



Office for Victims of Crime

OVC Bulletin

16 of 19

New Directions
Restitution

Advocating for the Fair
Treatment of Crime Victims

Message from The Director

New Directions from the Field: Victims' Rights and Services for the 21st Century is a comprehensive report and set of recommendations on victims' rights and services from and concerning virtually every community involved with crime victims across the nation. The report represents a significant maturation in the field of victims' rights and services since the President's Task Force on Victims of Crime released its Final Report in 1982. New Directions chronicles the extraordinary accomplishments of a still young field, but also recommends what we as a society should strive to achieve for victims as we enter the 21st century.

New Directions is the culmination of more than 3 years' work by over 1,000 individuals in the victims field including crime victims, representatives from national victim advocacy and service organizations, criminal justice practitioners, allied professionals, and many others. In addition, literally hundreds of reference documents were utilized and listed in the endnotes of each of the 18 chapters. The work of these individuals and the publication and dissemination of this material has been supported by the Office for Victims of Crime (OVC). The report and recommendations represent views from the field, however, and do not necessarily reflect the views of the Department of Justice. Moreover, while the recommendations may not reflect all of the individual contributors' views, the contributors agree that all of the recommendations are worthy of discussion and consideration.

This bulletin is a reprint of chapter 15 from New Directions and deals specifically with promising practices and recommendations related to Restitution. As we move into the 21st century, New Directions should serve as a vitally useful guide for developing policies, programs, and practices on behalf of crime victims well into the next century. As comprehensive as this report is, however, the real challenge begins now. After you read the recommendations, after you have examined the numerous promising practices presented in each section, then I encourage you to move forward to see how you can implement improvements in a manner that meets the needs of crime victims.

Kathryn M. Turman
Acting Director
Office for Victims of Crime

New Directions from the Field: Victims' Rights and Services for the 21st Century

Restitution

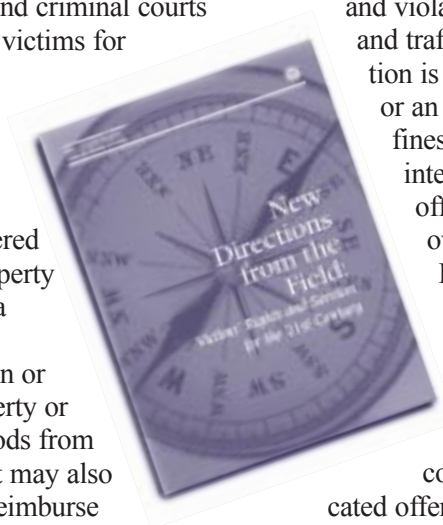
The concept of personal accountability for the consequences of one's conduct, and the allied notion that the person who causes the damage should bear the cost, are at the heart of civil law. It should be no less in criminal law.

The Final Report of the 1982 President's Task Force on Victims of Crime

Restitution holds offenders partially or fully accountable for the financial losses suffered by the victims of their crimes. Restitution is typically ordered in both juvenile and criminal courts to compensate victims for out-of-pocket expenses that are the direct result of a crime. Most often, it is ordered in cases of property crime such as a home burglary involving stolen or damaged property or the theft of goods from a retail store. It may also be applied to reimburse victims of violent crime for current and future expenses related to their physical and mental health recovery and to make up for loss of support for

survivors of homicide victims. Other types of cases in which restitution is commonly ordered are theft of services (e.g. cab or restaurant bills), fraud, forgery, and violation of vehicle and traffic laws. Restitution is not a punishment or an alternative to fines, sanctions, or interventions with the offender. It is a debt owed to the victim. Recently, judges have also begun to order "community restitution," in which convicted or adjudicated offenders "pay back" the community through service.

The concept that offenders should provide restitution to the victims of their criminal or delinquent



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acts can be traced back thousands of years to the earliest forms of laws governing society.¹ In the Bible, recompense to the victim included not only reimbursing or replacing the victim for what was lost, but additional measures as a guilt offering.² Over time, government took responsibility for prosecuting crimes, and crimes were viewed as committed against the state, not against the victim.³ As a result, for the most part, restitution was forgotten.⁴

Modern-day restitution emerged in the 1930s with the establishment of penal laws in some states permitting restitution as part of suspended sentences and probation.⁵ In the 1960s and 1970s, a number of restitution initiatives emerged. Federal funding became available in the mid-1970s for the development of restitution programs across the country. Recommendations for the consideration of restitution were made in policy statements of such groups as the National Commission on Criminal Justice Standards and Goals, the Council of Judges of the National Council on Crime and Delinquency, the American Bar Association, and the American Law Institute. It was not until the 1980s, however, that restitution found new prominence as a critical element of the victims' rights movement.

Restitution as a significant remedy for crime victims was first addressed on the federal level with the enactment of the Victim and Witness Protection Act (VWPA) of 1982, which required federal judges to order full restitution in criminal cases or state their reasons for not doing so on the record.⁶ The same year, the *Final Report* of the President's Task Force on Victims of Crime reinforced the language of the VWPA by recommending that "judges should

order restitution to the victim in all cases in which the victim has suffered financial loss, unless they state compelling reasons for a contrary ruling on the record."⁷

Restitution is needed, the President's Task Force argued, because:

It is simply unfair that victims should have to liquidate their assets, mortgage their homes, or sacrifice their health or education or that of their children while the offender escapes responsibility for the financial hardship he has imposed . . . if one of the two must go into debt, the offender should do so.⁸

As a result of these developments, national research efforts soon followed. Two early studies published in the 1980s, *Crime Victim Restitution: An Analysis of Approaches*, a comprehensive review of restitution programs published by the National Institute of Justice in 1986,⁹ and the American Bar Association's *Guidelines Governing Restitution to Victims of Criminal Conduct* in 1988,¹⁰ highlighted model restitution approaches. Both publications cited a need for increased accountability on the part of the justice system and the offender to make consistent payment of restitution a reality.

Over a decade later, the importance of restitution was emphasized on the federal level with the enactment in 1994 of the Violent Crime Control and Law Enforcement Act, which made restitution mandatory in cases of sexual assault or domestic violence. In 1996, restitution was made mandatory on the federal level in all violent crime cases and in certain other cases with the passage of the Mandatory Victim Restitution Act.¹¹ Full implementation of these provisions will bring new importance to restitution in federal criminal

proceedings. Other significant changes may be on the horizon. A victims' rights constitutional amendment proposed in Congress in 1997 calls for an order of full restitution from the convicted offender.¹²

In the decade that followed the 1982 passage of the Victim and Witness Protection Act, every state passed statutes addressing restitution, most following the lead of the federal model. However, states continue to amend their statutes, creating a patchwork of financial reparations for victims across the country. As of 1995, 29 states had followed federal law in mandating restitution in all cases, unless the presiding judge offers compelling reasons not to do so.¹³ Some states, however, mandate restitution only in cases involving violent crimes, while others mandate restitution only in cases involving property crimes.

Moreover, in some states, not only the victim but family members, victims' estates, private entities, victim service agencies, compensation programs, and private organizations that provide assistance to victims may seek restitution. A number of states require that offenders be on probation or parole before victims may collect restitution, and many do not require restitution from juvenile offenders.¹⁴

Despite the passage of federal and state legislation, restitution remains one of the most underenforced victim rights within the criminal and juvenile justice systems. Evidence of this is apparent both in decisions to order restitution and in efforts to monitor, collect, and disperse restitution payment to victims. In a 1992 report on recidivism of felons on probation, the Bureau of Justice Statistics reported the results of a two-phase

survey of selected counties.¹⁵ Of the 32 counties surveyed, only half required restitution in at least one-third of all felony probation cases.¹⁶ A study of a followup sample revealed that the average restitution order imposed was \$3,368 per probationer.¹⁷ For felony probationers who had completed their sentences, only 54 percent of the amount of restitution ordered was paid.¹⁸

National research studies indicate that restitution is one of the most significant factors affecting the satisfaction of victims with the criminal justice process. The results of a 1989 study funded by the State Justice Institute and conducted by the American Bar Association (ABA) found that victims who were not satisfied with their involvement in the criminal justice system cited their lack of input into the decision about how much restitution to impose and the lack of information provided to them about the criminal justice process.¹⁹ The ABA study found that victims expressed the most satisfaction with the process when they felt there was communication between them and a member of the criminal justice system who served as their contact, most typically a member of the victim-witness office. Earlier in 1980, Hudson and Galway found that a majority of the victims they surveyed, 61 percent, viewed monetary restitution as the fairest form of punishment.²⁰ However, more than half of the survey, 51 percent, indicated dissatisfaction with restitution, mostly because they felt the amount imposed was insufficient.²¹

In 1997, the Promising Practices and Strategies for Victim Services in Corrections project, sponsored by the National Victim Center with support from the Office for Victims of Crime, identified 10 obstacles that directly influence a jurisdiction's ability to

manage a successful restitution program. These obstacles include the belief among some justice professionals that all offenders are indigent and cannot afford to pay restitution; the fact that restitution orders often are not first in the priority of court-ordered payments and follow behind court costs, fines, costs of salaries for justice officials, costs of incarceration, and other financial obligations; the lack of interagency agreements stipulating who is responsible for monitoring, enforcing, collecting and disbursing restitution; and cynicism of some crime victims and service providers about efforts to collect restitution, which contributes to low employee morale among those responsible for monitoring restitution programs and payments.²² While all of these barriers can be overcome, each must be closely examined and addressed when agencies seek measures to improve their restitution collection programs.

Models for Implementing Restitution Statutes

Restitution can be a highly complex process, involving numerous professionals and a diverse array of tasks. Moreover, there are inherent problems in requiring financial reparation from offenders who appear to be indigent at the time of sentencing. Many jurisdictions across the country are experimenting with and institutionalizing procedures to enhance and streamline restitution collection.

- In New York City, the Criminal Court is establishing a "court-based infrastructure" to ensure strict accountability for all conditions, including restitution, that are imposed by the court. The Court is developing an innovative electronic information and

I think if the criminals who do these things are caught they should have to pay for the damage they do, even if it takes them years. My family and I will be trying to recover from this for the rest of our lives.

A victim, The 1982 President's Task Force Final Report

communications system to link the various agencies, including those responsible for restitution, batterers' intervention, and substance abuse treatment.

- In New Jersey, a pilot program has been initiated to improve the rate of offender payment of court-ordered fines, restitution, and community service. By using a consistent sanctioning policy toward sentence violators and a centralized bench warrant process before one judicial officer in the Superior Court, the project has produced immediate significant results. The success of the program encouraged 10 other New Jersey jurisdictions to start similar pilot programs.
- The Earn-It Program, first created in Quincy, Massachusetts, places offenders who are ordered to pay restitution with local businesses for employment. The offenders are paid minimum wage and keep one-third of their earnings. The remaining two-thirds is paid to victims.²³ For juvenile offenders, the program requires community service in place of monetary restitution. The program has been replicated in many jurisdictions around the country.

The coordinated inter-agency approach to restitution management is a common sense approach to solving some of the problems that have plagued restitution programs for decades. This approach promotes the full use of restitution within the traditional criminal justice system by implementing essential goals of victim involvement, effective communication, clear definition and streamlining of tasks and roles, routine information flow, and accountability by all participants.

Jane N. Burnley & Morna A. Murray
Restitution Reform: The Coordinated Interagency Approach, 1997

- In Westchester County, New York, the probation department established an Economics Sanctions Unit in 1991 with responsibility for collecting restitution. Payments from probation are mailed to the Unit and restitution accounts are monitored by the accounting staff. Probation officers receive special training on the collection of restitution, and the Unit works with officers when offenders have problems making payment. In addition, the probation departments of both Westchester County and Alexandria, Virginia, evaluate probation officers' proficiency in managing restitution cases as a component of their job performance evaluation.²⁴
- In Alexandria, Virginia, the Clerk's office generates restitution data and circulates a monthly report to all key players in the criminal justice system that helps them manage restitution functions more effectively. The report lists each restitution case, with

figures for amounts received during the current month, total paid, and total owed. Any changes in the status of a restitution case are circulated to all agency heads.

- In Phoenix, Arizona, the Maricopa County Probation Department requires probationers enrolled in the intensive supervision program and the work furlough program who owe restitution to endorse their paycheck and sign them over to the probation department. Another check is then issued to the offender, minus the restitution payment. Probationers enrolled in the day reporting program are also subject to this requirement.
- In Summit County, Colorado, offenders who owe more than \$2,000 in restitution are required, as a condition of probation, to submit their income tax returns to their probation officers. If the offender is entitled to a tax refund, the probation officer can require the offender to pay that amount toward their restitution obligation.
- On the federal level, the Bureau of Prisons has developed an Inmate Responsibility Program that requires inmates to make contributions from their inmate wages toward their financial obligations, including restitution.

Coordinated Interagency Restitution Collection

A coordinated interagency approach to restitution collection has been implemented by the City of Alexandria, Virginia, as well as other jurisdictions across the country. These programs were studied by the Victim Assistance Legal Organization (VALOR) in 1995-1996 for a project

on restitution reform.²⁵ Supported with funding from the Office for Victims of Crime, VALOR's report outlines five essential goals for managing restitution using a coordinated interagency approach:

- *Effective Communication and Coordination Among Criminal Justice Agencies and Professionals.* Effective communication and coordination among criminal justice and juvenile agencies and personnel are crucial to successful restitution management. A lack of communication affects every aspect of the process and severely hampers any efforts to improve restitution management.
- *Clear Definition and Delineation of Restitution Roles.* Because restitution involves a multitude of tasks, it is essential that agency roles be clearly defined and acknowledged. Lack of such clarity can lead to duplication of services or failure to provide certain services at all. Neither the victim nor justice is served when the system fails to define and assign the roles involved in restitution in a manner that is both efficient and effective.
- *Efficient and Streamlined Coordination of Restitution Tasks.* Restitution tasks must be viewed with a keen eye toward eliminating unnecessary steps and duplication of efforts. Tasks should be assigned to the agency most capable of performing it efficiently. At times, this may require rethinking procedures or reallocating resources.
- *Routine Flow of Information and Data.* Establishing an efficient, routine flow is important for two types of restitution information: substantive data and procedural data. It is extremely important for

each agency at each stage of the criminal and juvenile justice system to be aware of any developments, changes, or problems that have occurred in other agency restitution responsibilities.

- *Participation and Accountability by All Parties to the Process.* Each criminal and juvenile justice system agency and professional must take responsibility for their portion of the restitution process. To do this, agencies should recognize their interdependence and use a coordinated, interagency approach.

This commonsense approach to restitution is promising for solving problems that have plagued effective administration of restitution programs for decades. Underlying its success is the requirement that restitution receive priority at every level of the criminal and juvenile justice systems.

Restitution and Automation

One of the most significant barriers to collecting restitution is a lack of automation. Often, multiple agencies, in addition to the victim and offender, are involved in the restitution process. When data regarding orders, payment or nonpayment, and related information are not readily available and shared, restitution orders fall through the cracks of the justice system. To address this problem, several jurisdictions have implemented innovative, cost-effective automated systems.

- The Court-Ordered Payment System (COPS) is an automated collection system located on the mainframe computer of the Florida Department of Corrections and linked to the offender's criminal history and supervision/inmate records. The program requires

offenders to make payments to the state, which are then converted to government checks and disbursed to victims and other payees. COPS links all 155 probation offices, 51 major institutions, 32 community correctional centers, and 43 road prisons, work camps, and forestry camps. A 4 percent surcharge on all court-ordered obligations is used by the department to defray the costs of processing payments from offenders.

- The Washington Department of Corrections operates a highly successful automated billing system that sends monthly "billings" to offenders who have outstanding restitution orders, allowing them to budget victim restitution as they would any other financial obligation. The system accepts credit cards for payment.

Innovative Approaches to Collecting Restitution

Across the country, some jurisdictions are using innovative strategies to collect restitution when offenders fail to pay on schedule. These efforts include using civil remedies, making offenders forfeit bond money for restitution obligations, collecting restitution while offenders are institutionalized as well as after they are placed on parole, providing incentives for incarcerated offenders to pay restitution, accepting credit card payments, garnishing wages, converting restitution orders to community service, extending community supervision until offenders fulfill their restitution obligations, and hiring private collection agencies to seek payment. These innovative methods are discussed below in further detail.

Civil Remedies

According to the National Victim Center, 41 states have laws that provide civil remedies for victims whose offenders' sentences include restitution orders. In most of these states, once an offender has defaulted on payment, a civil judgment can be enforced by placing a lien on real property, garnishing wages, attaching assets or wages, or freezing bank accounts. The attachment of deposited funds ("freezing") is usually time-limited from the initial restitution order (such as 24 months), unless it is extended by the court or paroling authority.

Laws in several states provide for specific measures to enforce restitution orders as civil judgments. Delaware allows up to one-third of an offender's total earnings to be assigned to victim restitution. Minnesota and Washington provide for the freezing of bank accounts, and courts in Montana and Oklahoma may order the forfeiture, seizure, or sale of offenders' assets.

Forfeiture of Bond Money

In Westchester County, New York, when a violation of probation is filed as a result of failure to pay restitution, the probation officer can request bail. The officer then suggests that the court set bail in the amount of the owed restitution, if the amount is not unreasonable. In the accompanying report to the court, the court is advised that if the violation is sustained and the probationer is willing to assign the bail money as payment of restitution, the probation department would recommend that probation be continued or, in some cases, terminated. The report recommends alternative sentences for

probationers who will not assign bail money. These sanctions modify the order to include a graduated sanction such as "shock time," community service, or electronic monitoring. In some instances, a recommendation of revocation and a sentence of incarceration is made.

Restitution Collection in Institutions

Many forward-looking correctional agencies encourage inmates' participation in fulfilling their restitution obligations *and* increase collections by offering incentives. Correctional agencies use a variety of measures to do this, including increasing inmates' privileges for visitation and services at the prison commissary, giving them priority enrollment in popular education programs, and removing privileges for failure or refusal to participate in the department's victim restitution program. Restitution program staff and court officials must be educated on the availability of prison restitution procedures.

The California Department of Corrections (CDC) has implemented an Inmate Restitution Fine Collections System supported by state law that enables the department to deduct up to 50 percent of inmate wages and other trust account deposits to pay court-ordered restitution. This amount is forwarded to the State Board of Control Restitution Fund, which provides reimbursement to qualified victims for expenses such as medical costs and counseling incurred as a result of the crimes committed against them. Since its inception in November 1992, this system has resulted in the collection of over \$9 million from inmate wages and trust account deposits. CDC's Victim Services Program staff also coordinates voluntary restitution payments from

inmates and parolees as well as money from annual inmate fundraising events.

Community Restitution

When offenders are truly indigent and unable to pay even a portion of their restitution order, many correctional agencies give offenders the option of performing community restitution. It should only be imposed, however, after victims have given their consent. Some victims may want to have the restitution order remain in effect for the offender's lifetime rather than see their debt discharged in another fashion. Other victims may feel a measure of compensation by helping to select the type and location of the service that offenders will perform. Offenders generally perform services directly for the victim, for a favorite charity of the victim, or a public work project of the agency that the victim chooses. Victim restitution does not preclude an order of community restitution as well. The offender not only has caused monetary damage to the victim but also has damaged the safety and security of the community as a whole.

Using Private Collection Agencies

Some states authorize justice agencies to use the services of private collection agencies to secure restitution payments. The use of private collection agencies, which have experience, automated systems, and employees trained to track down delinquent debtors, can significantly increase the collection of restitution. Although a percentage of the payment collected is kept by the collection agency, reducing the amount of restitution the victim receives, many justice agencies and victims feel that 90 percent of a

restitution order is better than nothing at all. When contracting for the services of private collection agencies, justice agencies should establish clear guidelines for acceptable collection tactics and secure the permission of the victim.

Victim Services, Inc., a nonprofit organization, manages the restitution collection program in New York City for all nonprobation cases. In fiscal year 1997, 2,732 cases were referred to the organization, which collected a total of \$1,830,000. Overall, the payment rate in those cases was 79 percent.

Enforcing Restitution Statutes

Several states and local jurisdictions have undertaken innovative measures to enforce restitution orders. In some states, offenders who fail to pay restitution risk being held in contempt of court, imprisoned, or having their parole or probation extended or revoked.²⁶ Such sanctions can be lifted in extreme cases in which an offender can demonstrate hardships that prevent them from making payment. However, in such cases, restitution payment schedules should be adjusted, not abandoned.

It is important that victims understand their obligation to report nonpayment of court- and parole board-ordered restitution so that correctional agencies can assess the reasons for nonpayment and consider sanctions. Victims should be provided the opportunity to have input into the types of sanctions that might be imposed.

Recommendations from the Field for Restitution

RESTITUTION RECOMMENDATION FROM THE FIELD #1

Restitution orders should be mandatory and consistent nationwide. Full restitution should include all immediate and expected monetary costs of the crime to victims, including property loss, health and mental health costs, and, when appropriate, compensation for pain and suffering. When a victim cannot be identified to receive restitution, judges should consider ordering payment to national, state, or local victim assistance or compensation programs. Judges should review restitution orders periodically to assess whether the victim has incurred additional costs as a result of the crime and whether the offender is making timely payments. Restitution payment plans should include provisions for immediate payment of full restitution should the offender obtain additional financial assets.

Judges should order full restitution in every case. Realistic payment schedules should be established, and victims should be advised fully about realistic expectations for the likelihood and speed of full collection. Restitution orders should reflect the full extent of damages to the victim so that victims can seek civil judgments in that amount.

RESTITUTION RECOMMENDATION FROM THE FIELD #2

A coordinated, interagency response throughout the justice system is essential for the effective collection of restitution.

It is critical that all justice agencies responsible for restitution, including courts, probation, prosecution, and corrections, implement coordinated, interagency models for the collection of restitution to enable professionals at each stage of the process to carry out their responsibilities more effectively. Much of the disparity between the perceived and actual effectiveness of restitution practices may be traced to procedures that have become cumbersome because they involve numerous agencies and personnel. A coordinated interagency approach to restitution collection that manages this complex process with clearly defined roles and streamlined tasks will improve communication among agencies, increase consultation and communication with victims, and enforce judicial restitution orders with appropriate followthrough.

RESTITUTION RECOMMENDATION FROM THE FIELD #3

Restitution must be a priority for all criminal justice agencies if it is to be implemented successfully.

Because multiple entities are involved throughout the restitution process, successful collection depends on their ability to cooperate. Studies show that compliance increases when restitution is made a priority in correctional agencies, but lags when restitution is not a top agency concern. Programs that aggressively target restitution

generate more successful performances and lower recidivism rates.

RESTITUTION RECOMMENDATION FROM THE FIELD #4

Victims should be informed as early as possible in the justice process of their right to receive restitution from the offender. They should be notified of the disposition of the case, advised of realistic expectations for payment, and provided with information about their rights when offenders fail to pay.

Because many victims are not informed of their right to obtain restitution for their losses, they do not adequately document their financial losses. Without this evidence, victims have a difficult time proving damages at the time of sentencing. Victims should be informed of their right to restitution as early as possible, and they should receive information at that time on what type of documentation is necessary for the court and what methods they can use to obtain that documentation. In addition, victims should be informed of whom to call if they have any problems or questions. The appropriate agencies must initiate proceedings in those jurisdictions which provide for statutory imposition of civil remedies.

RESTITUTION RECOMMENDATION FROM THE FIELD #5

At the time of sentencing, courts should have sufficient information about both the victim and the offender to determine the amount of full restitution and a payment schedule.

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Judges often state that their failure to order restitution is due to a lack of information regarding the victim's loss or the offender's financial assets or future ability to pay. Presentencing reports must contain victim impact information on financial losses, including current and expected medical and counseling expenses, lost wages, and property losses. Presentencing reports should also cover offenders' ability to pay restitution, including information on wages accumulated while incarcerated pending trial or final sentencing. Moreover, victim impact statements should describe the cost of the crime to the victim, particularly in cases in which a presentence investigation report was not filed.

Justice professionals and victim service providers also have a responsibility to educate victims about how to document immediate losses such as expenses related to medical care, mental health services, funeral expenses, time off from work, and crime scene cleanup and relocation. The guidelines for documenting losses for restitution orders that were developed through the National Victim Center's Promising Practices and Strategies for Victim Services in Corrections project sponsored by the Office for Victims of Crime should be widely distributed to victims.

RESTITUTION RECOMMENDATION FROM THE FIELD #6

The use of technology can greatly enhance the tracking and payment of restitution orders. Those responsible for monitoring restitution should automate their program.

The full automation of restitution collection will assure more efficient communication among responsible

agencies and improve the tracking of money collected, owed, and disbursed. Many jurisdictions are creating software packages that fully automate restitution processes, which substantially increases both restitution collection and victim satisfaction.

One reason restitution orders are not enforced is the cost involved in tracking the orders. Automation can improve efficiency and, over time, greatly reduce this cost. One software package, for example, includes programs for tracking payments, establishing disbursement priorities, prompting enforcement measures and generating enforcement reports, and writing checks to victims. To facilitate the collection of restitution, administrative fees should be included in any order that includes payment in installments. These fees should be used to develop computerized tracking systems or to prioritize collection.

RESTITUTION RECOMMENDATION FROM THE FIELD #7

Offenders should be held accountable for restitution payments; state legislation should make restitution payments a priority over other payments due from the offender, including fines, fees, and restitution to entities other than the crime victim; and restitution payments should be collected before fines or penalties.

Correctional agencies should put procedures in place for dealing with offenders who fail to pay restitution as ordered. When offenders fail to make restitution payments, notice should be sent to the appropriate judicial or probation officers to reevaluate the offenders' ability to pay and their release status. Measures that can be taken in response to offenders

who default on payments range from informal communication by the probation officer to a court-ordered revocation hearing. When appropriate, the probation officer should consider steps to modify the payment schedule. If an action is taken that will affect the payment of restitution, the victim should be informed. When an offender's probationary period is coming to a close and an outstanding balance of restitution remains, the probation department or the court should extend supervision, step up collection, or assist victims with procedures to pursue civil judgments.

Offenders are generally unable to pay all restitution, fines, court fees and other costs in one lump sum. It is logical and right that the party least able afford to absorb the loss—the victim—be paid first. Several states and the federal government have already legislated such a priority.²⁷

RESTITUTION RECOMMENDATION FROM THE FIELD #8

Corrections agencies, including prisons, jails, probation departments, and paroling authorities, should designate one person to be responsible for victim inquiries and contact regarding restitution.

Victims are often confused about which official to call with questions and concerns about restitution because so many agencies are involved in the process. Designating one person or office for victims to contact for reliable and accurate information will help facilitate an effective restitution process.

RESTITUTION RECOMMENDATION FROM THE FIELD #9

A probation or parole officer's proficiency in managing restitution cases should be a component of evaluating their job performance.

The ability to manage restitution cases should be considered an essential part of a probation and parole officers' job. Evaluations of job performance should include this important responsibility.

RESTITUTION RECOMMENDATION FROM THE FIELD #10

Failure to comply with a restitution order should result in an extended sentence of the offender's community supervision.

In the state of Washington, offenders who fail to comply with their restitution orders can have their sentence of community supervision extended for up to 10 years by the department of corrections. Often, an offender's desire to be released from community supervision provides impetus for offenders to fulfill their restitution requirements in a more timely manner.

RESTITUTION RECOMMENDATION FROM THE FIELD #11

Civil remedies should be applied on a routine and consistent basis to assist crime victims in collecting restitution.

More than 40 states have enacted laws to provide civil remedies for the collection of court-ordered restitution. Such remedies include converting the restitution order into an

automatic civil lien, garnishing wages, suspending driver's licenses, placing automatic liens on real property, and intercepting state income tax refunds. Agencies responsible for the collection of restitution should inform victims about these civil options. For a more detailed discussion of civil remedies, see the next chapter of this section.

RESTITUTION RECOMMENDATION FROM THE FIELD #12

Victims should have the right to petition to amend the payment schedule for restitution, the amount of restitution ordered, and any failure to order restitution.

Victims of crime frequently incur losses that are not known at the time of sentencing. Expenses for rehabilitation and long-term counseling as well as additional lost wages are often incurred following the sentence. Victims should have the right to petition the court to modify the restitution order. Several states have adopted this approach as a matter of law.²⁸

RESTITUTION RECOMMENDATION FROM THE FIELD #13

Before the court modifies a payment plan or makes other changes to a restitution order, it should notify the victim and give them an opportunity to be heard on the matter.

Of all the parties concerned, restitution orders affect the victim most. Any change in a restitution order must involve consideration of the victim's interests by soliciting input from the victim. Several states

already provide victims this opportunity to be heard, and it should be standard practice in all states.²⁹ In Arizona, the victim is also entitled to question the defendant under oath about his employment, assets, and financial condition.³⁰

Endnotes

- 1 Most people are familiar with the term “an eye for an eye,” which dates back to the Code of Hammurabi in the 18th century B.C.. R. F. Harper, *Code of Hammurabi* (trans. 1904) (2nd ed.). The Hebrew Law of Moses (about 1688 B.C.) specifically provided for the payment of restitution.
- 2 Exod. 22:1, 7, 9 and Lev. 6:1-5.
- 3 The idea of restitution was prevalent throughout primitive societies. In Saxon England, a legal system developed which delineated between the restitution owed to the victim’s family (called the Bot), and that owed to the king for violating the king’s peace (called the Wit). Frank, L.F., *The Collection of Restitution: An Often Overlooked Service to Crime Victims*, ST. JOHN’S JOURNAL OF LEGAL COMMENTARY 8, 107-34 (1992), referencing J. Stark, & H. Goldstein, *The Rights of Crime Victims* (1985). Eventually, Anglo-Saxon law established the concept of the “botless” crime, and crimes were punished solely on the basis of being violations of the king’s peace. The victim then took on a secondary role and was left without remedies within the criminal system. The only recourse was to pursue damages in a separate civil action.
- 4 *Id.*, Frank.
- 5 *Id.* at 111.
- 6 *Victim and Witness Protection Act of 1982*, Pub. L. No. 97-291, Sec.4, 96 Stat. 1249 (codified at 18 U.S.C. Secs. 1512-1515; Fed. R. Crim. P. 32).
- 7 President’s Task Force Report on Victims of Crime, *Final Report*, Washington, D.C.:U.S. Government Printing Office, December 1982:72.
- 8 *Id.* at 79.
- 9 McGillis, D., *Crime Victim Restitution: An Analysis of Approaches*, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1986, NCJ 103680.
- 10 American Bar Association, *Guidelines Governing Restitution to Victims of Criminal Conduct*, Washington, D.C.: American Bar Association, 1988.
- 11 The Mandatory Victim Restitution Act, Title II of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132 (1996), 18 U.S.C. § 3663A (1996).
- 12 S.J. Res. 52, 104th Cong., 2d Sess., 149 Cong. Rec. S3792-06 (1996); H.J. Res. 173, 104th Cong. 2d Sess., 142 Cong. Rec. H3657-08 (1996); H.J. Res. 174, 104th Cong., 2d Sess., 142 Cong. Rec. H3657-08 (1996). S.J. Res. 6, 105th Cong., 1st Sess. (1997).
- 13 *Id.*
- 14 Because there are numerous ways to structure and define mandatory measures within legislation, it is difficult to precisely quantify how many states actually require restitution. See generally National Victim Center, *1996 Victims’ Rights Sourcebook: A Compilation and Comparison of Victims Rights Laws*, National Victim Center, Arlington, VA., 1997, §11.
- 15 Langan, P. A., and M. A. Cunniff, *Recidivism of Felons on Probation, 1986-89*, Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, February 1992.
- 16 *Id.*
- 17 Cohen, R., *Probation and Parole Violation in State Prison, 1991* (August 1995).
- 18 *Id.*
- 19 B. Smith et al., *Improving Enforcement of Court-ordered Restitution*, funded by the State Justice Institute, 1989.
- 20 *Id.*
- 21 National Victim Assistance Academy, *National Victim Assistance Academy Text*, Alexandria, VA, 1997:21-10-7.
- 22 Seymour, A., “Victim Restitution,” *Promising Practices and Strategies for Victim Services in Corrections*, Office for Victims of Crime and National Victim Center, Arlington, VA, 1997:VI-4/5.
- 23 McGillis, D., *Crime Victim Restitution: An Analysis of Approaches*, 9.

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- 24 American Probation and Parole Association, *Promising Victim-Related Probation and Parole Practices*, American Probation and Parole Association, 1997:44.
- 25 Burnley, J. and Murray, M., *Restitution Reform: The Coordinated Interagency Approach*, Washington, D.C.: Victims' Assistance Legal Organization and Office for Victims of Crime, U.S. Department of Justice, 1997.
- 26 National Victim Center, *1996 Victims' Rights Sourcebook*, Sec. 11.
- 27 See e.g., IOWA CODE § 910.2, WIS. STAT. § 973.20, and 18 U.S.C. 3612 (payment of the penalty assessment has the first priority, but payment of restitution has priority over all other fines, penalties, costs, and other payments required under the sentence).
- 28 Alabama allows any of the parties with an interest in the income withholding order to petition to alter, modify or rescind the order, including the victim, the defendant, or the district attorney for good cause (ALA. CODE §15-18-151). In Iowa, the court retains the power to issue further supplemental orders as additional victim losses are incurred (IOWA CODE § 910.3). Arizona provides that the defendant or those entitled to restitution may petition the court for an order modifying the payment schedule (ARIZ. REV. STAT. §13-804).
- 29 As examples, see ARIZ. REV. STAT. § 13-804; MONT. CODE ANN. § 46-18-246.
- 30 ARIZ. REV. STAT. § 13-810.

The report and recommendations represent views from the field, and do not necessarily reflect the views of the Department of Justice.

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