

Bureau of Behavioral Support
NM DEPARTMENT OF HEALTH – DEVELOPMENTAL DISABILITIES SUPPORTS DIVISION

Restitution Guidelines

Purpose: The purpose of these guidelines is to provide a set of considerations and requirements for behavior support consultants and/or interdisciplinary teams when certain types of behavioral interventions are proposed.

Definition: Restitution is the planned requirement for an individual to directly repay, replace, or otherwise compensate for all or part of the costs/item(s) s/he may have broken or damaged, taken without permission, lost, etc. This could also include incidents of causing emotional harm. Restitution is a subtype of *response cost* programming. Please also be familiar with the response cost guidelines distributed by the Bureau of Behavioral Support.

Types: Programmed or required restitution can run a continuum from:

- Requiring that an individual offer an apology in verbal or written form;
 - Note: This level of restitution would not require human rights approval but be wary of ‘mandating’ apologies and take steps to assure that the individual understands the whats and whys of the apology.
- Required or enforced exchange of an item of similar value;
- Mandating that the individual complete a task, chore, or other form of assistance for ‘the offended’;
 - Physical/Exercise cost response (e.g., ‘drop and give me 20’) or overcorrection (e.g., person throws their food on floor and is required to clean up everyone else’s plates etc.) ARE NEVER PERMITTED UNDER ANY CIRCUMSTANCES.
- Enforcing that the individual engage in some activity that benefits a wider group of people (e.g., volunteer activities); or
- Partial or complete monetary repayment (from the individual’s personal spending monies) for the value of the item, cost of repair, or perceived damage – emotional or physical.

Ethics: It is your responsibility to engage in a careful, considered, and documented effort towards ensuring the least restrictive intervention(s) and environments for all individuals you support. This is perhaps better described as a constant endeavor to seek and create ‘the most supportive environment’. As such, the use of restitution presents an area of ethical concern as:

- In technical behavioral terms restitution is a type of response cost;
- Restitution is considered a possible aversive intervention or punishment;
 - We frame it as a ‘possible’ punishment because in order to *be* a punishment (per the Applied Behavior Analysis definition: Cooper, Heron, & Heyward, 2007) there would have to be evidence that the instigation/application of a restitution program has resulted in a clear reduction in future events;
 - At times, the application of an intervention intended to be a way to lessen the frequency or intensity of a challenging behavior may result in the behavior of concern becoming worse or emergence of other new/novel types of challenging behavior;
 - Remember – in using the term ‘challenging behavior’ – the challenge is *ours* – to creatively develop systems of supports that address what is important *for* an individual as well as what is important *to* the individual.
- Unless or until there are data indicating a reduction in frequency, severity, and/or duration *along with* no overt unintended or other side effects (e.g. secondary aggression), the intervention is simply a consequence without clinical utility, could be considered a form of abuse, and should be reported as such;

2015 06 09 Restitution Guidelines

- If less restrictive means have not been attempted first (and not just once or a few times but until the data indicate a clear lack of effect) then the process of ensuring a person's right to least restrictive interventions may not be considered complete. This is an *ongoing* process.

Prior to instigating any restitution program the following several areas should be considered, addressed, and documented.

- **What is the *need* that the individual may be expressing via the destructive behavior?**
 - Remember: "Our energies are better put to eliminating the *need* for difficult behavior than in trying simplistically to eliminate the behavior itself" (Lovett, 1996, p. 94).
 - Never give up on efforts toward this goal.
 - Does the person 'have a life'? Would you trade positions with him/her? What might you do if in his/her position? What would you want to happen if you were in his/her position?
 - Functional assessment? Topography, Precursors, Antecedents, Levels of Severity, Possible Functions?
- **Have you collected/documented/charted data?**
 - With what variables? Frequency, Severity, Duration of events?
 - Without clear baseline data it will be impossible to judge effect of any interventions.
 - Destructive or harmful (physical or emotional) events can lead to a lot of intense emotions for all involved. Intense emotions may lead to 'snap' decisions and poorly thought out programs that do more to address *our* emotions than the actual situation at hand. Careful use of data may, at times, help to cool the emotional content of these situations.
 - We should also pay equal, if not greater attention to, data regarding other areas of the person's life:
 - How often does s/he get to do the things s/he likes? How often does s/he have periods of time with no demands or behavioral requirements?

MONETARY RESTITUTION

- **Does the individual understand money?**
 - How has this been determined/documented?
 - If not – then a restitution program should not be initiated in any form.
- **Does the individual understand the relative concept of monetary value? (i.e. \$1 versus \$100 versus \$1000)**
 - How has this been determined/documented?
- **Is the amount they are being asked to directly repay reasonable in relation to their income?:**
 - No matter the situation, an individual should never be required to 'give up' all of or a majority of their monies for a period of time.
 - A meaningful (to the person) but not overwhelming 'cost per event' should be established prior to instigating a restitution plan.
 - Further – consider an overall cap on amount owed at any one time.

ITEM RESTITUTION

- **Does the individual understand the concept of ownership/personal property?**
 - How has this been determined/documented?
 - If not – then an item restitution program should not be initiated in any form.
- **Does the individual understand the relative concept of the value of different items? (i.e. \$1 versus \$100 versus \$1000)**
 - How has this been determined/documented?

ALL PROGRAMS

- **Is there a clear definition of what constitutes ‘an event’?**
 - For example – John punches 10 holes in his wall in 10 minutes and the plan is to have him directly repay \$5.00 per incident of damage.
 - Does this count as 10 incidences and equal a cost of \$50.00? If so, this would likely be beyond an individual’s ability to repay quickly. Further, if there is another incident (or more) before the restitution is completed, this individual may then owe an even more unachievable amount. And so forth until the amount owed would take months (or years) to pay off.
 - The chronic lack of money or application of fines is a clear stressor for most people. Increased stress often leads to increased behavioral expression. In these cases, the intervention may actually end up increasing the severity or frequency of the types of events you are hoping to eliminate.
 - Alternately, you could define ‘incidents’ as periods of property damage that are separated by periods of absence of property damage – say 10-15 minutes.
 - Therefore, in the above scenario, the 10 holes would be one incident, the cost, \$5.00.
 - If John were calm down/stop punching holes for 15 minutes and then punch another hole (or three) this would be a second incident.
 - In this way, the ‘lesson’ of restitution remains but the overall cost does not become insurmountable.

- **Is the timeline for repayment within the individual’s ability to maintain understanding of the situation?**
 - For example – If an individual is required to directly pay \$60.00 of the cost of damage out of their personal monies and this is being done at \$5.00/week out of their \$20.00/week spending money this will take 12 weeks to repay.
 - Is the individual able to maintain understanding of why the \$5.00 is being repaid throughout the 12 weeks or at some point has s/he forgotten/is no longer connecting the repayment to previous actions?
 - If the duration of repayment exceeds his/her understanding then it has become a meaningless consequence and the learning aspects of the restitution are not valid.

- **How might you aid the individual in understanding progress toward completion of the program?**
 - Graphs, thermometers, moving pieces toward a goal like a board game, calendars etc.
 - This may help to sustain, strengthen, or quicken efforts.

- **Is the program such that the person would ‘dig themselves into a hole’ they cannot escape?**
 - For example – if an individual has a pattern of frequent events that may lead to restitution and the amount to be repaid is per event – this could rapidly escalate into the individual owing a relatively large sum of money.
 - As stated above – the team may consider a cap on total amount owed at any one time.
 - In general, if an individual evidences a pattern of reaching the cap on a regular basis the team should consider that this may indicate that the restitution plan is not showing any effect and is, in essence, a meaningless/ineffective consequence.
 - To continue application of an aversive program without clear evidence that there is effect may be considered abuse.

- **Is there a way for them to earn money for demonstrating alternate skills/choices?**
 - What skills could the person develop in place of the pattern that led to the damage/restitution? How else might s/he satisfy the underlying need?
 - E.g., Using a punching bag, taking a ‘cool-down’ walk, calling for assistance when upset.
 - Don’t take away a crutch without putting something in its place.

2015 06 09 Restitution Guidelines

- Might the team consider monetary reinforcement for instances when the individual has demonstrated or practiced these replacement skills?
 - If you are going to take away money – it is appropriate to consider how to help the individual *earn* money when they are making better decisions.
 - This may also help direct support professionals not simply pay attention to ‘the bad’ but begin to see times when the individual is making better decisions/demonstrating new or emergent skills and thus see the person as more than simply a set of ‘challenging behaviors’.
- This can also be paired with the team ‘chipping in’ on the debt:
 - If the individual achieves a certain level of new/alternate skill demonstration in a certain period of time then the team can ‘match’ the payment for that period thus shortening the time of repayment and doubly reinforcing the new efforts.
 - SET THE BAR LOW: Make the initial iterations *clearly achievable*. Set it up for success. Ensure the person feels achievement, not failure.
 - ‘Failure’ in most behavior programs is not the individual’s - it is ours, stemming from unrealistic goals or timelines, poorly defined alternatives, or near-perfection level demands that we would never accept in our own lives.
- **Has the restitution program been explained to/understood by the individual?**
 - How has this been determined/documentated?
 - A restitution program should never be instigated ‘on the fly’ or without the informed consent/assent of the individual.
- **How will the monies or item be handed over?**
 - Will the individual directly take cash to the involved party? On what schedule?
 - This may, at times, be more effective than having the monies be handed over ‘in the background’.
- **Is this approved by the HRC?**
 - Quarterly at a minimum.
 - Documented.
- **What is the plan going forward to fade/replace/avoid situations (antecedents)?**
 - In general – there is a risk that these types of programs ‘take on a life of their own’ and could remain in place for years after initiation.
 - The team’s responsibility is to create an environment and support system that minimizes the likelihood of reoccurrence via ongoing, continuous, and creative attempts to address the *underlying needs* the individual may be expressing.

References

- Alberto, P. A., & Troutman, A. C. (2009). *Applied behavior analysis for teachers* (8th Ed.). Upper Saddle River, NJ: Pearson.
- Cooper, J. O., Heron, T. E., & Heward, W. L. (2007). *Applied behavior analysis* (2nd Ed.). Upper Saddle River, NJ: Pearson.
- Lovett, H. (1996). *Learning to listen: Positive approaches and people with difficult behavior*. Baltimore, MD: Paul H. Brookes.