



# LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature  
Division of Legal and Research Services  
State Capitol, Juneau, AK 99801

(907) 465-3991 phone  
(907) 465-3908 fax  
[research@legis.state.ak.us](mailto:research@legis.state.ak.us)

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## Research Brief

TO: Senator Fred Dyson  
FROM: Susan Haymes, Legislative Analyst  
DATE: July 19, 2013  
RE: Status of Victim Restitution Laws in Alaska  
*LRS Report 13.404*

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***You asked about the status of victim restitution laws in Alaska. Specifically, you were interested in the effectiveness of current law. Additionally, you wished to know the priority under current law of collecting restitution compared to other fines.***

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In Alaska, a crime victim has a constitutional right to restitution from the offender. Accordingly, the Legislature and the Alaska Supreme Court have established rules to collect restitution from offenders and distribute payment to crime victims and organizations that provide counseling and other services to victims and their dependents. In addition to restitution, the offender is often required to pay other court-ordered fines and surcharges such as correctional facility surcharges, costs for court-appointed counsel, and costs for incarceration. Under current law, child support and victim restitution are typically the top two priorities when distributing an offender's assets to meet obligations for restitution and court-ordered fines.

The Department of Law's (DOL) Collection Unit is the agency primarily responsible for collecting court-ordered restitution, fines, and surcharges. Among other things, the Collections Unit may garnish an offender's permanent fund dividend (PFD) and wages, authorize bank account sweeps, and take money from an inmate's bank account for restitution. The primary tool used by the Collections Unit, however, is the garnishment of PFDs.<sup>1</sup>

According to the individuals we spoke with for this report, while victim restitution is an established priority under the constitution and the law, problems exist in the collection and distribution of restitution. This situation is due in part to the challenges inherent in collecting payment from offenders who have limited or no financial resources because they may be incarcerated or have limited employment opportunities. Nevertheless, all agree that offenders should be expected to pay what they can and the state should pursue collection whenever possible. A number of individuals cited the lack of communication and coordination among agencies that deal with victim restitution as the main problem in the process.

There has been some recent improvement, as the DOL's Collection Unit has taken active steps to increase collection of victim restitution, which has resulted in increased restitution payments and disbursement to victims. The Unit collected about \$2.3 million in restitution payments owed to crime victims in FY 2012, up 29 percent from FY 2011. The DOL has recently prioritized the distribution of money to victims, including improvements to internal processes and technology enhancements to more efficiently send checks to victims.

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<sup>1</sup> An amount of money approximately equal to the PFDs that would be owed to ineligible offenders is transferred to the PFD Criminal Fund each year. In recent years, the amount has been appropriated primarily to the Department of Corrections for inmate health.

### *Victim Restitution*

In 1994, Alaska voters adopted a constitutional amendment to provide crime victims in Alaska with guaranteed rights, including the right to restitution from an offender.<sup>2</sup> The procedures for ordering and collecting victim restitution are governed primarily by Alaska Statutes 12.55.045 and 12.55.051, and Alaska Court Rules of Criminal Procedure, Rule 32.6.<sup>3</sup> Restitution for victims is second only to an obligation for child support when distributing an offender's assets to meet court-ordered fines and restitution.

Unless the crime victim expressly declines restitution, the court when presented with credible evidence, is required to order the defendant to make restitution, including restitution to the crime victim or other injured person, to an organization that provides counseling, medical or shelter services, or as otherwise authorized by law (AS 12.55.045[a]). For example, the defendant may be ordered to make restitution to the Violent Crimes Compensation Board (VCCB) for payments the VCCB has made on behalf of the victim. The restitution order identifies each victim and the amount of restitution owed to each, the date the payment is due or a schedule of installment payments, and whether the payment must be made through the clerk of court or the Department of Law's (DOL) Collections Unit (AS 12.55.045).<sup>4</sup> The criminal restitution order can only be for actual monetary expenses or losses, not for pain and suffering.<sup>5</sup>

If the judge orders restitution, there are multiple ways it can be enforced. The court automatically sends a copy of the restitution judgment to the DOL's Collections Unit. The DOL will notify crime victims of their right to have the State collect the debt or to collect the debt without State assistance. A crime victim may choose to have a private collection agency and/or private attorney attempt to collect payment, or may choose to collect the debt without assistance. Unless the crime victim notifies DOL that he or she does not want the Collection Unit's help, the unit will begin action on behalf of the victim (12.55.051).

The DOL can use a variety of means to collect restitution such as collecting voluntarily payments from the defendant, seizing the defendant's PFD, garnishing wages, filing a property lien, and/or authorizing a bank sweep. Garnishing a defendant's PFD is probably the most common method of collecting restitution. PFD garnishment is limited, however, because individuals sentenced or incarcerated during the qualifying year may not be eligible for a PFD for that year (AS 43.23.065). When the offender's PFD is garnished, no obligation is higher in priority than court-ordered restitution except child support.<sup>6</sup>

According to Stacy Steinberg, Chief Assistant Attorney General, Collections and Support Section, the Collections Unit collected about \$2.3 million in restitution payments owed to crime victims in FY 2012, an increase of 29 percent from FY 2011.<sup>7</sup> About half, or \$1.1 million, came from PFD garnishments. The other half came from voluntary payments made by offenders.

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<sup>2</sup> Alaska Const., Art I, sec. 24.

<sup>3</sup> We include AS 12.55.045, AS 12.55.051 and Alaska Criminal Court Rule 32.6 as Attachment A.

<sup>4</sup> In 2001, the legislature passed the Crimes Victims' Rights and Advocacy Act which, among other things, authorized the Department of Law (DOL) to collect court-ordered restitution on behalf of crime victims (AS 12.55.051[g]), and created the Office of Victims' Rights (AS 24.65) to assist crime victims in obtaining their guaranteed rights (ch 92 SLA 2001).

<sup>5</sup> A restitution order does not affect the ability of a victim to pursue a civil lawsuit (AS 12.045[b]).

<sup>6</sup> In 2002, the Alaska Supreme Court added a new Criminal Rule of Procedure 32.6 which establishes the procedure for ordering and collecting restitution including the priority of payments received from or on behalf of a defendant. Under Rule 32.6(g) payments received from execution of the PFD are allocated according to the following priority: child support obligations, court-ordered restitution for crime victims, defaulted student loans, court-ordered fines, and writs of execution under AS 09.35.

<sup>7</sup> Stacy Steinberg can be reached at 907.269.5100 or by email at [stacy.steinberg@alaska.gov](mailto:stacy.steinberg@alaska.gov).

In addition to garnishing PFDs, the wages and other monetary assets of an incarcerated offender may also be seized to pay victim restitution. Ms. Steinberg notes, however, that most offenders who are incarcerated have no money or make only meager prison wages so they cannot initially pay the court-ordered restitution. The Department of Correction's policy (304.02) for disbursing prisoner funds includes the following list of priorities:

1. Child-support;
2. Court-ordered restitution or fines;
3. Civil judgments resulting from that person's criminal conduct;
4. State reimbursement for violent crime compensation; and
5. Other judgments entered against a prisoner in litigation against the state (AS 09.19.100).

Kevin Worley, Director, Division of Administrative Services, DOC, explained that after the initial sweep of an inmate's account, 40 percent of his or her wages can go to ongoing child support payments.<sup>8</sup> Other attachments such as victim restitution are deducted monthly and can come from the remaining wages and monetary gifts in the inmate's account.<sup>9</sup> These attachments are taken in order of priority, which means victim restitution and other court-ordered fines are the second priority after child support. Mr. Worley indicated that some inmates refuse to work because they don't want to pay child support or other obligations.

One of the conditions of probation and parole is to pay court-ordered restitution (AS 12.55.100). A defendant convicted of a felony crime who has been released on probation must report to a probation officer who monitors the individual's compliance with probation including the requirement to pay restitution. Likewise, a parole officer supervises parolees to ensure they are following the conditions of parole. An offender must submit a completed sworn financial statement to the assigned probation officer. If the individual fails to pay restitution as required, the prosecutor or probation officer (in felony cases) or the prosecutor (in misdemeanor cases) may file a petition to revoke the offender's probation (AS 12.55.051[a]). A criminal restitution order becomes a civil judgment that accrues interest and remains enforceable even after the offender's probation ends (AS 12.55.045[l]).

An exception to the usual allocation of assets exists for those prisoners who qualify for prerelease or short duration furlough to begin reintegration into society in a halfway house or group home. The earnings from such prisoners are transmitted to the DOC and are distributed to 1) pay for the room, board and personal expenses of the prisoner, 2) pay any court-ordered restitution or fine; 3) reimburse the state for an award made for violent crimes compensation, 4) pay a civil judgment, and 5) pay child support (AS 33.30.131).

### ***Other Judgments or Fees***

Persons convicted of a crime may also be subject to other judgments and fines, which are collected by the DOL's Collection Unit. Under AS 12.55.035, a defendant may be sentenced to pay a fine of from not more than \$500 for a violation, \$10,000 for a class A misdemeanor, \$100,000 for a class B felony, and \$500,000 for murder in the first or second degree. In addition to a fine, a defendant who pleads guilty or no contest, forfeits bail, or is convicted of felony, misdemeanor, or violation is

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<sup>8</sup> Mr. Worley can be reached at 907.465.4641. He notes that the DOC is in the process of reviewing policy 304.02 to ensure the new accounting system and the policies are functioning in tandem. Working inmates who have less than eight years to serve may also maintain a savings account.

<sup>9</sup> According to Mr. Worley, when the child support lien is first applied, the DOC can sweep the inmate's account and take everything but \$50. For ongoing support payments, money can only be taken from the inmate's wages.

assessed a surcharge ranging from \$10 for a violation to \$100 for a felony. The surcharge must be paid within 10 days of imposition. If a defendant cannot pay the surcharge the court may allow the defendant to perform community work (AS 12.55.039).

The State also imposes a correctional facility surcharge if in connection with a crime, an individual is arrested and taken to a correctional facility, regardless of whether he or she is released or admitted to the facility or sentenced to serve a term of imprisonment (AS 12.55.041). For individuals who are convicted, the surcharge is \$100 for a felony judgment and \$50 otherwise. The State may seek reimbursement from the defendant's PFD for the surcharge. In FY 2012, the DOL collected a little over \$400,000 in correctional facility surcharges and nearly \$1 million in incarceration costs on behalf of the Department of Corrections (DOC).<sup>10</sup>

Upon conviction an offender who qualifies for a public defender may be required to pay the costs of appointed counsel (AS 18.85.120). The schedule of fees is defined in Alaska Criminal Court Rule 39(d) and range from \$250 to \$5,000 for a trial and murder conviction in the first or second degree.<sup>11</sup> Upon a showing of financial hardship, the court may allow the individual to make payments under a repayment schedule and he or she may petition the court to reduce or defer the unpaid portion of the judgment. The judgment has the same force and effect as a civil judgment. Under Rule 39, payment may not be made a condition of the offender's probation. In FY 2012, the DOL collected nearly \$1 million on behalf of the Alaska Public Defender's Agency.

Those offenders who are incarcerated may also be required to pay fees and surcharges for such services as electric utilities (AS 33.30.017), medical co-payments (AS 33.30.028), photocopying, postage, and commissary. In addition, inmates who commit infractions such as destroying property may be required to pay restitution to the State (20 AAC 05.470).

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### Issues Identified in the Collection and Distribution of Victim Restitution

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All of the individuals we spoke with agreed there was limited money available for restitution because of the lack of resources available from many offenders. At the same time, they emphasized there is more the State can be doing to collect and distribute restitution to crime victims.

#### Department of Corrections – Victim Services Unit

Gail Brimner, Victim Services Unit, Department of Corrections (DOC) concurs that in Alaska there are problems with the collection and distribution of court-ordered restitution.<sup>12</sup> Ms. Brimner notes that victim restitution often “falls through the cracks” and that problems exist with both collection and distribution. Part of the problem is that probation officers are not adamant enough about ensuring that offenders pay restitution. Many offenders may not be able to pay much in the way of restitution each month; however, it is the responsibility of the probation officer to review the offender's finances, such as pay stubs and bills, to determine an amount of restitution that can be paid. Even if the amount is only \$10, the payment process encourages the offender to fulfill his or her responsibility to the crime victim. Ms. Brimner suggested probation officers receive training that emphasizes the payment of restitution as a condition of probation and ways to monitor that payments are being made.

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<sup>10</sup> The Department of Law's 2012 Annual Report can be accessed at <http://law.alaska.gov/pdf/admin/AnnualReport12.pdf>.

<sup>11</sup> For a defendant who is ineligible for court-appointed counsel, the court may enter a judgment for the actual costs of appointed counsel, including actual expenses (AS 18.85.150 and Criminal Court Rule 39[e]).

<sup>12</sup> Gail Brimner, Criminal Justice Specialist, can be reached at 907.269.7384.

Ms. Brimner also said she has investigated several complaints where voluntary restitution had been made by the offender but the money had not been sent to the victim. She noted that some victims may not keep their addresses current with DOL, but thought perhaps the State could do more outreach to crime victims.

### **Violent Crimes Compensation Board (AS 18.67)**

A crime victim, dependent of a crime victim killed, or certain other persons by virtue of their relationship to the crime victim may apply for separate financial assistance to the Violent Crimes Compensation Board (VCCB). Recognizing the difficulty in collecting court-ordered restitution, the VCCB was established in 1972 to help ease the financial hardships experienced by victims of violent crimes. The VCCB may compensate victims for medical expenses, counseling costs, lost income, lost support, funeral expenses, or any other reasonable expenses and losses. The VCCB is a “payer of last resort,” which means compensation is awarded only for expenses not covered through other sources such as medical and auto insurance, a civil lawsuit or other assistance program. The Board also provides for the payment of financial losses experienced by dependents of deceased victims and to victims who are permanently disabled.

The VCCB is awarded restitution by the courts, but the recovery of that restitution has been modest. In FY 2012, for example, the VCCB was awarded \$637,154 in court-ordered restitution, but received only \$47,652, with 80 percent of this amount coming from court judgments from earlier years.<sup>13</sup> Because the VCCB does not have the staff to pursue collection independently, it relies on the Department of Law’s Collections Unit. According to Kate Hudson, Executive Director, VCCB, the DOL’s Collections Unit is not actively collecting restitution beyond garnishing permanent fund dividends, and the situation in Alaska is “crying out for something better.”<sup>14</sup> The VCCB has proposed the hiring of a dedicated collections agent in the VCCB to pursue restitution payments. In addition, Ms. Hudson suggests that the Department of Law, Office of Victim Rights, and the Department of Corrections (Probation Office) better coordinate the exchange of information.

### **Office of Victims’ Rights (AS 24.65)**

In 2001, the Alaska Legislature created the Office of Victims’ Rights (OVR), an independent agency within the legislative branch of state government, to help crime victims obtain their constitutional and statutory rights with regard to their interactions with criminal justice agencies in the State. While the OVR does not collect restitution for victims, the agency can advise crime victims of their right to restitution and give them instruction and assistance in obtaining restitution. Taylor Winston, Director, OVR, notes that one of the problems in getting restitution money to victims is the lack of interfacing between departments. The current system is inefficient and frustrating for many victims.<sup>15</sup> While victims have a responsibility to keep the DOL updated of their current address, this does not always happen. She suggested that matching the names of victims who are owed restitution to PFD data for current addresses could help victims.

Like Ms. Brimner, Ms. Winston emphasized the lack of follow-through by some probation officers to ensure offenders are paying some amount of victim restitution. She stressed that it is important for offenders to make restitution, even if the payment is as low as \$10 each month.

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<sup>13</sup> “Violent Crimes Compensation Board – Restitution White Paper” is included as Attachment B.

<sup>14</sup> Ms. Hudson can be reached at 907.465.5525.

<sup>15</sup> Ms. Winston can be reached at 907.272.2620.

## Department of Law – Collections Unit

The DOL's collection services include sending demand letters, processing voluntary payments, and seizing the defendant's permanent fund dividends if the defendant is eligible for the dividend and the dividend is not claimed by child support.<sup>16</sup> The DOL will record a property lien for restitution judgments over \$10,000. Collections may also request a wage garnishment or bank sweep if they learn the defendant has regular and consistent wages. The DOL described measures they have recently taken as follows:

- In 2012, we hired a restitution coordinator, who has greatly assisted in overseeing the restitution process and managing staff and projects.
- We streamlined our internal processes and enhanced our collections database. This has improved the timeliness of our case opening. In fact, our policy is to require new cases to be opened within 30 days, and the recent average has been between one and two weeks. This ensures that the collection process can begin as quickly as possible. And, once the case is opened, it also allows us to garnish the debtors permanent fund dividend (PFD).
- We continued to increase our restitution collections. In FY10, we collected roughly \$1.1 million followed by \$1.8 million in FY11 and \$2.3 million in FY12. Both voluntary payments and PFD garnishments have increased. Voluntary payments increased over 8% from 3,320 in FY11 to 3,595 payments in FY12. PFD garnishments increased over 50% from 905 in FY11 to 1,405 in FY12.
- As payments and garnishments increased, we have had corresponding increases in disbursements to victims. Disbursement requests increased from 1,719 in FY11 to 3,121 in FY12. We also expect the FY13 numbers to be similar to, or exceed those from FY12.
- We improved our internal processes and technology, and are more efficient at distributing money to victims. We changed internal processes so checks are mailed to victims faster. Technology enhancements include a new receipting program implemented in March of this year so that we can provide for a quicker and more efficient disbursement request process.
- Recently, we prioritized disbursements making that part of the process more efficient. Since April, we have focused on distributing the largest disbursements first, working our way down to disbursements of less than \$100. Within just the past few months, the Collections and Support Unit has made great progress, and less than 5% of the disbursements that remain are for amounts larger than \$1,000. Our goal is to have all disbursements for more than \$500 distributed by January 2014.
- Disbursements less than \$100 make up two-thirds of all payments that are waiting for disbursement, and approximately half of that amount (or one-third of the total) is made up of payments that are less than \$5.
- When dealing with payments of less than \$5, the cost of disbursement is more than the payment amount, which is why it is our policy to wait until more payments for that victim

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<sup>16</sup> The Collections and Support Section includes the collections unit and child support unit. The collections unit collects unsecured debts owed to the State including criminal judgments (fines, cost of appointed counsel, and cost of incarcerations) and various civil judgments, such as attorney fees. The Unit also collects restitution owed in criminal court cases and sends the funds to the restitution recipient. More information on the Section can be accessed at <http://law.alaska.gov/departments/criminal/restitution.html>.

come in before disbursing them. These minimal payments (which can in some instances be less than a dollar) are often the result of money transferred from a prisoner's account by the Department of Corrections. These prisoners do not have a lot of money, so the amounts transferred are small and in some cases, the amounts are divided among multiple victims, resulting in even smaller payments.

- The department is currently in the process of hiring a temporary accountant to assist with disbursements. We expect the temporary accountant to help us get current on disbursements, at least those greater than a de minimis amount.<sup>17</sup>

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### Permanent Fund Dividend Criminal Fund

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In 1988, Alaska lawmakers passed legislation which makes any person who is convicted of a felony and incarcerated during any period of a qualifying PFD year as a result of the conviction ineligible for a PFD (AS 43.23.005[d]).<sup>18</sup> The Legislature further intended that an amount "approximately equal to the money" that would otherwise be paid as dividends to individuals ineligible under this law, be appropriated annually from the dividend fund to the Crime Victim Compensation Fund.<sup>19</sup>

In early September of each year, the Department of Corrections reports to the Department of Revenue (DOR) the total number of persons incarcerated in the system as of that date. The DOR then estimates the number of inmates who could have applied for a PFD and would have been found eligible had they not been incarcerated, and multiplies that number by the estimated amount of the dividend for that year. This amount represents the PFD Criminal Fund. In FY 2013, DOR calculated the PFD Criminal Fund at nearly \$16.7 million.<sup>20</sup>

Until recently, the Violent Crimes Compensation Board, the Council on Domestic Violence and Sexual Assault (CDVSA), the Office of Victim Rights, and the Department of Corrections received appropriations from the PFD Criminal Fund. The table below shows the appropriations from the PFD Criminal Fund for FY 2008-2013. As you can see, the Department of Corrections received almost 90 percent of the PFD Criminal Fund for inmate healthcare in FY 2012 and 89 percent in FY 2013. The VCCB received about \$1.8 million in FY 2012 and in FY 2013 to capitalize the Crime Victim Compensation Fund, which was then allocated to the VCCB.<sup>21</sup> From FY 2008-2013, the Department of Corrections received over 64 percent of the total appropriations, the CDVSA about 24 percent, the VCCB 9 percent, and the OVR a little over 2 percent.

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<sup>17</sup> Cori Mills, Assistant Attorney General, Department of Law, can be reached at 907.465.2132.

<sup>18</sup> The Alaska Supreme Court upheld the constitutionality of AS 43.23.005(d) in *State v. Anthony*, 816 P.2d 1377 (Alaska 1991), finding the measure does not violate the equal protection clause of the Alaska or U.S. constitutions. Subsequently, the Legislature has amended the statute to expand the number of persons ineligible for a PFD to include those persons who are incarcerated as a result of a misdemeanor if they had been convicted of two prior crimes as well as those persons who are incarcerated for a misdemeanor if they had a prior conviction for a felony or two prior misdemeanor convictions.

<sup>19</sup> The Crime Victim Compensation Fund, established at the same time as the Violent Crimes Compensation Board, was intended to provide a source of funding for the VCCB.

<sup>20</sup> Jerry Burnett, Deputy Commissioner, Department of Revenue, can be reached at 907.465.3669.

<sup>21</sup> Kelly Cunningham, Fiscal Analyst, Legislative Finance Division. Ms. Cunningham can be reached at 907.465.3821.

Permanent Fund Dividend Criminal Fund Appropriations FY 2008 - FY 2013 (\$ in thousands)							
Department	Program	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
Administration	Violent Crimes Compensation Board	\$ 1,068	\$ 1,569	\$ 1,586	\$ 1,884	\$ 1,800	\$ 1,798
Corrections	Inmate Health Care	\$ 6,211	\$ 9,126	\$ 10,897	\$ 10,037	\$ 15,920	\$ 14,890
Legislature	Office of Victim Rights	\$ 401	\$ 589	\$ 767	\$ 707	\$ -	\$ -
Public Safety	Council on Domestic Violence and Sexual Assault	\$ 3,790	\$ 5,568	\$ 8,258	\$ 7,607	\$ -	\$ -
<b>TOTAL APPROPRIATION</b>		\$ 11,470	\$ 16,851	\$ 21,507	\$ 20,234	\$ 17,720	\$ 16,688
<p><b>Notes:</b> The amount of money in the PFD Criminal Fund each year is based on the number of incarcerated inmates who would have applied for a PFD and otherwise been found eligible that year. Prior to FY 2012, the Violent Crimes Compensation Board (VCCB) received an appropriation directly from the PFD Criminal Fund. In FY 2012 and FY 2013, \$1.8 million was appropriated from the PFD Criminal Fund to capitalize the Crime Victim Compensation Fund, which was then allocated to the VCCB.</p> <p><b>Sources:</b> Legislative Finance Division, Operating Budgets, Fiscal Years 2008-2013; Kelly Cunningham, Fiscal Analyst, Legislative Finance Division, 907.465.3821.</p>							

We hope this is helpful. If you have questions or need additional information, please let us know.



*Alaska Stat. § 12.55.045*

ALASKA STATUTES

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TITLE 12. CODE OF CRIMINAL PROCEDURE  
CHAPTER 55. SENTENCING AND PROBATION

Alaska Stat. § 12.55.045 (2013)

Sec. 12.55.045. Restitution and compensation

(a) The court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law. The court shall, when presented with credible evidence, unless the victim expressly declines restitution, also order a defendant convicted of an offense to compensate a victim that is a nonprofit organization for the value of labor or goods provided by volunteers if the labor or goods were necessary to alleviate or mitigate the effects of the defendant's crime. In determining the amount and method of payment of restitution or compensation, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; and

(2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If the defendant fails to make one or more payments required under this section, the victim or the state on the victim's behalf may enforce the total amount remaining under the order of restitution as provided in (f) of this section.

(d) In any case, including a case in which the defendant is convicted of a violation of [AS 11.46.120](#) -- [11.46.150](#) and the property is commercial fishing gear as defined in [AS 16.43.990](#), the court shall consider the victim's loss, and the order of restitution may include compensation for loss of income.

(e) *[Repealed, § 7 [ch 17 SLA 2004](#).]*

(f) *[Repealed, § 7 [ch 17 SLA 2004](#).]*

(g) The court may not, in ordering the amount of restitution, consider the defendant's ability to pay restitution.

(h) In imposing restitution under this section, the court may require the defendant to make restitution by means other than the payment of money.

(i) An order of restitution made under this section is a condition of the defendant's sentence and, in cases in which the court suspends all or a portion of the defendant's sentence, the order of restitution is a condition of the suspended sentence. If the court suspends imposition of sentence under [AS 12.55.085](#), the order of restitution is a condition of the suspended imposition of sentence.

(j) A defendant who is convicted of an offense for which restitution may be ordered shall submit financial information as ordered by the court. The Alaska Court System shall prepare a form, in consultation with the Department of Law, for the submission of the information; the form must include a warning that submission of incomplete or inaccurate information is punishable as unsworn falsification in the second degree under [AS 11.56.210](#). A defendant who is convicted of (1) a felony shall submit the form to the probation office within 30 days after conviction, and the probation officer shall attach the form to the presentence report, or (2) a misdemeanor shall file the form with the defendant's response or opposition to the restitution amount. The defendant shall provide a copy of the completed form to the prosecuting authority.

(k) The court, on its own motion or at the request of the prosecuting authority or probation officer, may order a defendant on probation who has been ordered to pay restitution to submit financial information to the court using the form specified in (j) of this section. The defendant shall file the completed form with the court within five days after the court's order. The defendant shall provide a copy of the completed form to the prosecuting authority and the person's probation officer, if any.

(l) An order by the court that the defendant pay restitution is a civil judgment for the amount of the restitution. An order by the court that the defendant pay restitution when the court suspends imposition of sentence under [AS 12.55.085](#) is a civil judgment for the amount of the restitution and remains enforceable and is not discharged when a conviction is set aside under [AS 12.55.085](#). The victim or the state on behalf of the victim may enforce the judgment through any procedure authorized by law for the enforcement of a civil judgment. If the victim enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded. If the state on the victim's behalf enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded, up to a maximum of twice the amount of restitution owing at the time the civil process was initiated. This section does not limit the authority of the court to enforce orders of restitution.

(m) Notwithstanding another provision of law, the court shall accept (1) payments of restitution from a defendant at any time, and (2) prepayments of restitution or payments in anticipation of an order of restitution. If the recipient has elected to have the Department of Law collect the judgment of restitution under [AS 12.55.051\(g\)](#), the court shall forward all payments of restitution to the Department of Law within five days after the court's acceptance.

(n) In this section, "conviction" means that the defendant has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or has been found guilty or guilty but mentally ill by a court or jury.

**HISTORY:** (§ 12 ch 166 SLA 1978; am § 38 ch 102 SLA 1980; am § 1 ch 73 SLA 1986; am §§ 1, 2 ch 75 SLA 1988; am § 3 [ch 53 SLA 1991](#); am §§ 3, 4 [ch 71 SLA 1992](#); am § 4 [ch 71 SLA 1996](#); am §§ 3, 4 [ch 103 SLA 2000](#); am §§ 9, 10 [ch 92 SLA 2001](#); am § 1 [ch 23 SLA 2002](#); am § 1 [ch 26 SLA 2003](#); am §§ 1 -- 4, 7 [ch 17 SLA 2004](#); am § 11 [ch 42 SLA 2006](#))

*Alaska Stat. § 12.55.051*

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TITLE 12. CODE OF CRIMINAL PROCEDURE  
CHAPTER 55. SENTENCING AND PROBATION

Alaska Stat. § 12.55.051 (2013)

Sec. 12.55.051. Enforcement of fines and restitution

(a) If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment and, if the payment was made a condition of the defendant's probation, may revoke the probation of the defendant. In a contempt or probation revocation proceeding brought as a result of failure to pay a fine or restitution, it is an affirmative defense that the defendant was unable to pay despite having made continuing good faith efforts to pay the fine or restitution. If the court finds that the defendant was unable to pay despite having made continuing good faith efforts, the defendant may not be imprisoned solely because of the inability to pay. If the court does not find that the default was attributable to the defendant's inability to pay despite having made continuing good faith efforts to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each \$ 50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

(b) When a fine or restitution is imposed on an organization, the person authorized to make disbursements from the assets of the organization shall pay the fine or restitution from those assets. A person required to pay a fine or restitution under this subsection who intentionally refuses or fails to make a good faith effort to pay is punishable under (a) of this section.

(c) A defendant who has been sentenced to pay a fine or restitution may request a hearing regarding the defendant's ability to pay the fine or restitution at any time that the defendant is required to pay all or a portion of the fine or restitution. The court may deny the request if it has previously considered the defendant's ability to pay and the defendant's request does not allege changed circumstances. If, at a hearing under this subsection, the defendant proves by a preponderance of the evidence that the defendant will be unable

through good faith efforts to satisfy the order requiring payment of the fine or restitution, the court shall modify the order so that the defendant can pay the fine or restitution through good faith efforts. The court may reduce the fine ordered, change the payment schedule, or otherwise modify the order. The court may not reduce an order of restitution but may change the payment schedule.

(d) The state may enforce payment of a fine against a defendant under [AS 09.35](#) as if the order were a civil judgment enforceable by execution. This subsection does not limit the authority of the court to enforce fines.

(e) The Department of Law is authorized to collect restitution on behalf of the recipient unless

(1) the recipient elects as provided in (f) of this section to enforce the order of restitution without the assistance of the Department of Law; or

(2) the order requires restitution to be made in a form other than payment of a specific dollar amount.

(f) The court shall forward a copy of an order of restitution to the Department of Law when the judgment is entered. Along with the copy of the order, the court shall provide the name, date of birth, social security number, and current address of the recipient of the restitution and the defendant, to the extent that the court has that information in its possession. Upon receipt of the order and other information from the court, the Department of Law shall send a notice to the recipient regarding the recipient's rights under this section, including the right to elect to enforce the order of restitution without the assistance of the Department of Law. The information provided to the Department of Law under this subsection is confidential and is not open to inspection as a public record under [AS 40.25.110](#). The Department of Law or its agents may not disclose the information except as necessary to collect on the restitution.

(g) The Department of Law may not begin collection procedures on the order of restitution until the recipient has been given notice and has been given 30 days after receipt of notice to elect to collect the restitution without the assistance of the Department of Law. A recipient may inform the Department of Law at a later time of the recipient's election to collect the restitution without the assistance of the Department of Law; upon receipt of that information, the Department of Law may no longer proceed with collection efforts on behalf of the recipient. A recipient who has elected under this section to collect restitution without the assistance of the Department of Law may not later request the services of that department to collect the restitution.

(h) If the Department of Law or its agents proceed to collect restitution on behalf of a recipient under (g) of this section, the actions of the Department of Law or an agent of the Department of Law on behalf of the recipient do not create an attorney-client relationship between the Department of Law and the recipient. The Department of Law or its agents may not settle a judgment for restitution without the consent of the recipient of the

restitution.

(i) An action for damages may not be brought against the state or any of its agents, officers, or employees based on an action or omission under this section.

(j) The Department of Law may enter into contracts on behalf of the state to carry out the collection procedures of this section. The Department of Law may adopt regulations necessary to carry out the collection procedures of this section, including the reimbursement of attorney fees and costs in appropriate cases.

**HISTORY:** (§ 12 ch 166 SLA 1978; am §§ 3, 4 ch 75 SLA 1988; am §§ 5, 6 [ch 71 SLA 1992](#); am §§ 11, 12 [ch 92 SLA 2001](#); am § 5 [ch 17 SLA 2004](#))

## **Rule 32.6. Judgment for Restitution.**

(a) **Definition.** When a sentence includes a requirement that the defendant pay restitution, the judge shall either enter a separate judgment for restitution or shall include the order of restitution as a separate section of the criminal judgment. For the purpose of these rules, either of these constitutes a "judgment for restitution."

(b) **Content.** The judgment for restitution must:

- (1) Identify each victim or other person entitled to restitution and the amount of restitution owed to each.
- (2) State the date restitution is due or, if the court schedules installment payments, the amount and due date of each payment. If no due date is stated, the restitution amount is due immediately.
- (3) State whether payment must be made through the clerk of court or the Collections Unit of the Department of Law. Ordinarily, the restitution payment will be made through the Collections Unit of the Department of Law unless (A) the victim or other person elects to pursue collection without the assistance of the Collections Unit; (B) the order requires restitution to be made in a form other than payment of a specific dollar amount; or (C) the case is being prosecuted by a municipality. When payment is to be made through the Collections Unit, the judgment must state that the court will also accept payments and prepayments of restitution.
- (4) Identify by name and case number any defendants who are jointly and severally liable for the restitution owed to each victim or other person.
- (5) State whether post-judgment interest is owed on the judgment and, if so, when it begins to accrue.

(c) **Entering the Judgment for Restitution.**

- (1) *At Sentencing.* If the amount of restitution and the names of the victims are known at the time of sentencing, the court shall enter the judgment for restitution at the time of sentencing.
- (2) *After Sentencing.* If the amount of restitution and the names of the victims or other persons seeking restitution are not known at the time of sentencing, the prosecutor shall file and serve within 90 days after sentencing a proposed judgment for restitution on a form designated by the Administrative Director, and a notice that includes information concerning the identity of any victims or other persons seeking restitution, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers. Within 30 days after receipt of the proposed judgment for restitution, the defense shall file any

objection to the proposed judgment, a statement of grounds for the objection, and a financial statement on a form designated by the Administrative Director under AS 12.55.045(j). If the defendant does not file an objection, the court may enter the judgment for restitution without further proceedings. If the defendant files an objection and either party requests a hearing, the court shall schedule a hearing.

(3) *Municipal Cases.* In addition to the requirements of (c)(1) and (2) above, a municipal prosecutor shall file an ex parte victim information statement on a form provided by the Administrative Director, which includes information concerning the identity and addresses of the victims. The victim information statement shall be filed within 15 days after entry of the restitution judgment under (c)(1) above or at the time the municipal prosecutor submits a proposed judgment to the court under (c)(2) above.

(d) **Hearing Regarding Payment Schedule.** A defendant who is unable to pay restitution because of financial circumstances may request a hearing to ask the court to modify the restitution payment schedule. If the court holds a hearing and the defendant proves by a preponderance of the evidence that the defendant is unable through good faith efforts to satisfy the payment schedule in the judgment for restitution, the court may modify the payment schedule, but may not reduce the amount of restitution.

(e) **Execution.** Civil execution to enforce the judgment may issue if restitution is ordered to be paid by a specified date and defendant fails to make full payment by that date. If restitution is ordered to be paid in specified installments and defendant fails to make one or more installment payments, civil execution to collect the entire remaining balance may issue. The automatic stays on enforcement provided in Civil Rule 62(a) and District Court Civil Rule 24(a) do not apply to the enforcement of restitution judgments.

**(f) Transfer of State Restitution Judgments and Payments to the Collections Unit of the Department of Law.**

(1) Upon issuance of a judgment for restitution in cases prosecuted by the state, the court will send, either on paper or electronically, a copy of the judgment to the Collections Unit of the Department of Law. The court will also send the name, address, birth date, and social security number of each victim or other person entitled to restitution and each defendant, to the extent the court has the information.

(2) If payment for restitution is tendered to the court, the court shall accept the tendered payment. If the victim or other person entitled to restitution has elected to proceed through the Collections Unit, the court shall forward the payment to the Collections Unit within five days after clearance of the payment tendered to the court.

(g) **Priority of Payments.** Unless the court finds good cause to order a different priority, payments received from or on behalf of a defendant will be allocated as follows:



(1) If a defendant makes a voluntary payment and designates how or to what criminal or civil judgments the payment should be applied, the payment will be applied as designated by the defendant.

(2) Payments received as the result of execution on the defendant's permanent fund dividend will be applied to judgments according to the priorities stated in AS 43.23.065.

(3) If a defendant makes a voluntary payment but does not designate how the payment is to be applied or if a payment is received as a result of execution by the Collections Unit of the Department of Law or a comparable unit of a municipality, the payment will be applied using the following rules:

(A) Judgments for restitution will be paid in full before any amounts collected from the defendant will be applied to criminal or civil judgments owed to the state or a municipality.

(B) If restitution is owed to the state or a municipality, amounts collected from the defendant will be applied first to judgments for restitution owed to victims other than the state or a municipality.

(C) When restitution is ordered to be paid by a defendant to victims in the same criminal case, amounts collected from the defendant will be allocated among the victims based on the percentage of the amount of restitution owed to each victim to the total amount of restitution owed by the defendant to all of the victims; except that if a payment is less than \$100, the payment may be paid to a single victim if such payments are paid to all victims on an alternating basis.

(D) When restitution is ordered to be paid by a defendant to victims in different criminal cases, amounts collected from the defendant will be applied to the judgment that is first in time.

(4) If a payment is received as a result of execution by a victim, the payment will be applied to the judgment for restitution owed to that victim.

**(h) Financial Statement.**

(1) If restitution has been ordered and has not been paid, and no financial statement has been required under Rule 32.1(a)(2)(B) or Rule 32.6(c)(2), the court shall order the defendant to complete and submit such statement within 30 days of the restitution judgment. The statement shall be on a form designated by the administrative director and shall be submitted to the Collections Unit of the Department of Law in state cases or the prosecuting authority in municipal cases.

(2) If the defendant fails to submit a completed financial statement as ordered, the probation officer or prosecuting authority (including the Collections Unit of the Department of Law) may notify the court by affidavit. Upon receipt of an affidavit under

this paragraph, the court shall schedule a hearing for the defendant to show cause why the defendant should not be held in contempt for failure to comply with the order to submit the financial statement.

(3) At any time after sentencing, the probation officer or prosecuting authority (including the Collections Unit of the Department of Law) may request that the defendant be ordered to provide a financial statement pursuant to AS 12.55.045(k).

(i) **Victim Election.** If, after the judgment for restitution has been transferred to the Collections Unit of the Department of Law, the victim elects to pursue collections without the assistance of the Collections Unit, the Collections Unit shall notify the court of the victim's election. The Collections Unit shall include with the notice copies of

(1) the judgment for restitution;

(2) the signed election form received from the victim;

(3) a statement of all payments received from the defendant and applied to the restitution judgment; and

(4) any relevant victim and defendant identifying information needed by the court system to properly identify and distribute restitution payments.

(j) **Suspended Imposition of Sentence.** The judgment for restitution remains civilly enforceable after the expiration of the period of probation or the set-aside of conviction in a case where imposition of sentence is suspended.

(Adopted by SCO 1464 effective March 5, 2002; amended by SCO 1482 effective October 15, 2002; and by SCO 1554 effective April 15, 2006)

## **VIOLENT CRIMES COMPENSATION BOARD RESTITUTION – WHITE PAPER**

### **Introduction**

The right of crime victims to restitution is enshrined in the Alaska Constitution:

#### **§ 24. Rights of Crime Victims**

Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; **the right to restitution from the accused**; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication. [Amended 1994]

AS 12.55.045 authorizes the payment of restitution by a convicted defendant to the victim, and “to a public, private or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense”.

Pursuant to this statute, the courts have regularly been ordering a defendant to make restitution to the Violent Crimes Compensation Board (VCCB), where monies have been paid out by VCCB to or on behalf of the crime victim.

Restitution and other recoveries (such as reimbursements from subrogation agreements and refunds of overpayments) that are received by VCCB can now be appropriated back to the Crime Victim Compensation Fund. This presents an opportunity for VCCB to have a more self-sustaining stream of funding.

### **Funding**

At present VCCB receives 60% of its annual funding through the Crime Victim Compensation Fund which in turn is funded from the Permanent Fund Criminal Fund. 40% comes from the federal Victims of Crime Act annual formula grant<sup>1</sup>. Given the fluctuations both in the Permanent Fund earnings, and in the number of felons' confiscated dividends available for distribution at any one time, it makes sense to try and maximize recoveries from other sources, in order to ensure a consistent level of funding for the future.

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<sup>1</sup> Payments to states under the Victims of Crime Act (VOCA) come from the federal Crime Victim Compensation Fund. The balance in this Fund currently stands at approximately \$8 billion. The Fund, and VOCA, enjoy bipartisan support in Congress. If sequestration takes effect at the beginning of 2013, the amount available from the Fund would be reduced by 7.6% but because of the way in which the formula grants are calculated, this will impact victim assistance programs (the Council on Domestic Violence and Sexual Assault in Alaska) rather than victim compensation programs.

VCCB is currently being **awarded** restitution on a significant scale, but only **recovering** restitution on a very modest scale. In FY12, VCCB was awarded \$637,154 in restitution by the courts. In FY12 total restitution received by VCCB was \$47,652.43, with 80 % of this coming from court judgments in years prior to FY12 (actual recovery from FY12 court orders amounted to only \$9,695). Due to staffing levels it has not been possible to devote staff time to pursuing recovery independently, and as a result VCCB has had to rely upon the Department of Law Collections Unit. However, this is not an active agency (according to newly appointed Restitution Coordinator, Jayne Fallon).

Other states are doing much more to actively recover restitution from convicted felons, and have created dedicated restitution units with dedicated collections staff. Many states are seeing great results. To take two examples, Oregon and Idaho have improved their collection rate to an average of 16-19% of their annual award total. If Alaska was to have the same success rate, that would mean a recovery of around \$320,000 annually.

Some states have come up with creative ways to improve their systems in favor of crime victims. Maricopa County in Arizona has been leading the way, by establishing a monthly Restitution Court. This court has been lauded as one of the five most successful models in the country for collecting money that defendants owe. In Vermont, the compensation program cooperates with other state agencies whereby the Department of Labor sends the Restitution Unit a list of defendants currently on probation and where they are working so that collection can be enforced. And cooperation with the Department of Fish and Wildlife has meant that recreational licenses (hunting and fishing) can be suspended until the restitution debt is paid in full. These are in addition to traditional methods of collection such as garnishment.

## **Proposal**

VCCB would like to propose that we give serious thought as to how to improve the recovery of restitution. Many of our claimants, who are very grateful for the assistance we have provided, want to see money coming back to VCCB from the defendants. We would anticipate working with the Office of Victims Rights, the Department of Law, the Department of Corrections, particularly Probation, in order to coordinate the exchange of information. Going forward, VCCB would also likely need to employ a dedicated collections agent akin to a Child Support Specialist. This would require a budget increment. However, up to 5% of our annual federal grant<sup>2</sup> may be used for personal services and could be used to help pay for a new position. Additionally, the extra revenue generated by improved collections, should, we hope, more than outweigh the additional annual personal services expense.

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<sup>2</sup> 5% of our FFY11 grant would be 21,700. 5% of our FFY12 grant would be \$32,300. Based on what we anticipate for our FFY13 grant, 5% will be approximately \$49,458.