

**Alaska Criminal Justice Commission
Restitution/Restorative Justice Workgroup**

Meeting Summary

September 23, 2016

9 a.m. – Noon

AG's conference room, 5th Floor, Anchorage

Present: ACJC Commissioners: Brenda Stanfill, Dunnington Babb (for Commissioner Steiner), Greg Razo (telephonic), Alex Bryner.

Workgroup members: Christine Johnson, Alaska Court System; Stacy Steinberg, Kaci Schroeder (telephonic), Department of Law; Robin Langlie, Victims for Justice; Fred Dyson; Kate Hudson, VCCB (telephonic); Jeff May, UAF; Alanna McCourt

Staff: Susanne DiPietro, Barbara Dunham, & Staci Corey, Alaska Judicial Council.

The workgroup went through the draft of the restitution report that will go to the Commission next month.

Proposal 1(a). Workgroup members discussed proposal 1(a) which, had two options to address the problem of cases resolving before victims have an opportunity to make prosecutors or the court aware of the need for restitution: either (1) have a mandatory paragraph on all judgments leaving the matter of restitution open for 90 days, or (2) mandating that courts inquire about restitution at sentencing.

Dunnington Babb informed the group that the PDs liked the second option. Other members preferred the first; Brenda Stanfill noted that most crimes will have a victim, and mentioned the broad mandate of the legislature to make significant changes. She stated that this was the time for bold strokes; Greg Razo, Christine Johnson and Fred Dyson agreed, as did Robyn Langlie, who stated that the Commission should take the opportunity to heal everyone involved in the criminal justice system to the extent possible. Alex Bryner also wanted to expand opportunities for victims to claim restitution and recalled a case involving DV assault where no one mentioned restitution at sentencing. He asked the DA about it later and the DA thought that the victim's expenses wouldn't be covered by restitution.

Suzanne DiPietro cautioned that applying mandatory language to judgment forms in all cases may be problematic, and asked Dunnington what the PDs' concerns would be. Dunnington replied that there is a notice and due process issue because defendants will plea out thinking the plea will result in a fixed sentence and not be aware that restitution could be added in later. They may also be less likely to plea out if they know that anyone can come forward with a claim for restitution later.

Stacy Steinberg suggested that rather than have an “opt-in” checkbox for restitution (which is what the judgment forms currently have), that the judgment form include an “opt-out” check box which the judge will have to check only if the judge is certain that restitution would not be involved. This would necessarily involve an inquiry on the part of the judge. Dunnington agreed that this would be a good option.

Alex was concerned that in some cases the parties would include not paying restitution as part of a plea agreement, and Robyn concurred, stating that the court needed the victim’s input. Brenda suggested that using the “opt-out” box would be foreclosed if the victim had not been notified and given a chance to weigh in. Group members also discussed having a fill-in line for the judge to explain the reason for opting out of restitution.

Dunnington was concerned about random persons not associated with the case asking for restitution. Group members pointed out that a defendant can dispute claims at a restitution hearing. Jeff May also noted that there were often collateral victims of crime who could also claim restitution.

Ultimately the group agreed on an opt-out box for judgment forms. Barbara will craft language to include in the report.

1.b. The group agreed to 1.b, which requires prosecutors to inform victims of the 90-day deadline to seek restitution. Kaci Schroeder said the Criminal Division at DOL was okay with this.

1.c. The group discussed proposal 1.c., which was to create information for victims about what can be requested for restitution. Robyn informed the group that OVR has information on its website. Kate Hudson stated that the VCCB does not have this information, and thought that DAs were generally conservative in their thinking about restitution. She wondered whether the statute limits the kinds of restitution that can be requested and group members agreed that the statute was fairly broad and case law supported a broad interpretation. Kaci stated that the DAs already have a form they send out but they would be happy to have other information. She will send the form that they’re using currently. [NB: this form will be distributed to workgroup members with this summary.]

1.d The group opted to discard proposal 1.d., which was to require prosecutors to inform the court of their efforts to obtain restitution information from victims. Christine said that it was assumed that the DAs would do their jobs, and Brenda pointed out that any concerns on this point would be addressed by the new version of 1.a.

At this point the group discussed the problem of victims not getting heard generally- by DAs and by the court. It was noted that the DAs are quite busy and can’t do a lot of follow-up with victims. This is a problem both before restitution is entered and after – victims aren’t parties to the case

and probably could not request a restitution hearing on their own if they are not getting paid. Susanne suggested the group table that discussion and focus on fine-tuning the current proposals, then circle back to that issue later time permitting.

Christine noted that when the court system takes over restitution from DOL, it will use DOL's collection tactics as well as begin a practice of sending out reminder letters to people who owe restitution, which will hopefully increase payments.

2. The group next discussed proposals 2.a.+b, which would require a payment plan to be set up at the time of sentencing if the restitution amount was known. Christine pointed out that in many cases the timing would be wrong, because defendants would be going to jail or have unstable finances. Brenda said that she recalled some research Mary Geddes found that payment plans instituted at sentencing increased payments, but Susanne said that she wasn't sure that was actually in the research or an educated inference. Christine stated that the court system would be reluctant to have statutes put in place during the transition between DoL and the court system. Group members noted that the judges currently have the ability to set up a payment plan in cases where it would make sense. Christine also noted that judges are using the restitution judgment form in most cases, which has an option to set up a payment plan already. The group opted to strike 2.a. and b.

Susanne suggested keeping 2.c., which was to encourage DOC and the court system to work together to monitor restitution in misdemeanor and non-probation felony cases. Brenda was concerned that the misdemeanor cases were going to fall through the cracks and that there would potentially be a lot more misdemeanor theft cases with larger amounts of restitution to be paid, because the felony theft threshold was raised in SB91. Christine noted that the judges have ideas of their own on how to enforce restitution once the court system takes over collections. The court system has been meeting with DOC and DOL to discuss how this will work. Christine noted she is also concerned that victims don't have a vehicle to come to court directly to ask for enforcement (within the criminal case). Brenda stated she thought that the transition team should pull victims into this process of transition between DOL and ACS/DOC and suggested victim advocates work with the transition team.

Ultimately the group opted to discard 2.a. and b., and keep 2.c., with an addition that the transition team would include victim's advocates to discuss restitution enforcement and the transition to ACS/DOC collections.

3.a. The group approved 3.a. which was to discard statutory language making a defendant financial statement mandatory at sentencing. Christine explained that the judges preferred dropping this language as it was an unused provision. Judges can still order a financial statement in cases where it makes sense.

4.a. The group approved 4.a., allowing for civil compromise in misdemeanor larceny cases.

5.a. The group approved 5.a., looking at improving streamlining civil execution statutes.

6. The group had a wide-ranging discussion on proposal 6, which would have directed additional funds to the VCCB from the Permanent Fund Criminal Fund and from unclaimed restitution from the court system. Fred informed the group that the PFCF has been sending over \$10 per year to DOC but this money was intended to go to victims of restitution. He provided the group with a memo on this subject and has also been talking to Governor Walker's office about this. He strongly supports the idea of increasing the availability of bridging funds to compensate victims of crime up front.

Kate explained that the VCCB is authorized to pursue active recovery for restitution ordered by the court to VCCB. But it is not authorized to collect restitution directly on behalf of victims. She also explained that the Board is constrained not only by its mandate to cover only violent crimes, but also by its structure. The all-volunteer board can only meet so often and they are the only ones who can authorize disbursement of funds, even for emergencies. They are operating at capacity-meaning they are only able to disburse the funds at their current funding level; increasing funding would therefore not increase payments to victims. Though more money from the PFCF has been going toward the DOC instead of the VCCB, the VCCB has not seen a decrease in funding, and has not been running out of money.

Fred reiterated that he believed increased bridging funding was necessary and recommended changing the process for recovery.

Staci Corey noted that Vermont has a program with a separate restitution fund dedicated to paying up to \$10,000 to victims- only victims who are people (not businesses). Brenda noted that property crimes can be hard on small businesses and suggested creating a general bridging fund. Robyn suggested changing the VCCB remit to cover other crimes. Kate noted that expanding the VCCB might be a possibility, but that the structure would need to be changed. She will write up her thoughts on how the VCCB is structured now what exactly would need to change.

The group expressed general approval of expanding victim access to bridging funds. Barbara agreed to draft some alternatives that the group could pick from over email.

7. The group approved the proposals under 7, which were to explore using technology to facilitate restitution payments.

8. Proposal 8, to help municipal victims collect restitution, was discarded. Christine informed the group that the court system will also include municipal cases when it takes over restitution collection from DoL, rendering any additional proposal unnecessary.

9. Proposal 9 was to expand PFD eligibility for defendants with shorter sentences. Brenda noted that the statutes regarding this are actually very complicated and based on level of offense, not time served. The group decided to keep proposal 9, though the wording is vague. This will likely require a lot of reworking in any event if the legislature decides to take it up.

The group adjourned with the understanding that any remaining issues with wording (particularly regarding proposal 6) would be hammered out over email and the group would only meet again if we hit an impasse.

**Alaska Criminal Justice Commission
Restitution/Restorative Justice Workgroup**

Meeting Summary

August 19, 2016

9 a.m. – Noon

AG's conference room, 5th Floor, Anchorage

Present: Brenda Stanfill (telephonic); Dunnington Babb (for Commissioner Steiner); Christine Johnson & Doug Wooliver, Alaska Court System; Stacy Steinberg, Kaci Schroeder (telephonic) & Jim Cantor, Department of Law; Alyssa Wooden, DHSS; Taylor Winston, OVR; Robin Langlie, Victims for Justice; Fred Dyson; Kate Hudson, VCCB (telephonic); Greg Razo, Alaska Criminal Justice Commission.

Susanne DiPietro, Barbara Dunham, & Staci Corey, Alaska Judicial Council.

Review of the status of state collection of restitution and ideas on how to shift restitution recovery to the court system:

Update from Ms. Steinberg: the collections unit at the Dept. of Law will continue to collect restitution on existing accounts through June 30, 2017 (end of the fiscal year), with funding made possible through the court system. The unit will open new accounts for as long as possible and hopefully will allow a smooth transfer of the collections process to the court system.

The collections unit currently only collects money from state cases, not the municipality. The court system is interested in collecting from both. The presiding judges support the court system collecting restitution and have suggested a PACE-type model with status hearings, etc.

Ms. Johnson informed the group that the court system is able to accept restitution at any time, per statute—even in advance of judgment. Defense attorneys, prosecutors and some court clerks are unaware of this possibility. Some clerks have been sending defendants to the Dept. of Law for collections. Participants discussed providing a flyer for PDs to give to defendants explaining how to pay and putting information on the court website for victims explaining how to collect. The court may be able to have a priority line for restitution payments or even a dedicated court clerk for restitution (at least in Anchorage).

The court system currently holds around \$280,000 in prepaid restitution—the victims to be paid have not come forward and/or not been identified. (Eventually these funds escheat to the state, possibly to the general fund.) The court system pays for search services to find victims.

The participants discussed the data shared by the collections unit and AJC. Ms. Steinberg noted that it was hard to pinpoint the exact percentage of voluntary payments, but estimated the number to be somewhere around 45%.

Mr. Dyson wanted it to be clear in the Commission's report to the legislature that the state has a constitutional obligation to ensure victim restitution. He suggested that if private collection agencies were retained to collect restitution, that the cost of collection be added to the amount owed. Mr. Babb cautioned that experience in other states has revealed problems created by private collection agencies, and said they are gaining a negative reputation nationally. Conversely, the cost of state employees' time spent on restitution recovery could be added to the amount owed.

Mr. Dyson also suggested that the unclaimed restitution from the court fund be used as a "bridge" fund to pay victims up front and then the court can pursue recovery later. Other possible sources of a bridge fund might be the criminal fines and the punitive damages fund, although punitive damages are rarely awarded in civil cases and that money typically goes to ALSC.

Participants discussed financial statements which the law technically requires defendants to provide in advance of sentencing. In practice, these are almost never provided and judges proceed to sentencing without them. Participants discussed whether the financial statement was helpful to judges or parties, whether it should be provided at sentencing, and if it provided an accurate picture of a defendant's financial situation post-incarceration. **AJC staff will follow up with additional research.**

The court system will need clerks to process and set up misdemeanor restitution payments – misdemeanor defendants will not have an institutional PO to do this for them. The court system will try to centralize restitution for all defendants as much as possible. The court system will need access to salary information just like CSSD has. AJC staff will look at the statute enabling CSSD's access to information and the possibility of expanding it.

Participants discussed the restitution recovery rates and whether anything can be learned from states with higher rates of recovery. **AJC staff will research this for the group.**

Participants also discussed the challenges prosecutors face in getting restitution documentation and the need to get notice to victims earlier. In some cases victims will not get timely notice of sentencing. Typically prosecutors will ask for 90 days to get information post-sentencing and will send a letter to victims requesting documentation, but this is often not enough time for victims to collect documentation.

In some cases, prosecutors neglect to ask for restitution and judges neglect to consider it, particularly in misdemeanor cases. Participants discussed whether restitution should be a mandatory line on the judgment form (rather than a checkbox), though there was some hesitation about whether this might lead to more confusion. Most judges will use a separate restitution judgment form. **The court system can provide data on how often those forms are used and in what cases.**

The possibility of the PFD no longer being available as a source of restitution recovery also was discussed. Other options included orders for wage garnishment or making restitution payments a mandatory requirement of going on electronic monitoring. Another option is civil execution. **AJC staff will research whether normal civil execution exemptions would apply for restitution.**

Proposed changes to the draft report on restitution:

AJC staff will provide additional research for the report on what exactly is included in the concept of restitution and whether any statutory changes are needed to define restitution more explicitly or to codify existing case law.

Proposal 1(a): change the proposed language on criminal judgments to “the matter of victim restitution shall remain open for 90 days” (rather than 30 days)

Proposal 2(b): strike language on representation (defense attorneys already do this).

Proposal 2(c): strike.

Proposal 3(b): add an option of adding fees to the restitution payment.

Proposal 3: add an additional proposal that prosecutors and defense attorneys work out a payment plan as part of a plea deal where possible.

Proposal 4(a): strike

Proposal 4(b): revise language to read: “In misdemeanor cases, require the defendant to attend a restitution hearing scheduled 60 days after sentencing, unless restitution has been paid in full.”

Proposal 7(a): Add language recommending that a percentage of the money saved by SB91 be reinvested in the active recovery program.

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Proposal 7(a): strike the “triage” language – (VCCB not authorized to do this).

Next meeting: Sept 23, 2016 at 9:00

To do before the next meeting: AJC staff will provide minutes of this meeting and additional research by 9/9.

Workgroup members will let AJC staff know which proposals they approve of by 9/9.

AJC will provide a final draft of the report by 9/16 for workgroup members to review.

**Alaska Criminal Justice Commission
Restitution/Restorative Justice Workgroup**

REVISED Meeting Summary

July 29, 2016

9 a.m. – Noon

AG's conference room, 5th Floor, Anchorage

Present: Brenda Stanfill (telephonic); Dunnington Babb (telephonic) (for Commissioner Steiner); Alex Bryner (telephonic); Nancy Meade & Christine Johnson, Alaska Court System; Stacy Steinberg & Jim Cantor, Department of Law; Alyssa Wooden, DHSS; Trina Sears, OVR; Fred Dyson; Jeff May, UAF (telephonic); Kate Hudson, VCCB (telephonic).
Susanne DiPietro, Giulia Kaufman, Staci Corey, & Brian Brossmer, Alaska Judicial Council.

The Department of Law took over collection of restitution from the court system in 2002 and began collecting victim restitution for restitution judgments entered after 2002. The court continued to collect restitution on all pre-2002 restitution judgments. Victim restitution is roughly 20% of all DOL collections.

Governor Walker has line-item vetoed the victim restitution unit from the Department of Law's budget. The unit will be closed down in January. The group discussed the implications of this closure, and what resources might be offered after January for victims who need assistance collecting restitution.

One idea was to rely on private collections agencies, who charge a fee. For this idea to work, a law would be need to allow the fee to be assessed against the debtor/defendant, and not the victim. Such a system might make sense in some situations, but experience in other states shows that collection agencies assess significant fees that pile up against defendants who owe smaller amounts, and some of these defendants have ended up with debts to the collection agencies far exceeding the actual judgment amount. These types of debts are damaging to defendants' abilities to successfully re-enter society, and the debts could be viewed as unfair.

Another idea is to rely more on the Violent Crime Compensation Board. The VCCB is funded through state appropriations (an RSA from the Permanent Fund Criminal Fund), and a federal grant. Mr. Dyson asked the working group to support his proposal to increase state funding for the VCCB by ending the current practice of appropriating money from the Permanent Fund Criminal Fund to the Department of Corrections (around \$14.8 in FY13). It was not clear whether the executive branch has the authority to direct Criminal Fund appropriations, or whether this is a

legislative function. Eligibility restrictions apply to VCCB's services. For example, victims of property crimes are not eligible, and the maximum award is capped at \$40K.

Negotiated resolutions to some criminal cases involve a plea to a lesser charge and payment of restitution. Currently, these resolutions are difficult to implement because there is no easy way for the defendant to pay the restitution before entry of judgment. Ms. Johnson and Ms. Meade will investigate whether the court system could accept these types of payments. Defendants should somehow be incentivized to pay restitution early on, even before judgment.

Executing on a civil judgment is difficult for inexperienced or unsophisticated victims. The same is true for obtaining an order garnishing wages.

Restitution should be more clearly defined so that victims understand what they can ask for. Commissioner Bryner cited one case in which the judge ordered the defendant to pay restitution, but the amount was not known at sentencing, and the prosecutor never followed up with the court to provide the amount.

Another proposal might be to increase assets available for restitution by decreasing the number of defendants who become ineligible for a PFD based on incarceration. Mr. Babb asked the group to consider whether the law should be changed to allow defendants who serve only short prison sentences to retain their PFD eligibility.

Mr. Babb also asked the group to consider whether to triage the types of victims paid by the PF Criminal Fund, based on indigency or some means-based assessment.

The court system and the Department of Law are conferring to work out the details of how existing restitution accounts will be serviced after January. This task likely will not be fully completed by January.

Starting in January, DOC probation officers will be required to create a restitution payment schedule based on the probationer's income and ability to pay if the court has not already set a restitution payment schedule. It is not clear how DOC will implement this responsibility. Currently, probation officers rely on the Department of Law collections unit to inform them about fines, fees, and restitution owed by their supervisees. After January, victim restitution will be handled by the court system but the fines and fees will still be collected by DOL. Also, the group wondered whether the officers will create one payment plan for fines and fees and a separate plan for restitution

After January 1, a probationer will be eligible to earn a credit of 30 days for each 30-day period served in which the defendant complied with the conditions of probation. (Question: Does this provision apply only to felony probationers, or also to misdemeanants?) The DOC must promulgate regulations to implement this credit system, including defining whether failure to pay restitution would prevent the defendant from earning the credit.

The next meeting date is August 18, 2016 from 9 am – noon, location TBA.

Staff will collect more information and revise the restitution memo before the next meeting.