

COMMONWEALTH OF MASSACHUSETTS  
Supreme Judicial Court

At the Supreme Judicial Court holden at Boston within and  
for said Commonwealth on the third day of December, in the year  
two thousand and twenty-four:

present,

<u>KIMBERLY S. BUDD</u>	)	
	)	Chief Justice
	)	
<u>FRANK M. GAZIANO</u>	)	
	)	Justices
	)	
<u>SCOTT L. KAFKER</u>	)	
	)	
	)	
<u>DALILA ARGAEZ WENDLANDT</u>	)	
	)	
	)	
<u>SERGE GEORGES, JR.</u>	)	
	)	
	)	
<u>ELIZABETH N. DEWAR</u>	)	
	)	
	)	
<u>GABRIELLE R. WOLOHOJIAN</u>	)	

ORDERED: That the Massachusetts Rules of Criminal Procedure  
adopted by order dated October 19, 1978, as amended,  
to take effect on July 1, 1979, are hereby amended as  
follows:

Rule 49 By inserting after existing Mass. R. Crim. P. 48 the  
new Mass. R. Crim. P. 49 attached hereto.

The amendment accomplished by this order shall take effect on March 1, 2025.

ORDERED:

<u>KIMBERLY S. BUDD</u>	)	
	)	Chief Justice
	)	
<u>FRANK M. GAZIANO</u>	)	
	)	Justices
	)	
<u>SCOTT L. KAFKER</u>	)	
	)	
	)	
<u>DALILA ARGAEZ WENDLANDT</u>	)	
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<u>SERGE GEORGES, JR.</u>	)	
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<u>ELIZABETH N. DEWAR</u>	)	
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<u>GABRIELLE R. WOLOHOJIAN</u>	)	

## Mass. R. Crim. P. 49

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### **Rule 49. Restitution**

#### **(a) Request for restitution.**

**(i) After trial.** In the case of a conviction after a trial, the Commonwealth may request an order of restitution at any time prior to the completion of the sentencing hearing or, with the permission of the judge for good cause shown, within sixty days of the disposition.

**(ii) Plea or admission.** In the case of a guilty plea or admission to sufficient facts, the Commonwealth may request an order of restitution as part of its disposition recommendation. In the case of a defendant-capped plea, the terms of the defendant's request may, but need not, include a cap on any restitution award.

#### **(b) Restitution hearing.**

**(i) Timing.** In the judge's discretion, the judge may decide the question of restitution at the time of the disposition hearing or at a separate hearing conducted after the disposition.

**(ii) Determination of victim's loss.** The judge shall determine the economic loss suffered by the victim or victims that is causally connected to the defendant's actions and then may, in the judge's discretion, set a maximum restitution amount not exceeding that loss. The Commonwealth bears the burden of showing the economic loss by a preponderance of the evidence.

**(iii) Determination of ability to pay.** After determining the loss amount, the judge shall conduct an inquiry into the defendant's ability to pay. The defendant bears the burden of showing by a preponderance of the evidence the amount that the defendant is able to pay without creating a substantial financial hardship for the defendant or the defendant's dependents. The judge shall determine the defendant's ability to pay and set a restitution payment schedule that does not exceed the defendant's ability to pay. If the defendant is incarcerated or sentenced to incarceration, the judge may, in the exercise of discretion, defer the determination of the defendant's ability to pay until the defendant's release from incarceration or until a reasonable period after the defendant's release from incarceration.

**(c) Redetermination of ability to pay.** At any time prior to the termination of probation, either party or the probation service may file a written motion requesting that the judge redetermine the defendant's ability to pay. Unless the motion lacks a reasonable basis, the judge shall promptly hold a redetermination hearing. The probation service shall notify the victim or victims of the

hearing. At a redetermination hearing, the defendant bears the burden of showing by a preponderance of the evidence the current amount that the defendant is able to pay without creating a substantial financial hardship for the defendant or the defendant's dependents. The judge shall determine the defendant's current ability to pay and set a restitution payment schedule that does not exceed the defendant's ability to pay or the maximum restitution amount previously determined.

**(d) Conclusion of probation.** Except at the defendant's request for good cause shown, the period of probation shall not be extended because of unpaid restitution in the absence of a willful violation of the conditions of probation.