

**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.