Inter-Office
MEMORANDUM

DEPARTMENT OF PUBLIC SAFETY

No. _____

Suspense: _____

July 29, 2016

TO: ALL CONCERNED

FROM: Nolan P. Espinda, Director

SUBJECT: **AMENDMENTS TO COR.02.04, RESTITUTION COLLECTION**

The following are the significant changes to COR.02.04, effective July 29, 2016:

1) Section 2.2.j. was modified to reflect that restitution shall be collected from off-status cases upon reincarceration.
2) Minor formatting and grammar changes.

If you require any clarification, please contact Shelley Nobriga at 808-587-1415 or shelley.d.nobriga@hawaii.gov

1.0 PURPOSE

To provide guidelines and standards governing the collection of restitution deductions from Inmate Trust Accounts, the processing of all inmate payments for restitution and other court fees, and the transmission of these payments to the Judiciary and the Crime Victim Compensation Commission.

2.0 REFERENCES AND DEFINITIONS

.1 References

a. Department of Public Safety (PSD), Policies and Procedures (P & P), COR.02.12, Inmate Trust Accounts.

b. PSD, P & P, COR 14.15, Furloughs.

c. Hawaii Administrative Rules (HAR), Title 23, Department of Public Safety, Subtitle 4, Criminal Injuries Compensation Commissioner, Chapter 604, Criminal Injuries Compensation Act.

d. Hawaii Revised Statutes (HRS) § 353-17, Committed Persons, Furlough, Employment.

e. HRS § 353-21, Withdrawals; Forfeitures, etc.

f. HRS § 353-22.5, Garnishment to Cover Non-budgeted Costs

g. HRS § 353-22.6, Victim Restitution.

h. HRS § 706-605.6, Authorized Disposition of Convicted Defendants.

i. HRS § 706-624(2), Conditions of Probation. Discretionary Conditions.

j. HRS § 712A-18, Victim Restitution.

k. Memorandum dated August 2, 2005, from Ed Shimoda. (RESCINDED)

.2 Definitions

a. ***Crime Victim Compensation Fee (Comp Fee):*** A fee that is imposed by the Court as part of a sentence but is NOT considered restitution.

b. ***CRMS:*** CVCC online database.

c. ***CVCC:*** Crime Victim Compensation Commission.

d. ***Free-Standing Order of Restitution***: An Order created by the Court that stands alone even after the incarceration period has elapsed and continues to be enforceable during and after incarceration until the order is satisfied.

e. ***Furlough Inmate***: An inmate in the legal custody of the Department of Public Safety (hereinafter "PSD") that is participating in a work furlough or extended furlough program.

f. ***ITA:*** Inmate Trust Account.

g. ***Jail Inmate***: An inmate that has been typically sentenced to a total of 364 days or less of incarceration.

h. ***Joint & Several Restitution***: A restitution amount in which each party listed on the Order is individually as well as jointly responsible for the full amount of the restitution.

i. ***Manner of Payment***: The deduction may be made through the process determined by the business office of each facility, usually through the Inmate Trust Account (ITA) and filtered through Crime Victim Compensation Commission (hereinafter "CVCC").

j. ***Off-Status Case***: a case in which an offender previously was in custody on, was on probation or parole for, but has attained his maximum incarceration period. Restitution shall be collected from off-status cases upon reincarceration. ("Maxed-out")

k. ***On-Status Case***: a case in which an offender is actively incarcerated and serving time or on active probation or parole for.

l. ***Other Court Fees & Fines***: All other fines and fees as applied and determined by the court are NOT considered restitution. Restitution is specifically enunciated in the Orders.

m. ***Prison Inmate***: An inmate that has been typically sentenced to a total of 365 days or more of incarceration.

n. ***Probation inmate***: A probationer serving jail or prison time as a condition of probation is considered an inmate.

o. ***Restitution***: Court or Facility ordered repayment of part or all of a loss caused by a crime, misconduct, or loss or damage of State or personal property.

3.0 POLICY

In accordance with the provisions of the applicable HRS, all sentenced inmates who have been ordered to pay restitution shall have their restitution obligations established in their inmate trust account, and shall have all earnings and cash deposits to their accounts deducted for payment of restitution. Deductions shall be processed and transmitted once monthly.

.1 Upon discharge, restitution amounts remain unchanged in Inmate Trust Accounts even if the inmate is being discharged for time served ("maxed-out").

.2 If inmate is returned on a case where restitution is still owed, restitution will continue to be collected.

.3 Facility shall verify restitution balance upon court orders, see section 4.3.

.4 Facility shall provide balance information & payment report to inmates upon request but no more frequently than once per month.

.5 Facility shall process lump sum restitution payments as requested or authorized by inmates.

.6 Retroactive deductions shall be taken upon discovery that an error was made on the part of the facility.

.7 Probation collections shall be sent to Judiciary, and Incarceration collections shall be sent to CVCC.

.8 Case Workers are to monitor restitution collection (in relation to store/commissary purchases), assist offenders who want to pay, assist pre-parole, assist business office staff, assist CVCC, etc.

.9 Restitution may be collected from annuities and tax returns if the date on the Court Order is on or after July 1, 2012, and the funds are deposited into the inmate's account. No deductions shall be made from Social Security income.

.10 A probationer serving a jail sentence as a term of probation shall have restitution deducted, and the monies sent to the Judiciary in the circuit from which the Order was sent, *only* if the Court Order specifies that payment is made to the Court.

.11 Inmates on work furlough or extended furlough shall have their income deducted at the rate of 25% as directed by the P & P, COR.14.15.

.12 Probationers on work furlough or extended furlough shall have their pay deducted at a rate of 30% in accordance with HRS § 706-624(2).

4.0 PROCEDURES

.1 Receiving & requesting sentencing documents from the Judiciary:

a. A copy of sentencing documents for each inmate shall be delivered to the Business Office or Warden's designee, within 24 hours of receipt by the facility.

b. Previous documents ordering restitution (i.e. originally probation judgment) shall be forwarded in the same manner as Section 4.1.a above.

c. Subsequent documents regarding restitution (e.g. Free-Standing Orders, Amended Judgments, Orders to Vacate Restitution, etc.) shall be forwarded to the Business Office in the same manner as 4.1.a.

.2 Identify Restitution Cases and Establish Obligation in ITA.

.3 How to read court judgments, what to look for:

a. Deduct according to HRS § 353-22.6, unless the Court order states otherwise.

b. Court-ordered manner of payment vs. statute.

c. How to set up ordered amounts in ITA. Refer to the ITA manual.

1) Restitution – Specific transaction codes are to be used for Restitution transactions. All facilities in Hawaii, including the Mainland Branch Unit, shall use them for consistency.

   a) R – Restitution. This is the **account code** used to record restitution.

   b) R – for restitution payment. This **transaction code** is used whenever a new case is opened. i.e., R-R.

   c) RC – for restitution credit. This **transaction code** is used when adjusting for a reduction in the balance of a restitution (R) case resulting from a subsequent manual payment or payments made to CVCC but not posted to the ITA. i.e., RC-R

   d) RD – for restitution debit. This **transaction code** is used when adjusting for an increase in the balance of a restitution case resulting from an understatement in the recorded balance, i.e. RD-R.

   e) WR – This **transaction code** is used when fund is withdrawn for the payment of restitution other than 10% recovery from payroll and 25% recovery from deposit, i.e., WR-GA or WR-R or WR-FA.

2) Court Fees – the procedure to set up Court Fees is the same as the restitution. However, the Transaction Type is "CD" and the Account is "CF".

3) Crime Victim Compensation Fees – same as court fees.

.4 Balance Verification is the balance of restitution as verified from the CVCC Receipts.

a. Upon transfer from Mainland Branch facility: the Mainland Branch (MB) staff shall request a report each month from the mainland facility which details the amounts deducted from each inmate owing restitution. MB staff will enter amounts into ITA and CRMS in the same manner as other in-state facilities (see section 4.0.3c).

b. Upon parole violation: facility staff will update ITA with the correct amount from CVCC.

.5 ITA Deductions for Restitution. Refer to ITA Manual for the procedure.

a. Wages/Earnings

1) If the inmate is convicted before July 1, 2012, deduction for restitution from gross wages is 10%. The ITA is programmed to automatically take out 10 per cent of the gross wages/ earnings when posted.

2) If the inmate is convicted from July 1, 2012 and later, the ITA automatically takes out 10% of the gross wages/earnings when posted. Hence, if the court ordered more than 10%, the additional collection is to be taken out from the gross wages manually. Refer to .5 c.

** Additional deductions to be done manually until such time when the majority of orders are dated after July 1, 2012 at which time the ITA automatic deduction will be changed to 25% and manual deductions are to be changed for the inmates owing 10%.

b. Cash Deposits/Receipts

Convictions from July 1, 2012, and later, include collection of restitution equal to 25% of gross deposits. The ITA System has a built in program that automatically takes out 25% of the cash deposits when the Restitution box is checked off and the cash receipt is posted.

c. Adjustments for recoveries of restitution

1) For additional recoveries from the Earnings and Wages, withdraw the funds from the inmate's account in the ITA with the following guidelines:

a) If the Total Gross Earnings is $27.00 or over, half or 50% of the additional recovery is taken out of the spendable and the other half or 50% is taken out of the restricted.

i) Illustration: The court ordered payments of 25% of earnings which is $6.75 (25% of $27.00).

ii) ITA automatically takes out 10% or $2.70 of the Total Gross Earnings.

iii) Additional recovery is15% of $27.00 is $4.05, of which $2.03 is to be taken out of the spendable account and $2.02 is to be taken out of the restricted account.

b) If the Total Gross Earnings is less than $27.00 but more than $20.00, the additional recovery is to be taken out from100% of the restricted and the balance is to be taken out from the spendable.

i) Illustration: Total Gross Earnings is $26.50. ITA takes out 10% or $2.65.

ii) The Payroll Distribution shows that $21.93 is spendable and $1.92 is restricted. Additional recovery is 15% of $26.50 or $3.98.

iii) The $3.98 is to be taken out of the restricted of $1.92 and out of the spendable for $2.06.

c) If the Total Gross Earnings is $20.00 and less, the additional recovery is taken out of the spendable.

2) Two checks will be used to remit the recoveries to CVCC – one for the 10% and another one for the additional recoveries.

3) An inmate going to mainland facilities whose ordered Restitution was not recorded in the ITA once discovered should be posted to the ITA. The court order should be sent to Halawa Correctional Facility to post using R-R. HCF has the capacity to post to the mainland facility locations in the ITA.

4) Restitution balance of an inmate who is released for time served shall be maintained.

5) Restitution balance of an inmate who returns from the mainland facilities, or readmitted from parole should be adjusted for payments made while in the mainland facilities or out of the Hawaii facilities.

d. If CVCC Receipts show a Case Number not yet recorded in the ITA, the Restitution should be posted in the ITA.

e. Exemptions:

1) Furlough pay.

2) Refunds – all.

3) Balance transfers between facilities including Mainland Branch.

4) Receipts other than donations, (UA test, etc.)

.6 Lump Sum payments for Restitution, Compensation Fee or other Court fees/fines

a. Inmate fills out an inter-unit request indicating his desire to make a payment, with the Case Number, amount, and to whom the check is to be payable.

b. Inmate submits the inter-unit request to his/her Case Manager, and they discuss it. The case manager may ask the Business Office for the balance of inmate's fund. If approved, inmate and case manager signs the request and forwarded to the Business Office for processing. Refer to Manual.

.7 Opening a case with CVCC, by submitting a request accompanied by the Court Order to CVCC.

.8 Monthly processing of payment

a. Send reports of collection for review first

1) From Wages/Earnings -After the Inmate payroll is posted by the 15th of the month, the Restitution Activity Report is printed. The details should match with the details of the Restitution column of the Payroll Distribution Report. Any court order showing a payment rate not equal to 10% needs an adjustment for the amount collected.

2) From Deposits – After the deposits for the day are posted, the Cash Receipts Journal is printed. A worksheet to summarize the daily collection for restitution may be prepared as a basis for the remittance to CVCC.

b. CRMS batch reports should accompany the restitution remittance to CVCC.

c. Submit the monthly list of inmate collections to CVCC using the Facility Batch Submission feature in CVCC's online database. Wait for approval from CVCC before remitting payment.

.9 Monitoring ITA Restitution Account Balance & Status

a. Reconciling balances with CVCC in event of payment from source other than ITA account (family member, prior payment, etc.).

b. Case goes off-status – amounts are maintained in the event of re-incarceration.

c. Restitution paid in full – a copy of CVCC Receipt should be filed in the Institutional file under "Restitution" by Case Manager or Designee.

.10 Restitution collections from Furlough and Extended Furlough Inmates

a. Inmate (IM) turns in paystub/paycheck to case manager (CM) by payday Sunday;

b. CM retrieves paystub/paycheck on the following Monday;

c. CM calculates the 25% restitution owed then sends a request to the bank for processing of cashier's check by Wednesday;

d. IM goes to the bank to retrieve cashier's check by Friday and drops off in the CM's box by Sunday; and

e. CM retrieves check the following Monday and forwards to CVCC with the furlough restitution form.

.11 Correcting Previously Overstated or Understated Restitution Orders in ITA

a. The Business Office makes adjustments to the Restitution balance, a credit for a decrease and a debit for an increase.

b. The adjustment is entered using the Disbursements window by RD-R to increase and RC-R to decrease the balance.

.12 Processing Retroactive ITA Deductions/Recoveries

a. If there is still a balance in the Restitution account, the Business Office should remit the retroactive recoveries to CVCC.

b. If there was an erroneous deduction, reverse the deduction using R for the transaction Type and R for the Account.

c. If the Restitution account has no balance, the Business Office should reimburse the inmate for the retroactive recoveries.

.13 The memorandum drafted by Ed Shimoda on August 2, 2005 is hereby rescinded and superseded by this Policy.

5.0 SCOPE

This policy applies to all personnel that handle inmate accounts and all sentenced inmates incarcerated at PSD facilities and contract facilities.

APPROVAL RECOMMENDED:

Jodie Maesaka-Hirata — July 29, 2016
Deputy Director for Corrections — Date

APPROVED:

John P. Egan — July 29, 2016
Director — Date