

# ***RESTITUTION ENFORCEMENT***

## **A Practical Approach to Assure Restitution to Victims**

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# Parents Of Murdered Children (POMC)

- POMC was founded in 1978, in Cincinnati, Ohio and currently has over 60 chapters and 100 contact people throughout the United States providing services to family and friends of those killed by violence.

## **The Mission of POMC:**

- POMC makes the difference through on-going emotional support, education, prevention, advocacy, and awareness.

## **POMC Vision Statement:**

- To provide support and assistance to all survivors of homicide victims while working to create a world free of murder
- Restitution can be important to homicide survivors.

# Importance of Restitution for Victims



## **NATIONAL HISTORY OF VICTIMS' RIGHTS**

**In 1982, Ronald Reagan appointed a Task Force on Victims of Crime. Chaired by Lois Haight Herrington, this Task Force published 68 recommendations to improve the treatment of Crime victims. [. . .] The report included a recommendation for a constitutional amendment for crime victims' rights.**

**Later that year, Congress answered the recommendation and passed the first law addressing victim/witness issues: The Federal Victim and Witness Protection Act. This Act provided for witness protection, restitution, and fair treatment for federal victims and witnesses of violent crimes**

# NATIONAL HISTORY OF

## VICTIMS' RIGHTS (continued)

- **The changes at the federal level led to legislative changes at state levels: Victims' Bills of Rights, new proposals for training and education, and the expansion of existing victim/witness programs.**
- **The single greatest event in the victims' movement to date occurred in 1984: the passage of the Victims of Crime Act (VOCA). This act established the Crime Victims Fund to provide funds for local victim assistance programs and state victim compensation.**

# **ARIZONA'S HISTORY OF VICTIMS' RIGHTS**

**Article II, Section 2.1 of the Arizona Constitution**  
In 1990, Arizona voters passed Proposition 104, a ballot initiative that amended the State Constitution, providing for a Victims' Bill of Rights.

**In 1991, the Arizona Legislature passed statutes to define and implement the rights accorded to victims of crime under Article II, Section 2.1 of the Arizona Constitution. These rights impact the victim at every stage of the criminal justice process...from the initial report to the parole process.**

**These rights impact the victim at every stage of the criminal justice process...from the initial report to the parole process including the right to prompt restitution**

# Arizona Constitution

- **Constitutional Right to Restitution**
- Article 2 section 2 (A)(8) A victim has a right “to receive *prompt* restitution

# What is restitution?



- Ariz. Rev. Stat. Ann. §13-105(16), “Economic loss’ means any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses that would not have been incurred but for the offense.”
- Ariz. Rev. Stat. Ann. §13-603(B), Restitution order equals “... full amount of the economic loss as determined by the court and in the manner as determined by the court...”
- Purpose of restitution to make victim whole. *State v. Howard*, 168 Ariz. 458, 459, 815 P.2d 5, 6 (App. 1991)

# Economic loss



- Future medical care costs and lost earning capacity. *State v. Howard*, 168 Ariz. 458, 460, 815 P.2d 5, 7 (App. 1991) (“[E]conomic loss includes . . . . losses reasonably anticipated to be incurred in the future as a result of the defendant’s actions.”)
- Other costs incurred as a direct result of crime such as mileage to/from court, burial costs, property cleanup costs
- Victim attorney fees (to exercise victim rights but *not* to “prod” the state into filing charges). *See State v. Slover*, 220 Ariz. 239, 243, 204 P.3d 1088, 1092 (App. 2009)

# Non-economic loss



- Pain and suffering. A.R.S. §13-105(16)
- Attorney fees to convince prosecutor to file charges or to help investigate or support charge (adjunct prosecutor).  
*State v. Slover*, 220 Ariz. 239, 243, 204 P.3d 1088, 1092 (App. 2009)
- Punitive damages (designed to punish not to make victim whole). A.R.S. §13-105(16)
- Consequential damages. *Id.* (indirect economic losses)

# Who can pursue restitution on behalf of a victim?



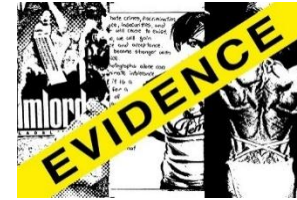
- Prosecutor at victim's request. A.R.S. §13-4437(C)(1) and (2)
  - But State does not represent victim
  - And State also has right to restitution. *See* A.R.S. §§13-804.01, -804(K).
  - What about conflicts? *See* Ariz. R. Crim. P. 39(c) (“In the event of any conflict of interest of the state ... and the wishes of the victim, the prosecutor shall have the responsibility to direct the victim to the appropriate legal referral, legal assistance or legal aid agency.”)
- Victims have a right to private counsel of their choice. A.R.S. §13-4437(A). *but see Lindsay R. v. Super. Ct.*, 2015 WL 161147 (App. 2015)

# What happens if Defendant disagrees with restitution amount?



- Contested restitution hearing proof required by preponderance:
  - Economic loss
  - Loss would not have occurred “but for” the crime
  - Criminal conduct must have directly caused the economic loss  
*In Re Stephanie B.*, 204 Ariz. 466, 469, 65 P.3d 114, 117 (App. 2003); *State v. Madrid*, 207 Ariz. 27, 29, 39 P.3d 1131, 1133 (2002)
- If these elements are met, restitution is mandatory. A.R.S. §13-603(C) (“[T]he court **shall** require the convicted person to make restitution....”) (emphasis added)

# Evidence required



- Medical bills to show out of pocket losses (co-payments, deductibles, co-insurance) (EOB's)
- Employer letters showing paid time off
- Expert testimony to show future reasonably probable:
  - Medical expenses (expected care, anticipated surgery, PTSD counselling etc.)
  - Diminished earning capacity
- Types of Experts
  - Forensic accountants
  - Economists
  - Vocational rehabilitation/life care planners
- But look out for reimbursement requests from collateral sources such as insurance and victim compensation fund

# **ARIZONA CODE OF JUDICIAL ADMINISTRATION**

## **Part 6: Probation**

### **Chapter 1: General Administration**

#### **Section 6-103 (4H): Victims' Rights Requirements for Probation Personnel**

- Notify the court having jurisdiction upon finding that the probationer has become in arrears in an amount totaling two full court ordered monthly payments of restitution.
- This notification shall consist of a petition to modify, petition to revoke, or memorandum to the court outlining the reasons for the delinquencies and expected duration thereof.
- A copy of the memorandum shall be provided to the victim, if the victim has requested notice of restitution modifications.

# Importance

- Through predominantly financial restitution, offenders can replace or repair damaged or stolen property, compensate victims for expenses such as medical treatment and psychological counseling, and sometimes compensate for lost income, legal fees, and other costs directly related to the criminal offense.

# Victim Restitution

- In cases of crimes resulting in the death of victims, offenders may be held responsible for funeral expenses, lost wages, and child support.
- Payment of restitution promotes the active participation of both offenders and victims in the justice process. It shifts the focus of justice system interventions and makes them victim-centered rather than offender-centered

# Restitution

- Promising restitution through court orders without collecting and disbursing the funds leads to dissatisfaction of victims.
- The study found that closer monitoring of offenders' payments increased their compliance with restitution orders. Further, regular updates to victims about the status of their restitution accounts helps them feel better informed (Davis & Smith, 1993).

# Restitution Court

- The restitution court program defines and clearly communicates to offenders that payment of restitution is expected and will be treated as a priority by the courts & the monitoring agency.

# We can do more!

- “Perhaps some would prefer it if crime victims just remained invisible. Perhaps we are so numbed by decades of crime and violence we simply choose to look away, to pass by on the other side of the road. But in America, when confronted with great injustice, great hope abides.” Victims of crime hope that more programs like restitution court will be implemented throughout our great country so that victims are never invisible.”-Steve Twist

# Statutory Remedies

- *Under Arizona Law:* remedies include Restitution Liens, Garnishment, Civil Judgments, and Civil Contempt

# Restitution Enforcement

## ARS § 13-810

### Consequences of nonpayment of fines, fees, restitution or incarceration costs



A. In addition to any other remedy provided by law, including a writ of execution or other civil enforcement, if a defendant who is sentenced to pay a fine, a fee or incarceration costs defaults in the payment of the fine, fee or incarceration costs or of any installment as ordered, the clerk of the court imposing the fine, fee or incarceration costs shall notify the prosecutor and the sentencing court. The court, on motion of the prosecuting attorney or on its own motion, shall require the defendant to show cause why the defendant's default should not be treated as contempt and may issue a summons or a warrant of arrest for the defendant's appearance.

# Restitution Enforcement

## ARS § 13-810



B. In addition to any other remedy provided by law, including a writ of execution or other civil enforcement, if a defendant who is ordered to pay restitution defaults in the payment of the restitution or of any installment as ordered, the clerk of the court that imposed the restitution shall notify the prosecutor and the sentencing court on a monthly basis. The court, on motion of the prosecuting attorney, on petition of any person entitled to restitution pursuant to a court order or on its own motion, shall require the defendant to show cause why the defendant's default should not be treated as contempt and may issue a summons or a warrant of arrest for the defendant's appearance.



# Restitution Enforcement

## ARS § 13-810

C. At any hearing on the order to show cause the court, the prosecuting attorney or a person entitled to restitution may examine the defendant under oath concerning the defendant's financial condition, employment and assets or on any other matter relating to the defendant's ability to pay restitution.

D. If the court finds that the ***defendant has willfully failed to pay*** a fine, a fee, restitution or incarceration costs or ***finds that the defendant has intentionally refused to make a good faith effort to obtain the monies required for the payment***, the court shall find that the default constitutes contempt and may do one of the following:

- 1. Order the defendant incarcerated in the county jail until the fine, fee, restitution or incarceration costs, or a specified part of the fine, fee, restitution or incarceration costs, is paid.***

# Adult Probation Screening

Probation Financial Compliance screens  
delinquent probationer's accounts



Clerk prepares Order To Show Cause



APO gives OSC Notice to the probationer during regular  
monthly meeting

# Procedure:

- Probation Financial Compliance screens delinquent probationer's accounts and then prepares a list.
- My Clerk of the Court prepares Order To Show Causes;
- Assigned APO gives the OTSC to the probationer a monthly meeting and directs them to attend hearing

# Probation Priority Checklist

Number of months delinquent

Type and number of victims

Amount delinquent

Amount of restitution owed

Cooperation with FINCOM

Class of felony





# Enforcement Hearing

- ❖ If the court finds that the ***defendant has willfully failed to pay*** a fine, a fee, restitution or incarceration costs,  
or
- ❖ ***Finds that the defendant has intentionally refused to make a good faith effort to obtain the monies required for the payment,***
- ❖ the court shall find that the default constitutes **contempt**.

# Ability and/or Willingness to Pay



Basic Obligations



Rent and or mortgage



Utilities and Cell Phone  
(media package)

# Ability and/or Willingness to Pay



Cable TV Deluxe NFL  
Package



Vehicle & liens



Unusual expenses

# Consequences

Consequence

- Incarcerate  
Probationer



Consequence

- Set purge amount  
(civil contempt)

Consequence

- Set up agreements to  
resolve delinquencies

# Agreements

- ❖ Make a finding of Contempt and continue hearing with and order for payment in 7 to 30 days or a payment plan to resolve arrears.
- ❖ Send Probationer for an updated life style assessment. Is the person living above means? Home Visits & look for “toys”.
- ❖ Schedule Review Hearings to assure compliance.

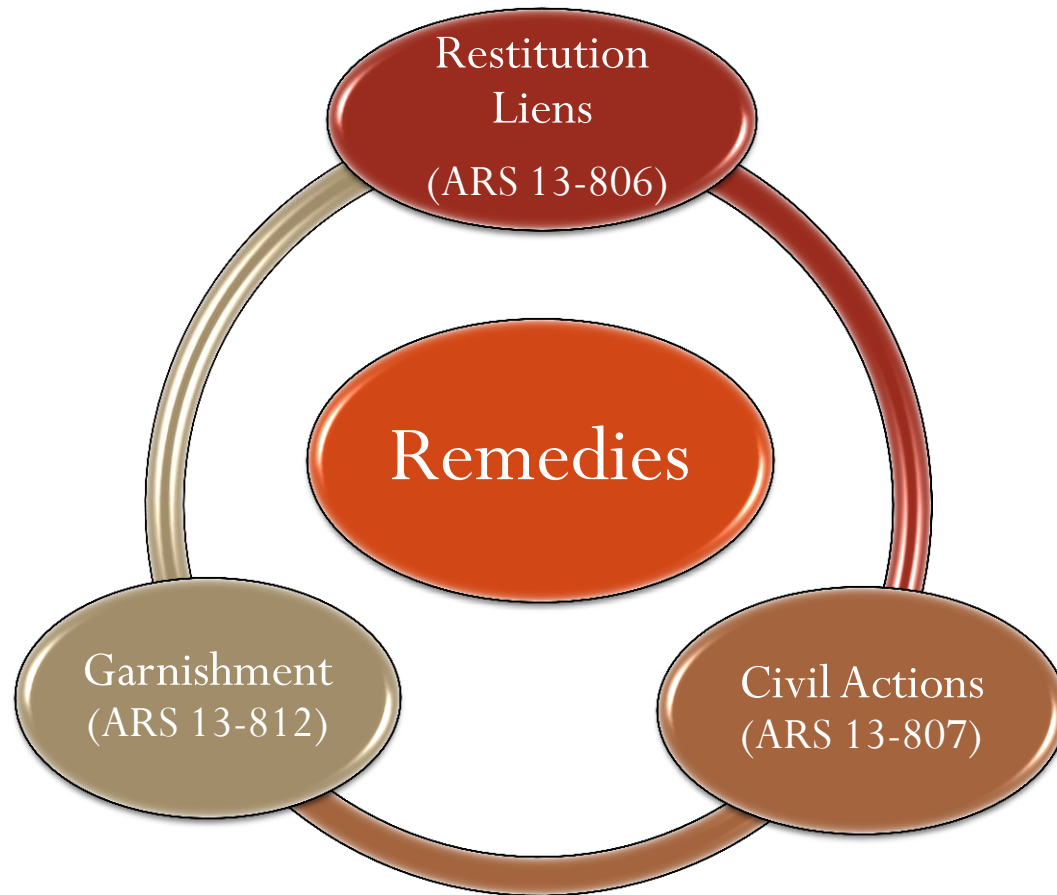


# State Tax Intercepts

- ❖ State and/or Federal Tax Returns
- ❖ Arizona Probation Department can initiate an intercept of Arizona State Tax refund.



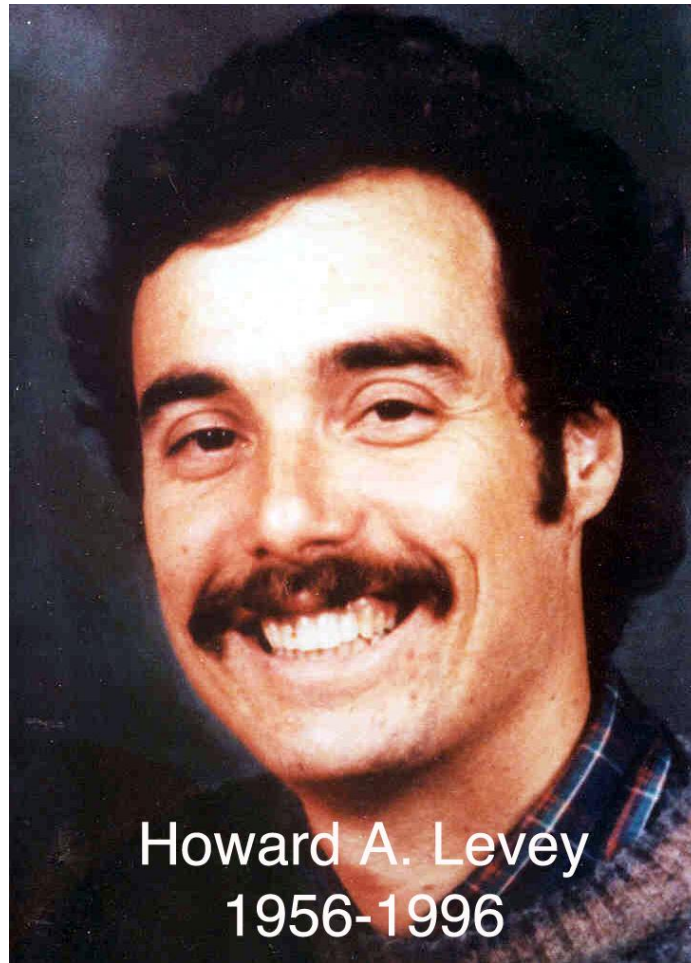
# Other Remedies



# Future Remedies:

- Wage Assignment,
- Interest from Sentencing date Criminal Restituion Order or Civil Judgment
- Restitution Liens
- Penalties for Late Payment.

In memory of my brother and all  
victims of crime.



Howard A. Levey  
1956-1996