

**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.