Vernon's Ann. Texas C.C.P. art. 42.12 § 11\(b\). Greathouse v. State](#), 33 S.W.3d 455 (Tex. App. Houston 1st Dist. 2000).

Sentencing court acted within its discretion in fashioning restitution order that considered assault defendant's future earning capacity and required defendant, as condition of probation, to pay for victim's dental expenses at rate of \$300 per month; court found that if it based restitution payment schedule on defendant's current ability to pay, without considering earning capacity, it would take defendant 12 years to repay victim, and that such result was unacceptable given victim's loss and defendant's ability to work. [13 Vt. Stat. Ann. § 7043](#); [28 Vt. Stat. Ann. § 252\(b\)\(6\)](#). [State v. Dwight, 2018 VT 73, 194 A.3d 1163 \(Vt. 2018\)](#).

Circuit court lacked statutory authority to order, as condition of probation, payment of restitution obligations from unrelated crimes for which defendant was previously convicted, even though general statute provided that circuit court could impose reasonable and appropriate conditions of probation, where separate statute specifically defined circumstances under which restitution could be ordered, namely for crime that was basis of conviction, and for other related crimes that were uncharged or dismissed as part of plea agreement, and prohibited imposition of restitution under any other circumstances. [W.S.A. 973.09\(1\)\(b\), 973.20](#). [State v. Torpen, 2001 WI App 273, 637 N.W.2d 481 \(Wis. Ct. App. 2001\)](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

III. Factors governing amount of reparations properly assessed

§ 7[a] Basis for fixing amount—View that amount must be liquidated or easily measurable

[\[Cumulative Supplement\]](#)

As the following cases demonstrate, some jurisdictions require that where a defendant who has been convicted of a crime of violence is granted probation on condition that he pay reparations to a victim of the crime, the amount assessed must not be in dispute or must be liquidated or easily measurable.

Where a defendant who had been convicted for assault and battery was required as a condition of probation to pay \$175 for the use of the victim for expenses incurred, in [O'Quinn v State \(1970\) 121 Ga App 231, 173 SE2d 409](#), it was held that the court did not err in imposing the condition, since a state statute authorized the court to require, as a condition of probation, that a defendant pay reparation to an aggrieved person provided that the amount was not in dispute or had been adjudicated. On appeal from the judgment, the court affirmed, saying that although the record failed to disclose what hearing, if any, or what evidence was adduced, if any, after conviction and before sentencing, the evidence adduced on the trial of an offense need not support the determination of the court in imposing conditions for suspension. The mere fact that the only evidence of a specified dollar amount of expenses was a dental bill of \$21, although it was also clear that the victim did incur other expenses, the amount of which did not appear, afforded no basis for the court to assume that the amount was in dispute and had not been adjudicated, or that the amount as determined by the court was in error requiring reversal in respect to the sentence imposed, it was added.

The court upheld a condition of probation which required a defendant to pay \$12,000 "restitution" to the victim of his assault, in [Biddy v State \(1976\) 138 Ga App 4, 225 SE2d 448](#), only because, the court said, the defendant had agreed to the amount. A state statute allowed an order requiring the payment of reparation or restitution to the victim for damage or loss caused by the offense in the amount to be determined by the court, but prohibited such orders if the amount was in dispute, unless the amount had been adjudicated. The defendant was contesting the condition on the ground, inter alia, that the amount was in dispute because there had been no prior adjudication. Noting that the amount appeared reasonable "in view of the serious and permanent injuries received" by the victim, the court said that it could be sustained, however, only by reason of the fact that the amount was not contested. The court said that although a defendant could not be "sentenced" to make restitution, the court could make restitution a condition of probation, that the criminal process should not be used to supplement a civil suit or as a threat to coerce the payment of a civil liability and thus reduce the criminal court to a collecting agency, but that the legislature did not intend to foreclose the court from determining the amount of restitution where such amount was freely admitted by the defendant. When a court in a criminal suit determines the amount of restitution for the purpose of probation, it does so as a

part of the criminal proceeding, the court said, and such proceeding determination is analogous in its nature to a presentence investigation, it was added.

In [State v Stalheim \(1976, Or\) 552 P2d 829, 79 ALR3d 969](#), the payment of reparations, ordered as a condition of probation, was held proper only if limited to amounts which were readily measurable. The defendant had been convicted of criminally negligent homicide and had been granted probation on the condition, among others, that he pay \$2,500 "restitution" to the man whose wife and daughter the defendant had killed, the payment being ordered to compensate him for the loss of his family. On appeal, the appellate court affirmed the conviction but remanded on the ground that the restitution condition was improper since the individual who was to receive the payment was not the aggrieved party within the meaning of the statute which authorized such restitution orders.⁴³ The state then petitioned for review, contending that the sentencing court's authority in this matter was limited only by the requirement that the conditions have a rational relationship to the purposes of probation and that the conditions were not shocking to one's conscience. Conceding that the statute was susceptible to that "broad interpretation," the court said that in other jurisdictions the courts had taken a variety of views ranging from the one extreme limiting restitution to the return of specific property or its value, with recovery limited to the victim of the crime, to the other extreme of permitting compensation for loss, damage, or injury to others, not limited to the victim, arising out of the commission of the crime, that the interpretation urged by the state presented problems, that it forced the judge to make an evaluation of losses usually reserved to civil juries, that the judge would not ordinarily have the benefit of the pleadings which framed the issues nor the testimony of witnesses to develop evidence relevant to the loss resulting from the defendant's wrongdoing, leaving the judge in the difficult if not impossible position of having to assign a value to a loss he knew little about, and that this was a highly inappropriate task for a judge presiding over a criminal trial. Also, the court continued, the defendant might be prejudiced by the introduction of civil damages issues into his criminal trial, because at sentencing a defendant does not have the benefit of defenses such as contributory negligence or assumption of risk, nor a jury determination of damages which would be available in a civil trial. Thus, the court construed "restitution" to mean the return of an object or its value which a defendant wrongfully obtained in committing a crime. And "reparation" was construed as "repairing" and as encompassing only reimbursement for the victim's liquidated or easily measurable damages resulting from the charged offense. In affirming, the court said that this construction would embrace medical expenses, wages actually (not prospectively) lost, and reimbursement for easily measurable property damage. Payment was restricted to the direct victims of a crime. According to the court, this interpretation served a rehabilitative purpose by impressing upon the offender the loss he had caused and his responsibility to repair that loss as far as it was possible to do so. The rehabilitative effect would be considerably weakened, the court added, if instead of requiring compensation for easily perceived damages, the trial court were to force the payment of large and speculative amounts representing pain and suffering, loss of consortium, and the like. The court pointed out that by holding in this manner, it specifically disapproved the majority opinion in [State v Sullivan \(1976, Or App\) 544 P2d 616](#).⁴⁴

CUMULATIVE SUPPLEMENT

Cases:

In prosecution in which defendant was convicted of criminal sexual conduct and was placed on probation conditioned in part on making restitution to victim of \$10,000, case would be remanded for reconsideration of restitution award following presentation of evidence on issue of economic loss to victim and her family, where record provided no factual basis for restitution award. [State v Fader \(1984, Minn\) 358 NW2d 42](#).

Provision that defendant make restitution to assault victim was inadequate in that it failed to specify amount of damages. [State v Papke \(1992\) 240 Neb 50, 480 NW2d 209](#).

Record did not support trial court's imposition of condition of probation that voluntary manslaughter defendant contribute \$200 monthly to the financial support of homicide victim's children; trial court failed to make findings regarding the actual financial needs of the victim's children or to what extent the victim actually provided financial support for his children prior to his death,

and the award seemed so speculative, as a matter of child support, as to approach being arbitrary. [42 Pa.C.S.A. § 9754\(c\)\(8, 13\)](#). [Com. v. Hall, 80 A.3d 1204 \(Pa. 2013\)](#).

See [Simpson v State \(1989, Tex App Amarillo\) 772 SW2d 276, § 26](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 7[b] Basis for fixing amount—View that disputed amount need not be liquidated or easily measurable

[\[Cumulative Supplement\]](#)

According to the courts in the following cases, a sentencing court, as a condition of probation, may require a defendant who has been convicted of a crime of violence to pay reparations to the victim of that crime even though the amount may not be liquidated or easily measurable and may remain in dispute.

Thus, it was held that suspension of sentence was purely a matter of discretion in the trial court and that it was not necessary for the trial court to spell out its reasons for either granting or denying probation or the basis for the particular amount of reparations that it ordered paid as a condition of probation, in [Shenah v Henderson \(1970\) 106 Ariz 399, 476 P2d 854](#), where, as a condition of probation, the trial judge required a defendant, who had been convicted of vehicular manslaughter, to pay \$2,500 to the parents of the deceased victim to help defray the expenses of their loss, and where the trial judge had conducted a mitigation hearing before imposing the condition and had the probation officer's presentence report before him. In attacking the condition, the defendant contended, inter alia, that the trial judge had no evidence as to the amount of injury suffered by the parents or as to the amount of their recovery under an insurance policy. In upholding the condition, the court said that the trial court had sufficient facts before it to warrant imposing reparation of \$2,500 as a condition of probation, that the burden was on the defendant at this mitigation hearing to bring to the attention of the court any factors which might bear upon the reasonableness of any reparation order and any factors which might bear upon the defendant's ability to make reparation, and that he failed to introduce any such factors in the instant case.

It was held that a defendant was not deprived of due process of law when he was denied a hearing on the question of the amount of "damages" to be imposed as a condition of probation, and that the statute authorizing the imposition of conditions was ample notice of the possibility that such a condition might be imposed, in [People v Good \(1938\) 287 Mich 110, 282 NW 920](#), where the trial court, as a condition of probation for a defendant who had been convicted of homicide resulting from the careless, reckless, or negligent operation of a motor vehicle, required the defendant to make "restitution" in the sum of \$385, "payable as determined by the probation department." Although the majority opinion referred to it as "restitution," a concurring opinion suggested that it was an attempt to order the payment of reparations. The defendant contended, on appeal from the judgment, that the condition violated the due process clause of both the federal and state constitutions by not allowing a hearing on the question of damages to be assessed, that he did not have an opportunity to interpose defenses such as the decedent's contributory negligence, and that the notice of a criminal prosecution was not appropriate to a proceeding in which civil damages could be assessed. The court rejected these contentions with the observation that they were based upon the erroneous assumption that damages were "assessed" by the court when "restitution" was made a condition of probation, that no judgment was rendered for, nor could a writ of execution issue to enforce the collection of, the sum specified, and that a defendant in such an instance was merely given the alternative of abiding by the conditions imposed or else suffering the imposition and execution of a sentence which ordinarily followed a verdict of guilty. The defendant was not deprived of any of his rights without due process, the court continued, rather, he was given the additional privilege of avoiding the usual penalty of his crime by the payment of a sum of money and the observance of the other conditions attached to his probation. However, the condition was held invalid because it left the manner of payment up to the probation department rather than to the court as required by the statute. Thus, the matter was remanded for entry of a correct order of probation or sentence.

Where a defendant who had been convicted of assault was given a suspended sentence on the condition that he reimburse the person assaulted for the cost of one pair of orthopedic shoes and an amount equal to the person's salary for the period he was unable to work, in [State v Mottola \(1972, App\) 84 NM 414, 504 P2d 22](#), the court upheld the condition, rejecting the defendant's contention that he could not be assessed damages because it involved the issue of proximate cause of damages which a judge in a criminal matter could not determine. The defendant appealed the judgment and the appellate court affirmed, saying only that a state statute authorized a trial court to suspend sentence by requiring the defendant to make restitution or reparation to an aggrieved party for actual damages or loss caused by the crime for which conviction was had.

CUMULATIVE SUPPLEMENT

Cases:

Probation conditioned upon payment of reparations to victim who was shot in neck with air rifle was not improper even though amount to be paid exceeded victim's actual medical bills and exceeded amount defendant could have been fined for offense. [State v Garner \(1977, Ariz App\) 566 P2d 1055](#).

See [People v Wager \(1983\) 129 Mich App 819, 342 NW2d 619, § 15\[a\]](#).

Restitution that is ordered as a condition of probation may not be strictly limited to a victim's property damage. R.C. § 2951.02(B) (9), (C) (2003). [State v. Walker, 164 Ohio App. 3d 114, 2005-Ohio-5592, 841 N.E.2d 376 \(2d Dist. Greene County 2005\)](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 7.5. Burden of proving amount

[\[Cumulative Supplement\]](#)

CUMULATIVE SUPPLEMENT

Cases:

Restitution condition of probation, which was imposed at sentencing for sexual intercourse without consent, that required probationer to pay \$5,000 to victim was illegal, where presentence investigation report did not document victim's pecuniary loss or probationer's future ability to pay. MCA 46–18–242, 46–18–244(2). [State v. Muhammad, 2002 MT 47, 43 P.3d 318 \(Mont. 2002\)](#).

Where restitution is imposed as a condition of probation, the required nexus between the crime and the victim's damages is relaxed. [18 Pa. C.S.A. § 1106\(a, b\)](#); [42 Pa. C.S.A. § 9754](#). [Com. v. Kelly, 2003 PA Super 416, 836 A.2d 931 \(2003\)](#).

Burden of proving amount of property damage or loss, for purposes of applying statute prohibiting probation or suspension of sentence for person convicted of crime resulting in property damage or loss unless such person makes at least partial restitution, is by preponderance of evidence. Code 1950, § 19.2–305.1, subd. A. [Bazemore v. Com., 25 Va. App. 466, 489 S.E.2d 254 \(1997\)](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 8. **Influence of maximum fine authorized for offense**

[Cumulative Supplement]

The amount of reparations that can be ordered as a condition of probation is not limited to the amount of the maximum fine that can be imposed for the particular criminal offense involved, according to the courts in the following cases.

The fact that the court ordered a defendant who was convicted of aggravated assault and battery to pay \$12,000 restitution to his victim as a condition of probation, while the statute provided that no payment of fine in excess of \$2,000 should be made a condition of probation, the court held in [Biddy v State \(1976\) 138 Ga App 4, 225 SE2d 448](#), that since a fine was payable to the state and reparation to the injured party, the two were distinct and could not be substituted for each other to uphold a sentence, and neither could the words be interchanged to void a sentence. The opinion contained no further discussion on this point.

In [State v Gunderson \(1968\) 74 Wash 2d 226, 444 P2d 156](#) (ovrld on other grounds [State v Gosby, 85 Wash 2d 758, 539 P2d 680](#)), it was held that a condition of probation requiring the payment of reparations was not a fine and was not limited by the maximum penalty authorized for the offense involved. After conviction of a defendant for negligent homicide, the court granted probation on condition, among others, that the defendant pay \$7,500 to the parents of the victim, payable on a monthly payment program. The defendant appealed, contending, inter alia, that the reparation condition was void because it constituted a fine in excess of the \$1,000 maximum penalty authorized for a negligent homicide. In affirming the judgment, the court pointed out that a state statute authorized the deferment of sentence on condition that the defendant make "restitution" to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question, and added that certainly the defendant did not argue that the parents of the deceased child did not suffer a loss, and that the payment required, as a condition of deferment, was clearly authorized by the statute, was not therefore a fine, and was grounded in the sound discretion of the trial court.

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In the following case the court distinguished the requirement to pay reparations, as a condition of probation, from a fine imposed as punishment.

Thus, in [Commissioner of Motor Vehicles v Lee \(1969\) 254 Md 279, 255 A2d 44](#) (superseded by statute as stated in [Laurie v State, 29 Md App 609, 349 A2d 276](#)), the court suggested, by way of dictum, that "restitution" could, in a proper case, be imposed as a condition of probation without finding a verdict, that such a requirement was to be distinguished from a fine or penalty payable to the state as punishment for the commission of a crime, and was in the nature of reparations or redress to make whole, persons who had been injured by the accused's conduct, and that, as such, it was not punitive, and was not, like a fine, consistent only with a criminal conviction. The defendant was appealing an order of probation without verdict imposed in a prosecution for operating a motor vehicle under the influence of alcohol and reckless driving.

CUMULATIVE SUPPLEMENT

Cases:

See [State v Garner \(1977, Ariz App\) 566 P2d 1055, § 7\[b\]](#).

[Top of Section]

[END OF SUPPLEMENT]

§ 9. Amount chargeable to one where damage caused by several

Even though the exact amount of damage inflicted upon the victim of a crime of violence is readily ascertainable, where the crime has been committed by two or more persons, and a court desires to impose a reparation condition upon one of those persons, a question arises as to the amount of reparations that can be assessed against that one person. The court in the following case seems to hold that a defendant cannot be assessed more than his share of the total damage inflicted, and in the absence of a showing otherwise, each participant must be presumed to have inflicted an equal share of the total damage.

Where three defendants who had participated in a mob disturbance, and as a result had been convicted of assault and battery on the police, were given probation on the condition, among others, that they each pay a 1/5 share of the damage (five had been convicted but only three appealed) even though "up to 123" persons had been involved, in [People v Kay \(1973\) 36 Cal App 3d 759, 111 Cal Rptr 894, 73 ALR3d 1235](#), the court appears to hold that since the amount of damage inflicted by any particular person could not be determined, the maximum that each could be assessed for reparations, as a condition to probation, would be 1/123 of the total damage. The defendants had appealed the judgment and the appellate court reversed the orders granting probation and remanded saying that there were up to 123 demonstrators, that 18 were convicted in the municipal court, but they were not required to pay anything by way of "restitution," and that this was a factor which the trial judge should consider on remand. The court added that on remand the judge should take into account the entire situation, including the responsibility of other guilty parties, not only those who were convicted in the municipal court, but also the total number of demonstrators, "because apparently it is impossible to determine who among them was responsible for any particular damage to the property."

§ 10. Effect of victim's civil action for damages

[Cumulative Supplement]

Where a defendant has been convicted of a crime of violence and granted probation on condition that he pay reparations to a victim of the crime, it has been held that his duty to pay reparations does not affect, and is not affected by, the victim's right to institute a civil action for damages against the defendant based on the same conduct, although, if the victim recovers, a setoff might be ordered for the money already received by the victim under the condition of probation. The court in the following case so holds.

Where a defendant attacked another with his shotgun causing injuries which resulted in the amputation of one of the victim's legs, the defendant thereupon being convicted of attempted murder on his guilty plea, it was held in [People v Stacy \(1965\) 64 Ill App 2d 157, 212 NE2d 286](#), that the fact that the victim instituted a civil action for damages against the defendant did not prevent the trial court in the criminal prosecution from requiring the defendant, as a condition of probation, to pay \$100 per month as a contribution toward the victim's medical expenses. In imposing the condition, the court stated that the payments were not intended to disturb any civil rights which might exist between the victim and the defendant. After the condition had been imposed, the victim instituted the civil action and the defendant filed a motion in the criminal court seeking suspension of the payments pending the outcome of the civil action. The motion was denied and the defendant appealed contending that it would be unjust to require him to continue the probation payments if the victim recovered a money judgment, and if the jury should find him not guilty, then he should not be required to pay damages in any form. Recognizing the right to order reparation payments as a condition of probation, the court concluded from the record that the parties had agreed on the amount of the reparation payments, and that the payments were not excessive. In affirming a denial of the defendant's motion, the court expressed the view that the prosecution of a criminal action against a defendant is in no way a bar to the victim's right to institute a civil action for damages against the same defendant based on the same conduct, that the determination of a civil jury could not change a criminal conviction in any case, and that this being so, it was difficult to see what effect a finding of nonliability could have upon the reparation payments. It would be unfair the court continued, to cut off payments because the victim exercised his valid right to institute a civil action against the defendant. Should the victim obtain a damage verdict, the court said, it might be that a setoff would have to be ordered for the money already received by the victim under the terms of the probation, but

this would be a question to be decided at the time of such an award, and not in the present case on the mere speculation that such an award might be forthcoming.

◆

In the following case a condition of probation requiring the payment of reparations to a victim of the defendant's crime was ordered only after the defendant had failed to pay a judgment obtained by the victim in a civil action for damages.

Thus, where a defendant had been convicted of felonious operation of an automobile which injured two persons, and had been placed on probation, the two victims later obtaining judgments (\$10,000 and \$11,000) against the defendant in civil actions for damages, and the defendant failed to make any payments on the judgments, and where the sentencing court, approximately 8 months after the defendant's original probation had expired, extended the period for 2 years and imposed a condition requiring the defendant to pay \$200 per month to each of the injured parties for 12 months, and \$100 to each party during the 13th month, in [People v Marks \(1954\) 340 Mich 495, 65 NW2d 698](#), the condition was held valid. The defendant appealed from the order. Pointing out that a statute authorized a court to include "restitution in whole or in part to the person or persons injured" as a condition of probation, and that another statute authorized probation up to 5 years in such instances as that of the present case, the court said that it had recognized the validity of such a condition in [People v Good \(1938\) 287 Mich 110, 282 NW 920](#), and that the defendant's rights were not impinged by the alteration in the probation order made within the statutory 5-year period, even though the conditions of the original order had not been violated and its term had expired, and that the trial judge, under the statute discussed above, was at liberty at all times within the 5-year period to alter and amend the order both in form and in substance. Finding no abuse of judicial discretion, the court affirmed the order.

CUMULATIVE SUPPLEMENT

Cases:

Trial court acted within its statutory authority by imposing as a condition of probation, for defendant convicted of assault with intent to inflict great bodily injury, that defendant establish a fund for payment of damages to victim, and that defendant make payments at rate of \$200 per month during three years of probation and pending resolution of civil action by victim seeking to recover damages in amount yet to be determined. [State v Sampson \(1979\) 203 Neb 786, 280 NW2d 81](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

IV. Damages for which reparations may be ordered

§ 11. Medical expenses

[\[Cumulative Supplement\]](#)

It is uniformly held that one who has been convicted of a crime of violence can be required, as a condition of probation, to pay reparations to a victim of the crime as reimbursement for the victim's medical expenses growing out of the injuries received. Thus, the courts have upheld probation conditions that required defendants who had been convicted of crimes of violence to reimburse the victims for—

Fla

[Brown v. State, 645 So. 2d 1066 \(Fla. Dist. Ct. App. 1st Dist. 1994\)](#)

Kan

[State v Hargis \(1980\) 5 Kan App 2d 608, 620 P2d 1181](#)

Neb

[State v Behrens \(1979\) 204 Neb 785, 285 NW2d 513](#)

Ohio

[State v. Shenefield, 122 Ohio App. 3d 475, 702 N.E.2d 134 \(10th Dist. Franklin County 1997\)](#)

—"out-of-pocket medical and hospital expenses." [Dickson v State \(1959\) 230 Ark 491, 323 SW2d 432.](#)

—"medical expenses." [People v Stacy \(1965\) 64 Ill App 2d 157, 212 NE2d 286.](#)

—"doctor and hospital bills." [State v Butcher \(1970\) 10 NC App 93, 177 SE2d 924](#); [State v Byrd \(1974\) 23 NC App 63, 208 SE2d 216](#); [Flores v State \(1974, Tex Crim\) 513 SW2d 66](#); [State v Morgan \(1973\) 8 Wash App 189, 504 P2d 1195.](#)

CUMULATIVE SUPPLEMENT

Cases:

See [People v Deadmond \(1984, Colo\) 683 P2d 763, § 21.](#)

Where defendant was convicted of sexual battery, condition of probation that defendant pay for victim's future counseling expenses and for cost of rape kit used to examine victim, such cost to be reimbursed directly to hospital at which kit was used, was proper. [Drye v. State, 691 So. 2d 1168 \(Fla. Dist. Ct. App. 1st Dist. 1997\).](#)

See [People v Valek \(1979\) 69 Ill App 3d 759, 26 Ill Dec 132, 387 NE2d 962, § 23\[a\].](#)

Sentencing court did not have authority to require defendant to pay for any counseling expenses his child molestation victims might incur as result of his offenses as condition of defendant's probation, as condition was based on future expense that was not certain to be incurred and thus was not within scope of restitution statutes. [West's A.I.C. 35-38-2-2.3, 35-50-5-3. Carswell v. State, 721 N.E.2d 1255 \(Ind. Ct. App. 1999\).](#)

Sentencing court was not required to suspend all of hard labor sentence before it ordered defendant to make restitution as a condition of probation; pursuant to suspension of sentences and probation statute trial court had discretion to suspend certain sentences in whole or in part in felony cases and to place defendant on probation, conditions of probation statute allowed court to impose reasonable reparation or restitution as condition of probation, and probation and restitution statute that otherwise gave court discretion in imposing restitution as a condition of probation became a mandatory condition where victim or his family has suffered any direct loss of actual cash, any monetary loss pursuant to damage to or loss of property, or medical expense. [La. Const. art. 1, § 20](#); [La. Code Crim. Proc. Ann. arts. 893, 895, 895.1. State v. Jarratt, 299 So. 3d 1202 \(La. Ct. App. 2d Cir. 2020\).](#)

Trial court properly ordered defendant convicted of sexual battery to pay medical expenses, including costs of psychological counseling, incurred by victim and victim's family. [State v Bush \(1992, Clermont Co\) 83 Ohio App 3d 717, 615 NE2d 709.](#)

See [Simpson v State \(1989, Tex App Amarillo\) 772 SW2d 276, § 26.](#)

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 12[a] Pain and suffering—Considered proper

It has been held proper to require a defendant who has injured another while committing a crime of violence to pay reparations, as a condition of probation, for the victim's pain and suffering growing out of injuries received at the hands of the defendant.

Neb

[State v Behrens \(1979\) 204 Neb 785, 285 NW2d 513](#)

A condition to the suspension of sentence for assault in the third degree that required the defendant to make "restitution" to the victim of the assault for "pain and suffering" as well as for medical expenses and lost wages, incurred as a result of the assault, was upheld, in [State v Morgan \(1973\) 8 Wash App 189, 504 P2d 1195](#), wherein it was held that the condition imposed was consistent with the state statute governing the point and within the discretionary powers of the trial court. Affirming the judgment, the court pointed out that the statute authorized a court to suspend a sentence upon conditions which bore a reasonable relation to the defendants' duty to make reparation, or as tended to prevent the future commission of crime. The court explained that the statute had been construed to include monetary payments of fixed liability (funeral expenses), as well as general damages (\$7,500 to the parents of the negligent homicide victim), that in the present case the "restitution" ordered by the trial court was for "loss or damage" sustained by the victim as a direct consequence of the commission of the particular crime to which the defendants pleaded guilty, that the payments ordered thus bore a reasonable relation to the defendants' duty to make "reparation," and that it could find no abuse of discretion. Declining the defendants' invitation to consider the possible effects that a damage award in a criminal proceeding might have upon a future civil action arising out of the same incident, the court said that this question was more properly a matter of legislative determination. As for the defendants' contention that the statute authorizing the condition violated the state constitution, the court refused to consider the issue since it was not raised in the trial court.

§ 12[b] Pain and suffering—Considered improper

According to the court in the following case it is improper to require a defendant who has injured another while committing a crime of violence to pay reparations, as a condition of probation, for the victim's pain and suffering growing out of injuries received at the hands of the defendant.

Thus, in [State v Stalheim \(1976, Or\) 552 P2d 829, 79 ALR3d 969](#), it was said that a defendant convicted of a crime of violence could not be ordered, as a condition of probation, to pay reparations of large and speculative amounts representing pain and suffering, loss of consortium, and the like. The court held that the amount of reparations which a sentencing court could impose as a condition of probation was limited to reimbursement for the victim's liquidated or easily measurable damages resulting from the charged offense.

§ 13. Loss of wages

It has been held proper to require a defendant who has injured another while committing a crime of violence to pay reparations, as a condition of probation, for the victim's loss of wages resulting from the injuries received at the hands of the defendant.

Thus, where a defendant who had been convicted of assault was given a suspended sentence on the condition that he reimburse the victim for the salary which the victim lost when he was unable to work, as well as for the cost of a pair of orthopedic shoes, in [State v Mottola \(1972, App\) 84 NM 414, 504 P2d 22](#), the condition was upheld. The defendant contested the condition on appeal, contending that he could not be assessed the damages because it involved the issue of proximate cause of the damages which a judge in a criminal matter could not determine. In affirming the judgment, the court said that a state statute authorized a trial court to suspend sentence by requiring the defendant to make restitution or reparation to an aggrieved party for actual damages or loss caused by the crime for which conviction was had.

And in [State v Morgan \(1973\) 8 Wash App 189, 504 P2d 1195](#), a condition to the suspension of sentence for assault in the third degree requiring the defendant to make "restitution" to the victim of the assault for lost wages as well as for pain and suffering and medical expenses, incurred as a result of the assault, was upheld. It was held that the condition imposed was consistent with the state statute governing the point and within the discretionary powers of the trial court. Affirming the judgment, the court

pointed out that the statute authorized a court to suspend a sentence upon conditions which bore a reasonable relation to the defendants' duty to make reparation, or as tended to prevent the future commission of crime. The court explained that the statute had been construed to include monetary payments of fixed liability (funeral expenses), as well as general damages (\$7,500 to the parents of the negligent homicide victim), that in the present case the "restitution" ordered by the trial court was for "loss or damage" sustained by the victim as a direct consequence of the commission of the particular crime to which the defendants pleaded guilty, that the payments ordered thus bore a reasonable relation to the defendants' duty to make "reparation," and that it could find no abuse of discretion.

§ 14. Orthopedic devices

It has been held proper to require a defendant who has injured another while committing a crime of violence to pay reparations, as a condition of probation, to reimburse the victim for the cost of orthopedic devices required by the victim as a result of injuries received at the hands of the defendant.

Thus, a condition of probation which required a defendant who had been convicted of assault to reimburse the victim for the cost of one pair of orthopedic shoes and an amount equal to the victim's salary for the period he was unable to work, was upheld, in [State v Mottola \(1972, App\) 84 NM 414, 504 P2d 22](#), where the assault caused the victim to fall down a stairway. The defendant contested the condition on appeal, contending that he could not be assessed damages because it involved the issue of proximate cause which a judge in a criminal matter could not determine. In affirming the judgment, the court said that a state statute authorized a trial court to suspend sentence by requiring the defendant to make restitution or reparation to an aggrieved party for actual damages or loss caused by the crime for which conviction was had.

§ 15[a] Payment toward support of dependents—Considered proper

[Cumulative Supplement]

The court in the following case considered it proper to require a defendant who had been convicted for killing another to contribute, as a condition of probation, toward the support of the victim's dependents.

In [State v Emonds \(1938, CP\) 11 Ohio Ops 258, 26 Ohio L Abs 410](#), a defendant who had been convicted of manslaughter for stabbing a man to death was placed on probation on the condition, among others, that he pay the mother of the victim the sum of \$50 per month for 5 years for the purpose of contributing toward her support in lieu of that support which the victim "might have given her."

CUMULATIVE SUPPLEMENT

Cases:

Condition of probation that defendant pay \$100 per month to children of victim throughout five-year probation period was valid where defendant was convicted of involuntary manslaughter, victim had four children who were minors at time of homicide, and condition had purpose of reforming and rehabilitating defendant by serving to make him aware of damage which his actions caused to others. [People v Clark \(1982, 3d Dist\) 130 Cal App 3d 371, 181 Cal Rptr 682](#).

In prosecution for negligent homicide resulting from auto accident while defendant was driving under influence, condition of probation that defendant pay \$60 per week as support for victim's two minor children during four-year probation was reasonable and valid despite fact that court could have calculated actual losses more precisely where defendant was not harmed by failure to so calculate. [People v Wager \(1983\) 129 Mich App 819, 342 NW2d 619](#).

Condition of probation that voluntary manslaughter defendant contribute to the financial support of homicide victim's children could properly serve rehabilitative purposes by assisting defendant in understanding the consequences of his crime. [42 Pa.C.S.A. § 9754\(c\)\(8, 13\)](#). *Com. v. Hall*, 80 A.3d 1204 (Pa. 2013).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 15[b] Payment toward support of dependents—Considered improper

The court in the following case considered it improper to require a defendant who had been convicted for killing another to contribute, as a condition of probation, toward the support of the victim's dependents.

In [Watson v State \(1973\) 17 Md App 263, 301 A2d 26](#), a condition of probation which required the probationer to pay 40% of his earnings to, or on behalf of, two minor children of the probationer's rape and murder victim, was held to have exceeded the authority reposed in the sentencing judge, where it was determined that the condition failed to meet the requirements that probation conditions should be reasonable, have a rational basis, be clear, definite, and capable of being properly comprehended by the probationer and by those responsible for their enforcement, and that they not be the product of arbitrariness or capriciousness. The probationer, convicted of murder and rape on his guilty plea, had been sentenced to two consecutive life imprisonment terms, one for murder and the other for rape. The second term was suspended with the condition that the payments be made. On appeal from the judgment the court said that there was no explanation of how the figure of 40% was arrived at, or what relationship it bore to any appropriate compensation the sons might be entitled to recover in a civil action, and that what constituted earnings was not defined nor was the period of time over which they were to be paid disclosed. The court further said that "arguably" the condition violated the state constitution, that "conceivably" the conditions imposed constituted an unwarranted invasion into, and encroachment upon the duties and functions of, the board of parole, that while the motives of the trial judge might have been lofty and salutary, his method of achieving them was well beyond the scope of his authority as a criminal trial judge, and that under the circumstances, the present court had no alternative than to set aside the sentence for rape as imposed and remand the case for the imposition of a proper sentence.

§ 16[a] Payment of "damages"—Considered proper

[\[Cumulative Supplement\]](#)

The requirement that a defendant who has been convicted of a crime of violence pay "damages" to a victim of that crime, as a condition of probation, was considered proper by the courts in the following cases.

Thus, in [People v D'Elia \(1946\) 73 Cal App 2d 764, 167 P2d 253](#), the court upheld a condition of probation which required a defendant, who had been convicted of assault, to have financial ability to pay any judgment rendered against him in a civil action for damages by the victim of the assault. The court pointed out that it could see no reason why a defendant should not be required, as a condition of probation, to answer financially for damage suffered by the victim of his assault. According to the court, the question of the validity of the condition was disposed of by the fact that an appeal from an order of probation was not available (there had been no judgment and the defendant was appealing from an order placing him on probation). There was no further discussion regarding the condition.

See also [Roberts v State \(1930\) 41 Ga App 364, 152 SE 921](#), wherein it was held proper to require a defendant who had been convicted of being drunk on the highway to pay \$50 to the owner of an automobile which he had damaged while committing the offense, the payment to go "for damages" to the automobile. There was no further discussion on this point.

A condition of probation that required a defendant convicted of driving while intoxicated to pay \$214 "damages" to the victim was upheld, in [Henry v State \(1948\) 77 Ga App 735, 49 SE2d 681](#), where the defendant, having failed to make the payment, petitioned to have the sentence set aside, the lower court sustaining a general demurrer and dismissing the petition. On appeal, the judgment was affirmed with the explanation that a state statute permitted the granting of probation on such conditions as the sentencing court might see fit, that this vested a broad power in the trial court, and restitution to an injured person or his property could not be said to be a condition in violation of that power, and that inasmuch as there was nothing in the record to show any compliance by the defendant, the lower court did not err in its disposition of the case.

The court upheld a probation condition requiring the defendant to pay \$2,500 to each of two victims, in [People v Marks \(1954\) 340 Mich 495, 65 NW2d 698](#), where the sentencing court did not impose the condition until after the victims had obtained civil judgments for damages against the defendant and the defendant had failed to make any payments on the judgments. A few months after the defendant (convicted of felonious operation of an automobile) had been placed on probation, the two victims obtained the judgments (\$10,000 and \$11,000). Approximately 8 months after the defendant's original probationary period had expired, the court extended the period for 2 years and imposed the condition requiring the payments. The defendant had resisted imposition of the condition, contending, inter alia, that the sole purpose of the condition was to obtain compensation or partial satisfaction of alleged damages which, if effected in this manner, would be contrary to law and a violation of due process. He appealed from the order imposing the condition. Pointing out that a statute authorized a court to include "restitution in whole or in part to the person or persons injured" as a condition of probation, and that another statute authorized changes to be made at any time up to 5 years, the court said that the trial judge was at liberty at all times within the 5-year period to alter and amend the order both in form and in substance. Finding no abuse of judicial discretion, the court affirmed the order.



Dealing with what appears to be a general assessment of damages, the courts have also upheld conditions of probation that required defendants who had been convicted of crimes of violence to pay reparations to victims of the crime "for the use of" the victim.

Thus, in [O'Quinn v State \(1970\) 121 Ga App 231, 173 SE2d 409](#), a condition of probation which required the defendant to pay \$175 "for the use of the victim for expenses incurred" was upheld as a proper requirement. The defendant had been convicted of assault and battery and was appealing from the conviction and sentence. According to the court, the mere fact that the only evidence of a specified dollar amount of expenses was a dental bill of \$21 afforded no basis for the court to assume that the amount was in dispute and had not been adjudicated, or that the amount as determined by the court was in error requiring reversal in respect to the sentence imposed. The court pointed out that it was clear that the victim did incur other expenses even though the amount did not appear in the record.

And in [State v Simmington \(1952\) 235 NC 612, 70 SE2d 842](#), a requirement that the defendant pay \$771.50 "for the use of" certain named victims of the defendant's reckless driving was held valid. The defendant failed to comply with the condition and was ordered into custody. On appeal, the court affirmed with the observation that the sentencing court afforded the defendant an opportunity to escape the service of the sentence pronounced by observing the conditions imposed, that he accepted and then withdrew his acceptance, rejecting the conditions, and that he thus furnished the grounds for invoking the original sentence.

CUMULATIVE SUPPLEMENT

Cases:

In prosecution for conspiring to defraud United States by evading import duties, restitution was properly ordered as condition of probation as payment for actual damages charged in indictment to have been caused by operation of conspiracy over time. [United States v Tiler \(1979, CA2 NY\) 602 F2d 30](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 16[b] Payment of "damages"—Considered improper

[\[Cumulative Supplement\]](#)

The requirement that a defendant who has been convicted of a crime of violence pay "damages" to a victim of that crime, as a condition of probation, was considered improper by the court in the following case.

In [People v Prell \(1939\) 299 Ill App 130, 19 NE2d 637](#), it was held that the requirement to pay "\$500 as supposed damages" to a victim of a crime of violence could not properly be imposed as a condition of probation against the defendant who committed the crime. The trial court revoked the probation of the defendant, who had been convicted of driving an automobile with a willful and wanton disregard for the safety of persons or property, because he had failed to pay the prosecuting witness the \$500 as required by the terms of his probation, and the defendant appealed. Reversing the revocation order, the court said that there was nothing in the probation law upon which such an order could be based and nothing in it disclosing an intention on the part of the legislature to grant power to the court to use the criminal process for the purpose of collecting damages to person or property. The court added that it was at a loss to understand how such payments could be regarded as "restitution" within the meaning of the law.

CUMULATIVE SUPPLEMENT

Cases:

Payment of victim's attorney fees was not permissible condition of probation for forgery conviction; victim's civil action encompassed several claims that were not based upon charged forgeries and also encompassed claims against third persons, thus it was not clear whether or to what extent attorney fees represented resulting harm from crime to which defendant pleaded guilty, validity of victim's civil claims against defendant, other than claim for forgery, had not been adjudicated, defendant's guilty plea in criminal case did not include admission of other alleged wrongdoing delineated in victim's civil complaint, and there was no judicial determination that defendant bore liability on those claims. I.C. §§ 19-2601(2), 19-5304. [State v. Parker, 139 P.3d 767 \(Idaho Ct. App. 2006\)](#).

Under statute permitting order of restitution for special, including pecuniary, damages, but not for general damages, trial court order establishing, as condition of defendant's probation, that he pay any civil judgment subsequently obtained against him by victims was clear error, as civil judgment typically included general damages. [State v Irick \(1993, Tenn Crim\) 861 SW2d 375](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 17. Victim's funeral expenses

[\[Cumulative Supplement\]](#)

The court in the following case considered it proper to require a defendant who had been convicted for killing another to pay, as a condition of probation, the victim's funeral expenses.

The suspension of a defendant's sentence for manslaughter (for killing another with a heavy blow to the head) on the condition, among others, that he pay the victim's funeral expenses was held, in [State v Summers \(1962\) 60 Wash 2d 702, 375 P2d 143](#), to be clearly within the ambit of a state statute that authorized the court when suspending a sentence to require the convicted person to make "restitution" to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question. The court, which was reviewing the case on appeal from the judgment, made no further comment on this point, but reversed on other grounds.

CUMULATIVE SUPPLEMENT

Cases:

See [People v Deadmond \(1984, Colo\) 683 P2d 763](#), § 21.

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

V. Persons to whom reparations can properly be ordered

§ 18. View that reparations limited to person(s) directly injured by defendant

This section has been superseded by the following article(s):

Superseded by [92 A.L.R.5th 35](#)

§ 19. Parents of person killed by defendant

This section has been superseded by the following article(s):

Superseded by [92 A.L.R.5th 35](#)

§ 20. Insurance company that reimbursed injured victim

This section has been superseded by the following article(s):

Superseded by [92 A.L.R.5th 35](#)

§ 21. Others

This section has been superseded by the following article(s):

Superseded by [92 A.L.R.5th 35](#)

VI. Application to particular offenses for which condition imposed

§ 22[a] Offenses involving homicide or attempt at homicide—Condition held valid

[Cumulative Supplement]

In the following cases which involve a question of the validity of a probation condition requiring a defendant who had been convicted of an offense involving homicide, or the attempt at homicide, to pay reparations to a person who suffered losses as the result of the crime, the condition was held valid.

Where, as a condition of probation, a trial judge required a defendant who had been convicted of vehicular manslaughter to pay \$2,500 to the parents of the deceased victim to help defray the expenses of their loss, and where the trial judge had conducted a mitigation hearing before imposing the condition and had the probation officer's presentence report before him, it was held in [Shenah v Henderson \(1970\) 106 Ariz 399, 476 P2d 854](#), that the judge neither abused his discretion nor acted in excess of his jurisdiction in imposing the condition. Approximately 1 month before the end of his probation, the defendant paid the required amount to the court clerk and then petitioned for special action urging that the trial judge acted without jurisdiction and abused his discretion when he imposed the condition, and that the judge had no evidence as to the amount of injury suffered by the parents on the amount of their recovery under an insurance policy. A temporary restraining order preventing the payment of the money to the victim's parents was also obtained. In the present action the defendant was appealing a denial of his petition. The denial was affirmed and the temporary restraining order was dissolved, the court explaining that a judge could condition probation or suspension of sentence upon a defendant's making reparation, that the suspension of sentence was purely a matter of discretion in the trial court, that it was not necessary for the trial court to spell out its reasons for either granting or denying probation, that the trial judge had sufficient facts before him to warrant imposing the reparation of \$2,500 as a condition for probation, that the burden was on the defendant at this mitigation hearing to bring to the attention of the court any factors which might bear upon the reasonableness of any reparation order and any factors which might bear upon the defendant's ability to make reparation, and that he failed to introduce any such factors in the instant case. Furthermore, the court continued, the defendant did not appeal from the order setting forth the conditions for probation nor did he object to the amount of the ordered reparation until approximately 1 month prior to the end of his probation, and he had failed to show or even allege that the amount awarded as reparation was excessive in terms of the loss suffered.

The requirement that a defendant convicted of attempted murder on his guilty plea pay \$100 per month to the victim, as a condition of probation, was upheld, and the fact that the victim had instituted a civil action for damages against the defendant was held not to affect the condition, in [People v Stacy \(1965\) 64 Ill App 2d 157, 212 NE2d 286](#), where the defendant had attacked the victim with a shotgun causing injuries which resulted in the amputation of one of the victim's legs. In imposing the condition, the court stated that the payments were not intended to disturb any civil rights which might exist between the victim and the defendant. After the condition had been imposed, the victim instituted the civil action and the defendant filed a motion in the criminal court seeking suspension of the payments pending the outcome of the civil action. The motion was denied and the defendant appealed, contending that it would be unjust to require him to continue the probation payments if the victim recovered a money judgment, and if the jury should find him not guilty, then he should not be required to pay damages in any form. Recognizing the right to order reparation payments as a condition of probation, the court concluded from the record that the parties had agreed on the amount of the reparation payments, and that the payments were not excessive. In affirming a denial of the defendant's motion, the court expressed the view that the prosecution of a criminal action against a defendant is in no way a bar to the right of the victim to institute a civil action for damages against the same defendant based on the same conduct, that the determination of the civil jury could not change the criminal conviction in any case, and that this being so, it was difficult to see what effect a finding of nonliability could have upon the reparation payments. It would be unfair, the court continued, to cut off payments because the victim exercised his valid right to institute a civil action against the defendant. Should the victim obtain a damage verdict, the court said, it might be that a setoff would have to be ordered for the money already received by the victim under the terms of the probation, but this would be a question to be decided at the time of such an award, and not in the present case on the mere speculation that such an award might be forthcoming, the court added.

The court upheld the validity of a probation condition requiring the payment of reparations by a defendant to the parents of a homicide victim, in [State v Green \(1976\) 29 NC App 574, 225 SE2d 170](#), cert den [290 NC 665, 228 SE2d 455](#), where the defendant had been indicted for murder, convicted of manslaughter, and given probation on condition, among others, that he

pay \$50 per week for 5 years, the money to go to the parents of the victim. On appeal from revocation of the probation because, among other things, the defendant failed to keep up the payments, the defendant claimed that the condition was unconstitutional because it was unreasonable, was imposed for an unreasonable length of time, and used the criminal process to enforce a civil obligation. In rejecting these contentions, the court said that in the case that held a probation condition unconstitutional and unreasonable because it used the criminal process for forced payment of civil debts, the court was concerned with obligations which were "unrelated" to the criminal act, that in the case at hand, the defendant was ordered to pay a sum to the parents of the person he was convicted of killing, that this requirement did not extend into the area prohibited by the previous case because the payments in the present case were related to the criminal act committed by the defendant, and that the parents were certainly persons injured by the defendant's act.

Where a defendant had been convicted of manslaughter for stabbing a man to death, the court placed him on probation, in [State v Emonds \(1938, CP\) 11 Ohio Ops 258, 26 Ohio L Abs 410](#), on the condition, among others, that he pay the mother of the victim the sum of \$50 per month for 5 years for the purpose of contributing toward her support in lieu of that support which the victim "might have given her."

Where a defendant was convicted of manslaughter for killing another with a heavy blow to the head, the suspension of his sentence on the condition, among others, that he pay the decedent's funeral expenses, was held, in [State v Summers \(1962\) 60 Wash 2d 702, 375 P2d 143](#), to be clearly within the ambit of a state statute which authorized the court when suspending a sentence to require the convicted person to make "restitution" to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question. The court, which was reviewing the case on appeal from the judgment and sentence, made no further comment on this point, but reversed on other grounds.

The suspension of a sentence on condition that the defendant, convicted of negligent homicide, pay \$7,500 to the parents of the victim, payable on a monthly payment program, was held, in [State v Gunderson \(1968\) 74 Wash 2d 226, 444 P2d 156](#) (ovrld on other grounds [State v Gosby, 85 Wash 2d 758, 539 P2d 680](#)), to be a proper condition authorized by state statute, and not to constitute a fine. The defendant, appealing from the judgment, contended that the requirement was void because it constituted a fine in excess of the \$1,000 maximum penalty authorized for negligent homicide. In affirming the judgment, the court pointed out that a state statute authorized the deferment of sentence on condition that the defendant make "restitution" to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question, the court observing that certainly the defendant did not argue that the parents of the deceased child did not suffer a loss, that the payment required as a condition of deferment was clearly authorized by the statute, that it was not therefore a fine, and that it was grounded in the sound discretion of the trial court.

CUMULATIVE SUPPLEMENT

Cases:

See [People v Wager \(1983\) 129 Mich App 819, 342 NW2d 619, § 15\[a\]](#).

Even if defendant's statements were improperly admitted in manslaughter prosecution, any claim of error was waived, under doctrine of curative admissibility, when defendant testified during punishment phase as to same pertinent facts revealed by his statements. [Smith v. State, 957 S.W.2d 881 \(Tex. App. Texarkana 1997\)](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 22[b] Offenses involving homicide or attempt at homicide—Condition held invalid**[Cumulative Supplement]**

In the following cases which involve a question of the validity of a probation condition requiring a defendant who had been convicted of an offense involving homicide or the attempt at homicide to pay reparations to a person who suffered losses as the result of the crime, the condition was held invalid.

In [Watson v State \(1973\) 17 Md App 263, 301 A2d 26](#), the imposition of a condition of probation which required the probationer to pay 40% of his earnings to, or on behalf of, two minor children of the probationer's rape and murder victim, was held to have exceeded the authority reposed in the sentencing judge, where it was determined that the condition failed to meet the requirements that probation conditions should be reasonable, have a rational basis, be clear, definite, and capable of being properly comprehended by the probationer and by those responsible for their enforcement, and that they not be the product of arbitrariness or capriciousness. The probationer, convicted on his guilty plea, had been sentenced to two consecutive life imprisonment terms, one for murder and the other for rape. The second term was suspended with the condition that the payments be made. On appeal from the judgment the court said that there was no explanation of how the figure of 40% was arrived at, or what relationship it bore to any appropriate compensation the sons might be entitled to recover in a civil action, and that what constituted earnings was not defined, nor was the period of time over which they were to be paid disclosed. The court expressed the view that "arguably" the condition imposed was akin to subjecting the probationer to a state of peonage, a status which had been proclaimed by the state constitution as forever abolished, that "conceivably" the condition imposed constituted an unwarranted invasion into, and encroachment upon the duties and functions of, the board of parole, that while the motives of the trial judge might have been lofty and salutary, his method of achieving them was well beyond the scope of his authority as a criminal trial judge, and that under the circumstances, the present court had no alternative than to set aside the sentence for rape as imposed and remand the case for the imposition of a proper sentence.

The requirement that a defendant, as a condition of probation, make "restitution" to the victim in the sum of \$385, "payable as determined by the probation department," was held invalid because it left the matter of payment up to the probation department rather than to the court as required by statute, in [People v Good \(1938\) 287 Mich 110, 282 NW 920](#), although it was also held that it was not a deprivation of due process of law to deny the defendant, who had been convicted of homicide resulting from the careless, reckless, or negligent operation of a motor vehicle, a hearing on the question of the amount of "damages" to be imposed as a condition of probation, and that the statute authorizing the imposition of conditions was ample notice of the possibility that such a condition might be imposed. Although the majority opinion referred to it as "restitution," a concurring opinion suggested that it was an attempt to order the payment of reparations. The defendant contended, on appeal from the judgment, that the condition violated the due process clause of both the federal and state constitutions by not allowing a hearing on the question of damages to be assessed, that he did not have an opportunity to interpose defenses such as the decedent's contributory negligence, and that the notice of a criminal prosecution was not appropriate to a proceeding in which civil damages could be assessed. The court rejected the contentions with the observation that they were based upon the erroneous assumption that damages were "assessed" by the court when "restitution" was made a condition of probation, that no judgment was rendered for, nor could a writ of execution issue to, and force the collection of, the sum specified, and that a defendant in such an instance was merely given the alternative of abiding by the conditions imposed or else suffering the imposition and execution of a sentence which ordinarily followed a verdict of guilty. The defendant was not deprived of any of his rights without due process, the court continued, rather he was given the additional privilege of avoiding the usual penalty of his crime by the payment of a sum of money and the observance of the other conditions attached to his probation. However, the court said that the state statute which permitted the court to impose the conditions of probation including restitution, etc., contained no authorization for a delegation of this duty, in whole or in part, to the probation department, that the probation department could act in this matter in, at most, an advisory capacity, that the court, in any event, should include within its order the specified purpose, terms, and conditions of the payment of money by a defendant if such payment was made a condition of probation, and that since the record was silent in this respect, it was impossible to say whether the payment ordered was or was not a proper condition of probation. Thus, the matter was remanded for entry of a correct order of probation or sentence.

Where a defendant had been convicted of criminally negligent homicide and had been granted probation on the condition, among others, that he pay \$2,500 "restitution" to the man whose wife and daughter the defendant had killed, the payment being ordered to compensate the man for the loss of his family, in [State v Stalheim \(1976, Or\) 552 P2d 829, 79 ALR3d 969](#), it was held that the condition was invalid since only a direct victim of the crime was entitled to such reparations, and the amount was limited to reimbursement for the victim's liquidated or easily measurable damages resulting from the charged offense. The defendant had appealed the sentencing court's judgment and the appellate court had affirmed the conviction but had remanded on the ground that the restitution condition was improper since the individual who was to receive the payment was not the aggrieved party within the meaning of the statute which authorized such restitution orders.⁴⁸ The state then petitioned for review, contending that the sentencing court's authority in this matter was limited only by the requirement that the conditions have a rational relationship to the purposes of probation and that the conditions were not shocking to one's conscience. Conceding that the statute was susceptible to that "broad interpretation," the court said that in other jurisdictions the courts had taken a variety of views ranging from one extreme limiting restitution to the return of specific property or its value, with recovery limited to the victim of the crime, to the other extreme of permitting compensation for loss, damage, or injury to others, not limited to the direct victim, arising out of the commission of the crime, that the interpretation urged by the state presented problems, that it forced the judge to make an evaluation of losses usually reserved to civil juries, that the judge would not ordinarily have the benefit of the pleadings which framed the issues nor the testimony of witnesses to develop evidence relevant to the loss resulting from the defendant's wrongdoing, leaving the judge in the difficult if not impossible position of having to assign a value to a loss he knew little about, and that this was a highly inappropriate task for a judge presiding over a criminal trial. Also, the court continued, the defendant might be prejudiced by the introduction of civil damages issues into his criminal trial because at sentencing a defendant does not have the benefit of defenses such as contributory negligence or assumption of risk, nor a jury determination of damages which would be available in a civil trial. Thus, the court construed "restitution" to mean the return of an object or its value which a defendant wrongfully obtained in committing a crime. And "reparation" was construed as "repairing" and as encompassing only reimbursement for the victim's liquidated or easily measurable damages resulting from the charged offense. In affirming, the court said that this construction would embrace medical expenses, wages actually (not prospectively) lost, and reimbursement for easily measurable property damage. Moreover, the court added, "aggrieved party" as used in the statute, referred to the direct victim of the crime, and not to other persons who suffered loss because of the victim's death or injury. The court took the position that damage valuation problems were particularly severe when the loss was suffered, as in the present case, by the deceased victim's family, and that when a defendant is ordered to make reparation to persons other than the direct victim of a crime, the rehabilitative effect of making the offender clearly appreciate the injury caused by his offense would, in the court's opinion, be significantly diluted. Pointing out that this holding specifically disapproved [State v Sullivan \(1976, Or App\) 544 P2d 616](#), the court said that this interpretation served a rehabilitative purpose by impressing upon the offender the loss he had caused and his responsibility to repair that loss as far as it was possible to do so. The rehabilitative effect would be considerably weakened, the court added, if instead of requiring compensation for easily perceived damages, the trial court were to force the payment of large and speculative amounts representing pain and suffering, loss of consortium, and the like.

CUMULATIVE SUPPLEMENT

Cases:

Payment of support for victim's children was not authorized as condition of probation related to rehabilitation for defendant convicted of voluntary manslaughter; purpose behind order was to support the decedent's children and not to rehabilitate defendant, and while the children may have been victimized by the crime, they were not direct victims themselves. [42 Pa.C.S.A. §§ 9754, 9754\(c\)\(8, 13\). Com. v. Hall, 2010 PA Super 79, 994 A.2d 1141 \(2010\).](#)

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 23[a] Assault—Condition held valid

[Cumulative Supplement]

In the following cases which involve a question of the validity of a probation condition requiring a defendant who had been convicted of assault to pay reparations to a person who suffered losses as a result of the assault, the condition was held valid.

Where a defendant had been convicted of aggravated assault for beating up the mayor, in [Dickson v State \(1959\) 230 Ark 491, 323 SW2d 432](#), the court upheld a condition of probation which required the defendant to reimburse the mayor for out-of-pocket medical and hospital expenses growing out of the injuries received. On appeal, the judgment was affirmed, the court observing that a state statute authorized a trial judge to impose such conditions as he might deem proper and reasonable, and that it could not be said that the trial court's action in conditioning the suspended sentence on the mayor's being reimbursed for his medical and hospital expenses was improper or unreasonable.

The court upheld a condition of probation which required a defendant who had been convicted of assault to have financial ability to pay any judgment rendered against him in a civil action for damages by the victim of his assault, in [People v D'Elia \(1946\) 73 Cal App 2d 764, 167 P2d 253](#), the court pointing out that it could see no reason why a defendant should not be required, as a condition of probation, to answer financially for damages suffered by the victim of his assault. The court said that the question of the validity of the condition was disposed of by the fact that an appeal from an order of probation was not available (there had been no judgment and the defendant was appealing from an order placing him on probation). There was no further discussion regarding the condition.

Where a defendant had been convicted of assault and battery, in [O'Quinn v State \(1970\) 121 Ga App 231, 173 SE2d 409](#), it was held that the court did not err in requiring, as a condition for suspension of the sentence to confinement, a payment of \$175 for the use of the victim for expenses incurred. The defendant was appealing from a conviction and sentence. The judgment was affirmed with the explanation that this was the same as a condition imposed for probation, that a state statute authorized the court to require, as a condition of probation, that a defendant pay reparations to an aggrieved person provided that the amount was not in dispute or had been adjudicated, and that although the record failed to disclose what hearing, if any, or what evidence was adduced, if any, after conviction and before sentencing, the evidence adduced on the trial of an offense need not support the determinations of the court in imposing conditions for suspension. The mere fact that the only evidence of a specified dollar amount of expenses was a dental bill of \$21, although it was also clear that the victim did incur other expenses, the amount of which did not appear, afforded no basis for the court to assume that the amount was in dispute and had not been adjudicated, or that the amount as determined by the court was in error requiring reversal in respect to the sentence imposed, it was added.

Where a defendant who had been convicted of aggravated assault and aggravated battery was sentenced to 20 years, 14 years to be served in a penitentiary and the remaining 6 on probation with the condition that the defendant pay "restitution" of \$12,000 to the victim at the rate of \$50 per month, the court in [Bidby v State \(1976\) 138 Ga App 4, 225 SE2d 448](#), held the condition valid. On appeal, the defendant contended that since the amount was in dispute, the condition was invalid. Noting that a state statute prohibited restitution and reparation requirements if the amount of damages was in dispute, unless it had been adjudicated, the court said that the amount appeared reasonable in view of the serious and permanent injuries received by the victim, that it could be sustained because the amount was not contested, and that the defendant had agreed to the amount when the condition was imposed. The defendant also contended that the condition violated a statute which prohibited the making of any fine in excess of \$2,000 a condition of probation. In rejecting this, the court said that since a fine was payable to the state and reparations to the injured party, the two were distinct and could not be substituted for each other to uphold a sentence, and that neither could the words be interchanged to void a sentence. The court went on to say that although a defendant could not be "sentenced" to make restitution, the court could make restitution a condition of probation, that the criminal process should not be used to supplement a civil suit or as a threat to coerce the payment of a civil liability and thus reduce the criminal court to a collecting agency, but that the legislature did not intend to foreclose the court from determining the amount of restitution where such amount

was freely admitted by the defendant. When a court in a criminal suit determines the amount of restitution for the purpose of probation, the court added, it does so as a part of the criminal proceeding, and such proceeding determination is analogous in its nature to a presentence investigation.

It was held in [People v Williams \(1975\) 57 Mich App 439, 225 NW2d 798](#), that a trial court's requirement as a condition of probation that a defendant convicted on a nolo contendere plea of felonious assault make "restitution" to the victim of the assault in the amount of \$1,500 at the rate of \$100 per month, did not violate any constitutional right of the defendant. The defendant appealed the judgment, contending, inter alia, that the condition violated due process of law and that it was contrary to the public policy of the state to imprison a probationer for failure to pay amounts totaling \$150 per month where his indigency has prevented such payment. Noting that the statute authorized the imposition of such a condition, the court said that the state's courts had repeatedly held that when a defendant is given probation, he is not deprived of any of his rights without due process, but rather he is given the privilege of avoiding the usual penalty of his crime by the payment of a sum of money and observance of other conditions. As for the imprisonment of the defendant for failure to pay the assessments, the court noted that the claim was not properly before the court and was premature since the defendant had not yet been imprisoned for any alleged failure to make the payments in question. Thus, the judgment was affirmed.

In [State v Mottola \(1972, App\) 84 NM 414, 504 P2d 22](#), where a defendant, who had been convicted of assault, was given a suspended sentence on the condition that he reimburse the person assaulted for the cost of one pair of orthopedic shoes and an amount equal to the person's salary for the period he was unable to work, and the defendant contested the condition on appeal contending that he could not be assessed damages, because it involves the issue of proximate cause of damages which a judge in a criminal matter could not determine, the condition was upheld. In affirming the judgment, the court said that a state statute authorized a trial court to suspend sentence by requiring the defendant to make restitution or reparation to an aggrieved party for actual damages or loss caused by the crime for which conviction was had.

The requirement that a probationer, convicted of assault and battery, execute as a condition of probation a bond guaranteeing the payment of reparations to his victim, was considered valid, in [Myers v Barnhardt \(1932\) 202 NC 49, 161 SE 715](#), wherein it was held that upon default of payments by the probationer, the victim could recover on the bond. The victim had instituted a civil action to recover on the bond. From a judgment of nonsuit she appealed. The court explained that the sentence could not be invoked to compel payment of the reparations, and that the condition on which the sentence was suspended was the execution of the bond, and when the bond was executed, approved, and filed, the condition imposed was met, terminating the power of the court so far as that particular condition was concerned. The court added that the defendants in the present case were in no position to complain at the civil liability voluntarily assumed under the bond, if, by executing it, they thereby induced the victim to forgo her rights in the civil action for damages then pending.

A probation condition which required the probationer to make reparation to the injured victim for doctor and hospital bills, after the probationer had been convicted of assault with a deadly weapon, was considered proper, in [State v Butcher \(1970\) 10 NC App 93, 177 SE2d 924](#), wherein the revocation of probation for failure to make the payments was affirmed.

A probation condition which required the defendant to make weekly reparation payments of \$30 to be applied to the victim's hospital and doctor bills, imposed after a conviction for assault with a deadly weapon, was treated as a valid condition, in [State v Byrd \(1974\) 23 NC App 63, 208 SE2d 216](#), wherein the defendant's probation was revoked for failure to report a change of residence.

In [Flores v State \(1974, Tex Crim\) 513 SW2d 66](#), involving the sentencing of a defendant who had been convicted of assault with intent to commit murder, the court affirmed a judgment which placed the defendant on probation on the condition, among others, that he pay "restitution" to an insurance company in order to reimburse the company for the amount paid out (\$584.20) for the medical expenses of the complaining witness, and that he pay "restitution" to "two witnesses." On appeal from the judgment the defendant contended that because under a state statute the conditions of probation which a court might impose were limited to those enumerated in the statute when probation was recommended by the jury, the court must obtain from the

jury its authority to award restitution under proper instructions to the jury, and when the court failed to charge the jury that restitution was a possible probation condition, it could not thereafter be imposed as a condition of probation (in its charge at the penalty stage of the trial, the court made no reference to restitution). Pointing out that it did not understand the defendant to contend that the probation condition concerning the insurance company would have been improper had the court charged the jury as to restitution being a possible condition of probation, the court rejected the defendant's contention, explaining that although it was considered good practice to enumerate in the court's charge the probation conditions which the court might impose if probation was recommended by the jury, the failure to so enumerate these conditions was not harmful to the accused or restrictive of the court's authority under the statute. In regard to the payment to the witnesses, the defendant contended that under [Bradley v State \(1972, Tex Crim\) 478 SW2d 527](#),⁴⁹ the sentencing court could not order a defendant to pay restitution to a party other than the victim of the crime for which he was convicted. In upholding the condition, the court said that it was unable to determine from the record if the two recipients of the restitution were in fact witnesses or just what their connection with the alleged crime was. In a footnote it was pointed out that at the hearing on the punishment, several reputation witnesses were cross-examined by the state and asked if they had heard that two firemen had accused the defendant of having swindled them out of \$5,000 on a phony land investment deal, but that these firemen had not been identified by name or otherwise.

A condition to the suspension of sentence for assault in the third degree requiring the defendants to make "restitution" to the victim of the assault for "pain and suffering," medical expenses, and lost wages incurred as a result of the assault, was upheld, in [State v Morgan \(1973\) 8 Wash App 189, 504 P2d 1195](#), wherein it was held that the condition imposed was consistent with the state statute governing the point and within the discretionary powers of the trial court. Affirming the judgment, the court pointed out that the statute authorized a court to suspend a sentence upon conditions which bore a reasonable relation to the defendants' duty to make reparation, or as tended to prevent the future commission of crime. The court explained that the statute had been construed to include monetary payments of fixed liability (funeral expenses), as well as general damages (\$7,500 to parents of negligent homicide victim), that in the present case the "restitution" ordered by the trial court was for "loss or damage" sustained by the victim as a direct consequence of the commission of the particular crime to which the defendants pleaded guilty, that the payments ordered thus bore a reasonable relation to the defendants' duty to make "reparation," and that it could find no abuse of discretion. Declining the defendants' invitation to consider the possible effects that a damage award in a criminal proceeding might have upon a future civil action arising out of the same incident, the court said that this question was more properly a matter of legislative determination. As for the defendants' contention that the statute authorizing the condition violated the state constitution, the court refused to consider the issue since it was not raised in the trial court.

CUMULATIVE SUPPLEMENT

Cases:

Contention court erred in imposing condition of restitution for medical expenses as part of sentence of probation for defendant convicted of battery, since defendant had not been advised of such possibility when he pled guilty, was without merit since in applying for probation defendant was presumed to know that making restitution was possible consequence of such sentence. [People v Valek \(1979\) 69 Ill App 3d 759, 26 Ill Dec 132, 387 NE2d 962](#).

See [State v Sampson \(1979\) 203 Neb 786, 280 NW2d 81, § 10](#).

Statute which authorized trial court to suspend imposition of sentence and place defendant on probation on "such terms and conditions" as it may deem right and proper, was sufficient to confer upon trial judge in assault case discretion to require that defendant pay restitution to victim as condition of probation. [Commonwealth v Walton \(1979\) 483 Pa 588, 397 A2d 1179](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 23[b] Assault—Condition held invalid

[Cumulative Supplement]

In the following cases which involve a question of the validity of a probation condition requiring a defendant who had been convicted of assault to pay reparations to a person who suffered losses as a result of the assault, the condition was held invalid.

Where the defendants had been convicted, on nolo contendere pleas, of felony assault and battery in connection with a mob demonstration, the requirement as a condition of probation that the defendants make "restitution for all losses incurred to the victim" as a result of the offenses, was held improper, in [People v Kay \(1973\) 36 Cal App 3d 759, 111 Cal Rptr 894, 73 ALR3d 1235](#), because the *amount* which each defendant was required to pay was not related to the particular acts that each committed, the defendants, having been represented by the public defender, "apparently" had no ability to pay at that time, and the condition did not "seem suitable for preventing repetition of the offenses." The three defendants who had participated with "up to 123" demonstrators had been convicted for attacks on police and were appealing the judgment. The reparation condition required each of the defendants to confess judgment for one-fifth of the whole (amounting to \$8,071.37 each) because five had been convicted (although only three appealed). In reversing the orders granting probation, the court stated that an indigent defendant could not be imprisoned because of his inability to pay a "fine," even though the "fine" had been imposed as a condition of probation, and that the confession of judgment plainly was to be preferred by the defendants to refusal of probation with its ominous eventuality. Pointing out that 18 of the demonstrators had been convicted but that none of them had been required to pay any "restitution," and that it was not shown that the defendants in the present case had damaged any property, the court said that these were factors which the trial judge should consider on remand. The court also said that on remand, the judge would have information about the present resources of the defendants and of their prospects, that he would take into account the entire situation including the responsibility of other guilty parties, not only those who were convicted in the municipal court, but also the total number of demonstrators, because apparently it was impossible to determine who among them was responsible for any particular damage to the property and that it ought not spell out in more detail its conclusions but rather would leave the matter to the sentencing judge's good discretion.

It was held that the trial court acted properly when it vacated a condition of probation in its original sentence which required the defendant to pay to a victim of the defendant's assault and battery \$1, 500 within 1 year, in [Commonwealth v Jackson \(1971\) 218 Pa Super 357, 280 A2d 422](#), the court declaring that before 1970 it was clear that a sentencing court was without power to direct a defendant to make "restitution" in an assault and battery case. The court went on to say that the trial court's substitute sentence of imprisonment, however, "increased" the defendant's punishment and amounted to double jeopardy. The judgment of sentence was vacated and the matter remanded for resentencing consistent with the court's opinion.

CUMULATIVE SUPPLEMENT

Cases:

District court exceeded its authority by ordering defendant, as a special condition of probation, to sign a quitclaim deed turning over to domestic violence victim his interest in residence which they owned jointly; while court had power to order defendant to vacate residence, ordering defendant to give up his interest in property was equivalent to a taking without due process. [U.S.C.A. Const. Amend. 5; R.C. § 2951.02\(C\). State v. Mueller, 122 Ohio App. 3d 483, 702 N.E.2d 139 \(1st Dist. Hamilton County 1997\)](#).

For purposes of determining whether restitution could be assessed as part of defendant's sentence, or as condition of his probation, following his conviction of simple assault, victim's injuries were not directly caused by defendant's illegal actions, where conviction was based upon defendant's threatening conduct and placing others in fear. [18 Pa. C.S.A. § 1106\(a\); 42 Pa. C.S.A. § 9754. Com. v. Popow, 2004 PA Super 34, 844 A.2d 13 \(2004\)](#).

In prosecution for burglary and sexual assault, trial court erred in imposing probation condition that defendant deposit \$2,000 in account to cover future counseling expenses of victim, where record was devoid of any indication that victims were in need of psychological treatment or that amount ordered deposited would be appropriate or adequate if counseling was needed. [State v Handley \(1993, App\) 173 Wis 2d 838, 496 NW2d 725](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 24. Driving while intoxicated

[\[Cumulative Supplement\]](#)

In the following cases which involve a question of the validity of a probation condition requiring a defendant who had been convicted of driving while intoxicated to pay reparations to a person who suffered losses as a result of the offense, the condition was held valid.

Where a defendant who had been convicted of being drunk on the highway was granted probation on condition, among others, that he pay \$50 to the owner of an automobile which he had damaged while committing the offense, the payment to cover the cost of damages, in [Roberts v State \(1930\) 41 Ga App 364, 152 SE 921](#), the condition was held proper. There was no further discussion on this point.

In [Henry v State \(1948\) 77 Ga App 735, 49 SE2d 681](#), where one who was convicted of driving while intoxicated was given probation on condition that he pay \$214 damages to a specified individual, the sentence was held to be a legal sentence. The defendant, who had failed to make the payment, petitioned to have the sentence set aside, and the lower court sustained a general demurrer and dismissed the petition. On appeal, the judgment was affirmed with the explanation that a state statute allowed a court to probate a sentence so as to permit the convicted person to serve the sentence outside of the confines of a place of detention on such conditions as it might see fit, that this vested a broad power in the trial court, and restitution to an injured person or his property could not be said to be a condition in violation of that power, and that inasmuch as there was nothing in the record to show any compliance by the defendant, the lower court did not err in its disposition of the case.

Where a court was empowered to grant a defendant "probation without a verdict," which avoided the finding of guilt and thus the stigma of a criminal record, in [Commissioner of Motor Vehicles v Lee \(1969\) 254 Md 279, 255 A2d 44](#) (superseded on other grounds by statute as stated in [Laurie v State, 29 Md App 609, 349 A2d 276](#)), the court suggested, by way of dictum, that "restitution" could in a proper case be imposed as a condition of probation without finding a verdict, that such a requirement was to be distinguished from a fine or penalty payable to the state as punishment for the commission of a crime, and was in the nature of reparations or redress to make whole, persons who had been injured by the accused's conduct, and that as such it was not punitive, and was not, like a fine, consistent only with a criminal conviction. The defendant was appealing an order of probation without verdict imposed in a prosecution for operating a motor vehicle while under the influence of alcohol and for reckless driving.

An order of probation requiring the defendant, convicted of driving while intoxicated, to make "restitution" to the victim in the amount of \$1,000 payable in weekly installments of \$10 each, was upheld, in [Taylor v State \(1967, Tex Crim\) 419 SW2d 647](#), wherein it was pointed out that a state statute permitted a sentencing court to impose a requirement to make restitution or reparation in any sum that the court should determine, not to exceed \$1,000. The defendant, appealing the order placing him on probation, contended that the condition divested him of property without due process of law. In affirming the order, the court pointed out that the victim suffered damages in excess of \$1,000, and that at the hearing the defendant stated that he had talked with the adult probation officer who had explained the terms and conditions of probation to him and that he felt he could abide by them if he was granted probation.

CUMULATIVE SUPPLEMENT

Cases:

In prosecution for felony drunk driving causing injury to another person, condition of probation that defendant pay restitution to victim in amount not to exceed \$60,000, without regard to defendant's ability to pay and without anything in record to suggest trial court considered alternative means to serve rehabilitative purpose of probation, was not reasonable condition. [People v Hodgkin \(1987, 5th Dist\) 194 Cal App 3d 795, 239 Cal Rptr 831](#).

See [People v Wager \(1983\) 129 Mich App 819, 342 NW2d 619, § 15\[a\]](#).

Trial court properly ordered defendant, convicted of driving while impaired, as condition of probation, to pay restitution to cover funeral expenses for child who died in automobile accident and expenses incurred in repair of automobile in which child had been riding, where child's losses were caused by defendant's criminal conduct, record clearly indicated purpose of restitution payments, and condition of restitution was reasonable and just and not designed as substitute for determination of defendant's civil liability. [People v Pettit \(1979\) 88 Mich App 203, 276 NW2d 878](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 25[a] [Reckless driving—Condition held valid](#)

[\[Cumulative Supplement\]](#)

In the following cases which involve a question of the validity of a probation condition requiring a defendant who had been convicted of reckless driving to pay reparations to a person who suffered losses as a result of the offense, the condition was held valid.

Although the condition was imposed after the original probationary period had expired, [People v Marks \(1954\) 340 Mich 495, 65 NW2d 698](#), the court upheld a condition of probation which required a defendant, who had been convicted of felonious operation of an automobile during which two persons were injured, to pay \$200 per month to each of the injured parties for 12 months, and \$100 to each party during the 13th month. A few months after the defendant had been convicted and placed on probation, the two victims had obtained judgments (\$10,000 and \$11, 000) against the defendant upon which he had paid nothing up to the time of the present action. Approximately 8 months after the defendant's original probationary period had expired, the court extended the period for 2 years and imposed the condition for the payments. The defendant appealed from the order. Pointing out that a statute authorized a court to include "restitution in whole or in part to the person or persons injured" as a condition of probation, and that another statute authorized probation up to 5 years in such instances as that of the present case, the court said that it had recognized the validity of such a condition, in [People v Good \(1938\) 287 Mich 110, 282 NW 920](#), that the defendant's rights were not impinged by the alteration in the probation order made within the statutory 5-year period, even though the conditions of the original order had not been violated and its term had expired, and that the trial judge, under the statute discussed above, was at liberty at all times within the 5-year period to alter and amend the order both in form and in substance. Finding no abuse of judicial discretion, the court affirmed the order.

A reparation condition was held valid, in [State v Simmington \(1952\) 235 NC 612, 70 SE2d 842](#), where a defendant, who had been convicted of reckless driving and who had injured "a number of persons," was given a suspended sentence on the condition that he pay \$771.50 for the use of the injured persons, and where his sentence had been invoked for failure to continue the payments. Some 2 months after the sentencing, the defendant moved to be discharged, attacking the reparation condition. The

motion was denied and the defendant ordered into custody for failure to comply with the conditions. The case was then heard on certiorari where it was concluded that the conditions of the suspended sentence were valid. From this the defendant appealed. In affirming the judgment, the court explained that the sentencing court afforded him an opportunity to escape the service of the sentence pronounced by observing the conditions imposed, that he accepted and then withdrew his acceptance, rejecting the conditions, and that he thus furnished the grounds for invoking the original sentence. [Myers v Barnhardt \(1932\) 202 NC 49, 161 SE 715](#), was said by the court to be "clearly distinguishable, " since in that case, according to the court, judgment had been suspended on condition that the defendant give a bond guaranteeing the payment of damages to the injured party, the plaintiff sued to recover on the bond and the Myers court held that the sentence could not be invoked to compel payment of the bond, that the condition on which the sentence was suspended was the execution of the bond, that when the bond was executed, approved, and filed, the condition imposed was met and the power of the court in the criminal case terminated, and that thereafter the plaintiff was relegated to his right to recover on the bond.⁵⁰ Returning to the case at hand, the court said that while the sentencing court was without jurisdiction to compel the defendant to pay the damage inflicted on penalty of imprisonment, this did not mean that it could not suspend the execution of the sentence of imprisonment on condition that the defendant compensate those whom he had injured, that such disposition of the case merely gave him the option to serve his sentence or accept the conditions imposed, that when imprisoned, the defendant would be imprisoned for his breach of the criminal law and not for the failure to pay damages, that if he was not content, he had the right either to reject the condition or to appeal, and that not having appealed, he was relegated to his right to contest the execution of the sentence on the grounds that there was no evidence that the conditions imposed had been breached or that the conditions were unreasonable and unenforceable, or extended for an unreasonable length of time.

CUMULATIVE SUPPLEMENT

Cases:

Condition of probation requiring accused who pled guilty to charge of failing to stop and render aid following an automobile accident to pay restitution to victim did not deny due process to accused and was adequately supported by evidence; but trial court improperly fixed amount of restitution without formal evidence as to damages and injuries suffered. [Thompson v State \(1977, Tex Crim\) 557 SW2d 521](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 25[b] Reckless driving—Condition held invalid

[\[Cumulative Supplement\]](#)

In the following case which involves a question of the validity of a probation condition requiring a defendant who had been convicted of reckless driving to pay reparations to a person who suffered losses as a result of the offense, the condition was held invalid.

Where a trial court revoked the probation of a defendant who had been convicted of driving an automobile with a willful and wanton disregard for the safety of persons or property, because he had failed to pay the prosecuting witness "\$500 as supposed damages" for injuries which she sustained as a result of the defendant's willful and wanton driving, in [People v Prell \(1939\) 299 Ill App 130, 19 NE2d 637](#), it was held that the order of probation contained no such condition and could not properly have imposed such a condition. Reversing the revocation on an appeal, the court said that there was nothing in the probation law upon which such an order could be based and nothing in it disclosing an intention on the part of the legislature to grant power to

the court to use the criminal process for the purpose of collecting payments for damages to person or property. The court added that it was at a loss to understand how such payments could be regarded as "restitution" within the meaning of the law.

CUMULATIVE SUPPLEMENT

Cases:

Trial court improperly ordered defendant in hit-and-run accident to pay \$2,000 for damages resulting from accident and restitution fund fine of \$100 as condition of probation, since gravamen of offense was not accident itself but attempt to evade responsibility by leaving scene of accident; court erred in making determination that defendant was criminally responsible for accident and assigning civil liability at criminal sentencing proceeding. [People v Escobar \(1991, 6th Dist\) 235 Cal App 3d 1504, 1 Cal Rptr 2d 579, 91 CDOS 9042, 91 Daily Journal DAR 14088.](#)

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

§ 26. Other

[\[Cumulative Supplement\]](#)

In the following case which involves a question of the validity of a probation condition requiring a defendant who had been convicted of a crime of violence other than those listed in §§ [22- 25](#), supra, to pay reparations to a person who suffered losses as a result of the offense, the condition was held invalid.

Where a defendant was convicted of attempted sodomy in the first degree and was placed on probation under the condition, among others, that he pay \$3,000 as "restitution" to the victim, in [State v Usher \(1976, Or App\) 552 P2d 1345](#), it was held, on appeal from the judgment, that the condition was invalid since it represented a sum greater than any expenses involved. The cause was accordingly remanded without further discussion on the point.

CUMULATIVE SUPPLEMENT

Cases:

See [United States v Tiler \(1979, CA2 NY\) 602 F2d 30, § 16\[a\]](#).

Restitution ordered for increased construction costs at elementary school was reasonably related to defendant's crimes of making threats to use a weapon of mass destruction and making criminal threats, stemming from incident in which defendant made criminal threats to elementary school teachers and students and used a deadly substance, and thus restitution was properly ordered as condition of defendant's probation; because construction project was ongoing at time of incident and there was a belief that a trades person working on the project might have been responsible, district decided to have construction proceed at night when students were not there and incurred swing shift costs as a result, and there was indication that restitution order would help rehabilitate defendant. [Cal. Penal Code §§ 422\(a\), 1203.1, 11418.5\(a\). People v. Landen, 31 Cal. App. 5th 1124, 243 Cal. Rptr. 3d 487, 362 Ed. Law Rep. 1053 \(2d Dist. 2019\).](#)

Trial court did not abuse its discretion in imposing on defendant, convicted of attempted burglary, condition for his probation that required him to make full restitution to owner of house he had attempted to burglarize for damages he had done to house. [People v Goss \(1980, 5th Dist\) 109 Cal App 3d 443, 167 Cal Rptr 224.](#)

Trial judge did not err in imposing, as condition of probation, requirement that defendant reimburse victim, even though jury convicted defendant of lesser included offense of battery rather than offense of "battery causing personal injury," as originally charged; however, cause would be remanded for inquiry into defendant's financial ability to comply with restitution order. [Sales v State \(1984, Ind App\) 464 NE2d 1336](#).

District court acted within its discretion in ordering defendant, convicted of attempted theft of property valued at \$500.00 or more, to pay full restitution to victim as a condition of his probation; amount of restitution ordered was supported by evidence, and defendant was ordered to pay restitution in connection with a crime he did commit. [LSA-R.S. 14:27, 14:67; LSA-C.Cr.P. arts. 895, 895.1. State v. Portie, 22 So. 3d 213 \(La. Ct. App. 4th Cir. 2009\)](#).

In prosecution for aggravated theft and violation of prearranged funeral law, defendant's repeatedly expressed willingness to make reparation was properly considered as relevant factor in determining whether restitution order created excessive hardship. [State v O'Donnell \(1985, Me\) 495 A2d 798](#).

In theft prosecution under which defendant was liable to pay restitution to victim, trial court was not authorized to delegate its authority for setting amount of restitution to victim assistance officer. [State v Rose \(1980\) 45 Or App 879, 609 P2d 875](#).

Loss suffered by automobile accident victim, who was injured and whose car was totaled as a result of being struck by vehicle being operated by defendant, was at least indirectly related to criminal conduct of defendant, who left scene of accident while driving on suspended license and who pleaded guilty to accidents involving damage to an attended vehicle or property and driving while operating privilege was suspended or revoked, supporting imposition of restitution as condition of probation. [42 Pa.C.S.A. § 9754\(c\)\(8\), 75 Pa.C.S.A. §§ 1532\(a\), 3743\(a\). Com. v. Nuse, 2009 PA Super 125, 976 A.2d 1191 \(2009\)](#).

Trial court's order of restitution to victim as condition of probation was proper after defendant was convicted of burglary, theft, receiving stolen property, and conspiracy where offense was serious one, the victim was defendant's mother-in-law, and property taken in burglary consisted of insurance policies, stocks and a large amount of cash. [Commonwealth v Darush \(1980, Pa Super\) 420 A2d 1071](#).

Condition of probation that required defendant convicted of sexual assault to pay victim's medical expenses, including psychological counseling expenses, for up to two years did not meet due process requirements, where probation order did not specify any definite amount that defendant had to pay, any mechanics by which amount of counseling made necessary by assault could be determined, or manner in which payments would be made, and provision for payment of medical expenses was for period in excess of that permitted by statute. [Simpson v State \(1989, Tex App Amarillo\) 772 SW2d 276](#).

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

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RESEARCH REFERENCES

Primary Authority

18 U.S.C.A. § 3651

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[A.L.R. Quick Index, Criminal Law](#)

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[Application of Section 1 of 13th Amendment to United States Constitution, U.S. Const. Amend. XIII, § 1, Prohibiting Slavery and Involuntary Servitude—Labor Required as Punishment for Crime, 87 A.L.R.6th 109](#)

[Propriety of Requirement, as Condition of Probation, That Defendant Refrain from Use of Intoxicants, 46 A.L.R.6th 241](#)

[Persons or Entities Entitled to Restitution as "Victim" Under State Criminal Restitution Statute, 92 A.L.R.5th 35](#)

[Validity, Construction, and Application of State Constitutional or Statutory Victims' Bill of Rights, 91 A.L.R.5th 343](#)

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[Measure and elements of restitution to which victim is entitled under state criminal statute, 15 A.L.R.5th 391](#)

[Propriety of conditioning probation on defendant's submission to drug testing, 87 A.L.R.4th 929](#)

[Propriety of conditioning probation on defendant's submission to polygraph or other lie detector testing, 86 A.L.R.4th 709](#)

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[Right of convicted defendant to refuse probation, 28 A.L.R.4th 736](#)

[Propriety of conditioning probation on defendant's not entering specified geographical area, 28 A.L.R.4th 725](#)

[Statutes providing for governmental compensation for victims of crime, 20 A.L.R.4th 63](#)

[Propriety of requirement, as condition of probation, that defendant refrain from use of intoxicants, 19 A.L.R.4th 1251](#)

[Propriety of conditioning probation on defendant's serving part of probationary period in jail or prison, 6 A.L.R.4th 446](#)

[Pretrial diversion: statute or court rule authorizing suspension or dismissal of criminal prosecution on defendant's consent to noncriminal alternative, 4 A.L.R.4th 147](#)

[Validity of statutes prohibiting or restricting parole, probation, or suspension of sentence in cases of violent crimes, 100 A.L.R.3d 431](#)

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[Right to cross-examine prosecuting witness as to his pending or contemplated civil action against accused for damages arising out of same transaction, 98 A.L.R.3d 1060](#)

[Judgment favorable to convicted criminal defendant in subsequent civil action arising out of same offense as ground for reversal of conviction, 96 A.L.R.3d 1174](#)

[Propriety of conditioning probation on defendant's remaining childless or having no additional children during probationary period, 94 A.L.R.3d 1218](#)

[Propriety of conditioning probation upon defendant's posting of bond guaranteeing compliance with terms of probation, 79 A.L.R.3d 1068](#)

[Validity of requirement that, as a condition of probation, indigent defendant reimburse defense costs, 79 A.L.R.3d 1025](#)

Ability to pay as necessary consideration conditioning probation or suspended sentence upon reparation or restitution, 73 A.L.R.3d 1240

Construction of clause of Federal Probation Act (18 U.S.C.A. § 3651) that, in placing defendant on probation upon terms and conditions, defendant may be required to make restitution, 97 A.L.R.2d 798

White Slave Traffic Act Mann Act as affecting constitutionality or application of state statutes dealing with prostitution, 161 A.L.R. 356

Construction and application of the word 'cause' in provision of White Slave Traffic Act which declares that one who shall knowingly cause a woman or girl to be transported in interstate commerce for purposes of prostitution shall be guilty of an offense, 156 A.L.R. 971

Purpose other than indulgence in sexual intercourse as affecting violation of Mann Act, 73 A.L.R. 873

Acts in violation of White Slave Traffic Act as constituting single offense or separate offenses, 51 A.L.R. 875

Plea of privilege by the woman concerned in violation of White Slave Act, 48 A.L.R. 991

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Who is "victim," so as to be entitled to restitution under Victim and Witness Protection Act (18 U.S.C.A. §§ 3663, 3664), 108 A.L.R. Fed. 828

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Propriety, under 18 U.S.C.A. § 3651, of district court's requiring contribution of money or services to charity or to community service as condition of suspending sentence and granting probation, 66 A.L.R. Fed. 825

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Footnotes

- 1 It is no longer necessary to consult the annotation at [97 A.L.R.2d 798](#) for matters precisely within the scope of the present annotation.
- 2 Arson may be regarded as being most directly a crime against property, and for this reason, arson has not been considered a crime of violence for purposes of this annotation. Also, cases in which juveniles are charged generally with delinquency, rather than with a specific criminal offense, are not included in this annotation.
- 3 See, for example, [State v Sullivan \(1976, Or App\) 544 P2d 616](#) (disapproved [State v Stalheim \(Or\) 552 P2d 829, 79 A.L.R.3d 969](#)).
- 4 See, for example, [State v Stalheim \(1976, Or\) 552 P2d 829, 79 ALR3d 969](#).
- 5 § 3, *infra*.
- 6 See Rothstein, *How The Uniform Crime Victims Reparations Act Works*. 60 Am Bar Asso J 1531.
- 7 ABA Standards Relating to Sentencing Alternatives and Procedures (Approved Draft, 1968) § 2.7(d) suggests that requiring the defendant to make reparation to the victim is preferred to compensating the state in the form of a fine. ABA Standards Relating to Probation (Approved Draft, 1970) § 3.2 recommends imposing the reparation condition but suggests that it should not go beyond the probationer's ability to pay. The [Model Penal Code § 7.02\(3\)\(b\)](#) prohibits a fine unless it will not prevent the defendant from making reparation to the victims of the crime. And the [Model Penal Code § 301.1\(h\)](#) authorizes the court to impose, as a condition of probation, the requirement that a defendant make restitution of the fruits of his crime or make reparation, in an amount he can afford to pay, for the loss or damage caused by his crime.
- 8 § 4, *infra*.
- 9 § 5, *infra*.
- 10 § 6, *infra*.
- 11 §§ 7- 10, *infra*.
- 12 § 7[a], *infra*.
- 13 § 7[b], *infra*.
- 14 § 8, *infra*.
- 15 § 9, *infra*.
- 16 § 10, *infra*.
- 17 §§ 11- 17, *infra*.
- 18 § 11, *infra*.
- 19 § 12, *infra*.
- 20 § 13, *infra*.
- 21 § 14, *infra*.
- 22 § 15[a], *infra*.
- 23 § 15[b], *infra*.
- 24 § 16[a], *infra*.
- 25 § 16[b], *infra*.
- 26 § 17, *infra*.
- 27 § 18, *infra*.
- 28 § 19, *infra*.
- 29 § 20, *infra*.
- 30 § 21, *infra*.
- 31 §§ 22- 25, *infra*.

- 32 See Rothstein, How The Uniform Crime Victims Reparations Act Works. 60 Am Bar Asso J 1531.
- 33 See, for example, *People v Prell* (1939) 299 Ill App 130, 19 NE2d 637.
- 34 See, for example, *People v Good* (1938) 287 Mich 110, 282 NW 920.
- 35 See, for example, *State v Stalheim* (1976, Or) 552 P2d 829, 79 ALR3d 969.
- 36 See, for example, *People v Alexander* (1960) 182 Cal App 2d 281; 6 Cal Rptr 153; and *State v Morgan* (1973) 8 Wash App 189, 504 P2d 1195.
- 37 See, for example, *State v Simmington* (1952) 235 NC 612, 70 SE2d 842.
- 38 See, for example, *Shenah v Henderson* (1970) 106 Ariz 399, 476 P2d 854.
- 39 *Commonwealth v Jackson* (1971) 218 Pa Super 357, 280 A2d 422.
- 40 See, for example, the following cases:
Mich
People v Good (1938) 287 Mich 110, 282 NW 920
People v Marks (1954) 340 Mich 495, 65 NW2d 698
People v Williams (1975) 57 Mich App 439, 225 NW2d 798
NC
State v Green (1976) 29 NC App 574, 225 SE2d 170, cert den 290 NC 665, 228 SE2d 455
Tex
Taylor v State (1967, Tex Crim) 419 SW2d 647.
- 41 See *State v Morgan* (1973) 8 Wash App 189, 504 P2d 1195.
- 42 The court in the Myers Case also said, by way of dictum, that according to authority, the court could suspend judgment upon the understanding that a defendant would compensate an injured party by payment of money, that the collection of such damages could not be enforced by imprisonment without coming in conflict with the constitutional inhibition against imprisonment for debt, and that in such case, the only redress open to the state was in the enforcement of the securities taken, so far as they could be made available.
- 43 The statute authorized the sentencing court to require, as a condition of probation, that the defendant make reparation or restitution to the aggrieved party for damage or loss caused by the offense in an amount to be determined by the court.
- 44 In *State v Sullivan* (1976, Or App) 544 P2d 616, where the trial court required, as a condition of probation, that defendant, who had been convicted of rape and sodomy, make "restitution" to the female victim by paying her the sum of \$3,000 at the rate of \$75 per month, the court held that although the amount of such a condition must be reasonable and have a rational basis and must not be the product of arbitrariness or capriciousness, the sentencing court had sufficient basis for fixing the amount when it had a report of the county diagnostic center (which recommended \$500 damages to the victim), had heard the defendant's statements at the sentencing hearing, and had observed the victim and heard her testimony concerning the perpetration of the crimes. On appeal, the court affirmed, explaining that under the statutes the grant of probation was discretionary with the trial court, that in exercising that discretion the court is guided by a balancing of the considerations of public safety and the rehabilitation of the offender, that a court could require as a condition of probation that a defendant pay a sum greater than the amount involved in the crime as "restitution" to the victim, and that although discretion was not unlimited, in crimes of the type involved in the present case which involved physical and mental anguish to the victim, the fixing of the amount of reparation is exceedingly difficult and must necessarily involve a large measure of discretion on the part of the trial judge. The amount of reparation fixed by the trial court was not without basis as the defendant contended, the court declared, adding that the trial court was not required to arrive at its determination of the amount of reparation by the taking of more specific evidence concerning the trauma suffered by the victim.
- 48 The statute authorized the sentencing court to require, as a condition of probation, that the defendant make reparation or restitution to the aggrieved party for damage or loss caused by the offense in an amount to be determined by the court.
- 49 In *Bradley v State* (1972, Tex Crim) 478 SW2d 527, a defendant who had robbed and assaulted a liquor store owner and one of his customers had been tried and convicted for robbery of the owner, and ordered to pay "restitution" to the owner and the customer, the requirement to pay restitution to the customer being canceled later, then the defendant was tried and convicted for robbery of the customer, and on appeal, the court rejected his claim that the judgment in the first case which required restitution to be paid to the customer precluded the defendant's indictment and trial for robbing the customer. A concurring opinion stated that

although he could find no authority directly on the point, the judge was of the opinion that the restitution or reparation contemplated by the statute did not include restitution to a party other than the victim of the crime for which the defendant was convicted.

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The court in the Myers Case also said, by way of dictum, that according to authority, a court could suspend judgment upon the understanding that a defendant would compensate an injured party by payment of money, that the collection of such damages could not be enforced by imprisonment without coming in conflict with the constitutional inhibition against imprisonment for debt, and that in such case, the only redress open to the state was in the enforcement of the securities taken, so far as they could be made available.

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