



NOVEMBER 2002

RESTITUTION: MAKING IT WORK

LEGAL SERIES



Message From THE DIRECTOR

Over the past three decades, the criminal justice field has witnessed an astounding proliferation of statutory enhancements benefiting people who are most directly and intimately affected by crime. As of 2000, all states had passed some form of legislation to benefit victims. In addition, 32 states have recognized the supreme importance of fundamental and express rights for crime victims by raising those protections to the constitutional level.

Of course, the nature, scope, and enforcement of victims' rights vary from state to state, and it is a complex and often frustrating matter for victims to determine what those rights mean for them. To help victims, victim advocates, and victim service providers understand the relevance of the myriad laws and constitutional guarantees, the Office for Victims of Crime awarded funding to the National Center for Victims of Crime to produce a series of bulletins addressing salient legal issues affecting crime victims.

Restitution: Making It Work, the fifth in the series, provides an overview of state legislation and current issues related to the collection of court-ordered restitution to crime victims. Although every state has enacted legislation on this issue, many crime victims who are awarded restitution

Continued on page 2

Introduction

Many crime victims are awarded restitution at the sentencing of an offender but fail to receive any money. Others are paid only a small portion of the restitution ordered. A recent study of restitution collection in Colorado found that convicted offenders ordered to pay their victims more than \$26 million in 1996 still owe more than \$20 million.¹ Even though many restitution orders will never be fully paid, states are taking various legislative approaches to improve the collection of restitution.

Status of the Law

All states have statutory provisions relating to the collection of restitution. States have addressed this issue by laying the groundwork for collecting restitution at sentencing and enforcing restitution orders during the payment period.

Laying the Groundwork for Collecting Restitution

Courts can take many steps well before collection efforts begin that may make enforcing restitution orders much easier. The sentencing court can lay the groundwork for collecting restitution by thoroughly investigating the assets of convicted offenders, preserving those assets, and routinely entering income deduction orders.

Investigating the Assets of Convicted Offenders

Many states have attempted to improve the collection of restitution by providing for a thorough investigation of the assets of convicted offenders, either before or after restitution is ordered. (Statutory approaches to such investigations are addressed in *Ordering Restitution to the Crime Victim*, the sixth bulletin in this Legal Series.) A complete investigation of a defendant's assets can help the court craft a workable payment plan, which should decrease the likelihood of default. If the defendant later defaults on any payments, the court can use this information to help determine whether the failure to pay restitution is willful.

OVC



Continued from page 1

never receive any money or receive only a small portion of what the court has ordered the defendant to pay. This bulletin and the others in the Legal Series highlight various circumstances in which relevant laws are applied, emphasizing their successful implementation.

We hope that victims, victim advocates, victim service providers, criminal justice professionals, and policymakers in states across the Nation will find the bulletins in this series helpful in making sense of the criminal justice process and in identifying areas in which rights could be strengthened or more clearly defined. We encourage you to use these bulletins not simply as informational resources but as tools to support victims in their involvement with the criminal justice system.

John W. Gillis
Director

A list of a defendant's assets also can assist the victim or other entities in their collection efforts. In California, a victim is entitled to see a defendant's disclosures identifying all assets, income, and liabilities or certain other documents concerning financial information.² Until all restitution is paid, Kansas gives a crime victim the right to any information regarding the offender's financial assets, income, or employment that is in the possession of the district court, parole board, or any community correctional service program.³

Preserving the Assets of Convicted Offenders

In some cases, defendants may conceal assets or may even waste assets in an attempt to avoid paying restitution. Pennsylvania allows the prosecutor to seek a restraining order or injunction when the criminal complaint is filed or the offender is indicted to preserve assets that may be used later to pay restitution. Before entering such an order, the court must hold a hearing to find a substantial probability that the commonwealth will prevail in the action, the restitution order will exceed \$10,000, the property to be preserved appears necessary to satisfy any restitution order, and the failure to enter the restraining order or injunction will result in the property being made unavailable.⁴ Under certain circumstances, a temporary emergency restraining order can be issued "without notice or opportunity for a hearing, whether or not a complaint, information, indictment[,] or petition alleging delinquency has been filed."⁵

California takes another approach. By state law, it is a separate offense to dispose of property to avoid paying restitution;⁶ the offense is usually a misdemeanor but may be a felony.

Entering Income Deduction Orders

The routine entry of income deduction orders—or garnishment orders—can streamline the process of collecting restitution. California and Florida both provide for automatic entry of an income deduction order at the time restitution is ordered. In California, this order is enforceable only when a defendant defaults on restitution payments, but in Florida, the order is effective immediately.⁷

Enforcing Restitution Orders

States have enacted various provisions to enforce the collection of restitution orders when a defendant defaults in payment. These provisions are described below.

Improved Monitoring of Restitution Payments

A first step in any effort to improve the collection of restitution must be a system for monitoring a defendant's compliance with the restitution order. Wisconsin requires its Department of Justice to establish a separate account for each person in custody or under supervision who has been ordered to make restitution. The court is to order a 5 percent surcharge to support the administrative expenses that result from such a system.⁸ In New Jersey, the Victims of Crime Compensation Board is charged with developing a system to track and disburse restitution and other offender payments,⁹ financed by a \$3 offender assessment deposited into the Criminal Disposition and Revenue Collection Fund.¹⁰

In Michigan, the probation or parole officer is required to review, twice a year, every case in which restitution was ordered to ensure that payments are being made as ordered.¹¹ The officer must also perform a final review at least 60 days before the expiration of an offender's probation or parole. If an offender is not paying restitution, the officer must file a written report with the court. Similarly, in Utah, the Corrections Department is responsible for collecting restitution and must file a violation report with the court if a defendant fails to pay.¹²

Accurate information regarding payment must be shared between agencies that play a role in collecting restitution. In Iowa, for example, if probation is revoked for failure to pay restitution, the probation department is to forward the restitution plan, payment balance, and other pertinent information to the corrections department.¹³ In Massachusetts, when an offender is ordered to pay restitution to a victim, "the victim has the right to receive . . . a copy of the schedule of restitution payments and the name and telephone number of the probation officer . . . responsible for supervising the defendant's payments."¹⁴

Single System for Collecting Restitution and Other Court-Ordered Payments

Some states have attempted to improve the collection of restitution and other court-ordered payments—such as court fees—through a single system. Washington was an early leader in this area, devising a system for collecting an offender’s legal financial obligation that combines into one debt the restitution, statutorily imposed crime victim compensation fees, court costs, court-appointed attorney fees, and other costs assessed by the court against an offender.¹⁵ When moneys are collected from the offender for the legal financial obligation, restitution is to be paid first.¹⁶ Other states, including Alabama and New Jersey, also address collecting such costs through a single entity.¹⁷

Attachment of State Payments to the Defendant

Some states allow by statute various state payments, which ordinarily would first go to the defendant, to be used to satisfy restitution orders. For example, Maryland and Wisconsin laws allow a defendant’s lottery prize to be used to pay restitution.¹⁸ Iowa requires that any witness fees paid to an inmate be applied toward restitution.¹⁹ In Tennessee, 15 percent of the amount raised by the sale of inmate arts and crafts must be applied to restitution.²⁰ Several states provide that whenever a prisoner is awarded damages in a civil suit, the award must be used to pay restitution.²¹

In Montana, any time a prisoner accumulates more than \$200 in his or her prison inmate trust account, the excess is forfeited and used to pay any outstanding restitution.²² Similarly, Iowa law requires its director of corrections to deduct restitution payments, according to the inmate’s restitution plan, from the inmate’s account, which consists of money received by the inmate from any source.²³

In some states, a defendant’s bond may be used to satisfy a restitution order.²⁴ Under an Illinois appellate court ruling, courts may order that bond proceeds be applied to restitution even when someone other than the defendant provided the money.²⁵

Wages From Prison Work Programs

By law, many prison work programs must direct a portion of the offender’s wages to the payment of restitution.²⁶ Some statutes apply only to programs within the prison,²⁷ others to programs run by private industry using prison labor,²⁸ and still others to work-release programs.²⁹ Because California law requires a deduction from prison wages for the payment of restitution, a California appellate court has ruled that trial courts may presume the payment of restitution from prison wages unless evidence shows that a defendant would be ineligible.³⁰

Often, statutes prioritize how an inmate’s work program wages should be allocated to pay any restitution and other payments an inmate is required to make. For example, Louisiana law provides that wages from its prison industries program will be paid in the following order: (1) federal and state taxes and Social Security deductions, (2) 30 percent of the remainder after tax and Social Security deductions to the victims of crimes committed by the offender to the extent of their loss and thereafter to any state compensation fund, (3) 20 percent of the remainder after tax and Social Security deductions to the Department of Corrections, and (4) 40 percent of the remainder after tax and Social Security deductions to the inmate’s spouse and children. If an inmate has no spouse or children, this portion shall be paid to any victims of crimes committed by the offender to the extent of their loss and thereafter to any state compensation fund. The amount remaining is deposited into the inmate’s personal fund.³¹

Revoking Probation or Parole

States generally provide that probation or parole may be revoked for failure to pay restitution. The offender’s failure must be willful. Because this can be hard to prove, the remedy is not widely invoked. However, in some cases, courts were able to determine that a defendant’s failure to pay was intentional. For example, in one case in Illinois, a defendant had accepted a plea agreement under which he was to pay \$5 a month. When he did not make the first \$5 payment, the court found that his failure to pay was willful because he had given every indication that he was able to pay that amount. Such willful failure to pay was sufficient to revoke the defendant’s conditional discharge.³²

A California defendant had her probation revoked after she had been given numerous chances to pay restitution and had lied to the court regarding a loan application for money to pay restitution. In sentencing the defendant to prison, the trial court judge noted the defendant was not put in prison “for nonpayment of a debt. That’s against our constitution. But this defendant is totally failing to comply with the orders of the court.”³³ The appellate court upheld the trial court judge’s ruling.

Extending Probation or Parole

Some states permit the extension of probation or parole when restitution remains unpaid at the time supervision is to expire. Because restitution is a sentencing condition, extending a defendant’s probation or parole enables the criminal justice system to exercise continued jurisdiction over that sentence.

Arkansas law provides that if a defendant fails to make all restitution payments at the time probation ends, the court has authority to continue and extend probation.³⁴ Under Arizona law,

probation may be extended up to 3 additional years for a felony and 1 year for a misdemeanor to allow an offender time to satisfy the requirements of a restitution order.³⁵ In Kentucky, parole is to be extended until restitution is paid in full.³⁶

In contrast, Washington provides for continuing jurisdiction as long as restitution remains outstanding; there is no need to specifically extend supervision.

Using State Entities or Private Collection Agencies To Collect Restitution

Several states have amended their laws to allow restitution orders, particularly orders in default, to be referred to private collection agencies. Some states add the collection fee to the amount due from the defendant, and others deduct this fee from the amount paid by the defendant.³⁷ Under Alabama law, district attorneys are authorized to establish special restitution recovery divisions. On written notification that a defendant has defaulted in payment of restitution, the division may collect or enforce such orders. A collection fee of 30 percent of the outstanding amount is added to the debt.³⁸ The district attorney's office is authorized to retain 75 percent of that collection fee, with the remaining 25 percent to be used by the circuit court for operating expenses. The district attorney's office is authorized to contract with a private collection agency to collect outstanding debts.³⁹

Kansas has taken a different approach to restitution collection. Under Kansas law, the attorney general is authorized to contract with certain entities to collect restitution and other court costs. The list of approved collection agencies is then published for use by courts and victims. Collection entities receive a fee of up to 33 percent of the amount collected, which is to be deducted from, not added to, the amount owed by the defendant.⁴⁰ Meanwhile, at least three states—California, Iowa, and Virginia—allow the restitution debt to be referred to the state taxation authorities for collection.⁴¹

Converting Restitution Orders to Civil Judgments

Most states allow restitution orders to be converted to civil judgments, especially when restitution remains unpaid at the end of the defendant's probation or parole. In some states, a restitution order is automatically entered as a civil judgment,⁴² whereas in others, the victim is authorized to have an order entered as a civil judgment.⁴³ Kansas places an additional burden on the victim, requiring the victim to pay court costs for entering such a judgment.⁴⁴ In some states, the conversion to a civil judgment happens immediately;⁴⁵ in others, the conversion or entry takes place only when a defendant defaults on the payment.⁴⁶

Current Issues

Lack of Data

Data are generally lacking on the amount of restitution ordered and collected. In the few states that have data on the gross amount of restitution collected, insufficient information is available on the percentage of restitution collected. Until the information is available, states will continue to be hampered in their efforts to improve restitution collection.

Victim Enforcement of Restitution Orders Converted to Civil Judgments

As noted, most states provide for unpaid restitution orders to be converted to and enforced as civil judgments. However, few crime victims understand the means available to enforce such judgments. The California Victim Compensation and Government Claims Board, formerly the California State Board of Control, has attempted to address the problem by developing a simple brochure for crime victims. The brochure describes procedures for converting a restitution order to a civil judgment and investigating the assets of the defendant.⁴⁷

Conclusion

State legislatures and criminal justice experts alike have recognized that holding a convicted offender financially responsible for the harm caused by the crime is a proper criminal sanction. They also recognize the importance of restitution in promoting the recovery of the crime victim. However, until the process of collecting restitution improves, these twin benefits cannot be fully realized. This process must begin before the restitution is ordered, with a thorough investigation of the defendant's assets and earning abilities and the court's ability to preserve those assets when necessary. At the same time, a state must have a system in place to monitor compliance with restitution orders and the means to enforce the orders. With increased focus on all aspects of collection, states have the potential to make restitution orders far more meaningful.

Notes

1. *Study of Criminal Restitution in Colorado* (1999). Denver, CO: Colorado Legislative Counsel. Table 2, p. 18. The study includes numerous caveats to this figure, including that the data reflect an analysis of payment over time and payments on many orders are

continuing and that many of the offenders ordered to pay are currently incarcerated and not expected to make significant payments until release or placement in a work program (see p. 16).

2. CAL. PENAL CODE § 1202.4 (Deering 2001).
3. KAN. STAT. ANN. § 60-4305 (2000).
4. 42 PA. CONS. STAT. ANN. § 9728 (West 2000).
5. *Id.*
6. CAL. PENAL CODE § 155.5 (Deering 2001).
7. CAL. GOV'T CODE § 13967.2 (Deering 2001); FLA. STAT. ANN. § 775.089 (West 2000).
8. WIS. STAT. § 973.20 (2000).
9. N.J. STAT. ANN. § 52:4B-8.1 (West 2001).
10. N.J. STAT. ANN. § 2C:43-3.1 (West 2001).
11. MICH. STAT. ANN. §§ 28.1073, .2306 (Michie 2000).
12. UTAH CODE JUD. ADMIN. R. 6-303.
13. IOWA CODE § 910.4 (2001).
14. MASS. ANN. LAWS ch. 258B, § 3 (Law. Co-op. 2001).
15. WASH. REV. CODE § 9.94A.030 (2001).
16. WASH. REV. CODE § 9.94A.120 (2001).
17. ALA. CODE § 12-17-225.2 (2001); N.J. STAT. ANN. § 52:4B-8.1 (West 2001).
18. MD. ANN. CODE art. 27, § 810 (2001); WIS. STAT. § 973.05 (2000).
19. IOWA CODE § 622.69 (2001).
20. TENN. CODE ANN. §§ 41-6-301–303 (2001).
21. ARK. STAT. ANN. § 12-29-601 (2001); OKLA. STAT. tit. 57, § 566.1 (2000); WIS. STAT. § 806.025 (2000). In Arkansas and Oklahoma, this is limited to suits against the government.
22. MONT. CODE ANN. § 53-1-107 (2000).
23. IOWA CODE § 904.702 (2001).

About This Series

OVC Legal Series bulletins are designed to inform victim advocates and victim service providers about various legal issues relating to crime victims. The series is not meant to provide an exhaustive legal analysis of the topics presented; rather, it provides a digest of issues for professionals who work with victims of crime.

Each bulletin summarizes—

- Existing legislation.
- Important court decisions in cases where courts have addressed the issues.
- Current trends or “hot topics” relating to each legal issue.

24. For example, CAL. PENAL CODE § 1463.009 (Deering 2001); 730 ILL. COMP. STAT. § 5/5-5-6; N.Y. CRIM. PROC. LAW § 420.10 (Consol. 2001); S.C. CODE ANN. § 17-15-15 (Law. Co-op. 2000).

25. *People v. Rayburn*, 258 Ill. App. 3d 331, 196 Ill. Dec. 598, 630 N.E.2d 533 (3d Dist. 1994).

26. For example, LA. REV. STAT. § 15:840.2 (2000); N.Y. CORRECT. LAW § 860 (Consol. 2001); S.D. CODIFIED LAWS § 24-11A-20 (Michie 2000).

27. For example, N.J. REV. STAT. § 30:4-92 (2001).

28. For example, MICH. STAT. ANN. § 28.1540(7a) (Michie 2000); MINN. STAT. § 241.26 (2000).

29. For example, ME. REV. STAT. ANN. tit. 17-A, § 1330 (West 2000); N.C. GEN. STAT. § 148-32.1 (2000).

30. *People v. Frye*, 21 Cal. App. 4th 1483, 27 Cal. Rptr. 2d 52 (3rd Dist. 1994). See also *People v. Gentry*, 28 Cal. App. 4th 1374, 34 Cal. Rptr. 2d 37 (1st Dist. 1994). (In making restitution determination, court may consider defendant's future prison wages in their entirety, as well as possibility of employment on release from prison; defendant's conclusory statement that a bad back precluded him from prison work was insufficient to show that the defendant could not secure prison employment.)

31. LA. REV. STAT. § 15:840.2 (2000).

32. *People v. Clark*, 268 Ill. App. 3d 810, 206 Ill. Dec. 585, 645 N.E.2d 590 (4th Dist.), *appeal denied*, 161 Ill. 2d 531, 208 Ill. Dec. 363, 649 N.E.2d 419 (1995).

33. *People v. Lawson*, 69 Cal. App. 4th 29, 35, 81 Cal. Rptr. 2d 283 (1st App. Dist., Div. 3, 1999).

34. ARK. STAT. ANN. § 5-4-303 (2001).

35. ARIZ. REV. STAT. § 13-902 (2000).

36. KY. REV. STAT. § 439.563 (2001).

37. Fee added to amounts owed by defendant: ALA. CODE § 12-17-225.4 (2001); IOWA CODE § 602.8107 (2001); 42 PA. CONS. STAT. § 9730.1 (2000). Fee paid out of the amount collected: VA. CODE § 19.2-349 (2000).

38. ALA. CODE § 12-17-225.4 (2001).

39. ALA. CODE §§ 12-17-225 to -225.9 (2001).

40. KAN. STAT. ANN. § 75-719 (2000).

41. CAL. PENAL CODE § 3000.05 (Deering 2001); IOWA CODE § 602.8107 (2001); VA. CODE § 19.2-349 (2000).

42. For example, COLO. REV. STAT. § 16-18.5-103 (2000); R.I. GEN. LAWS § 12-28-5.1 (2001).

43. For example, HAW. REV. STAT. § 706-647 (2000). In Maryland, orders from the Circuit Court (felony crimes) are automatically entered as civil judgments, whereas those entered in District Court (misdemeanors) are entered on the victim's request. MD. ANN. CODE art. 27, § 807 (2001).

44. KAN. STAT. ANN. § 60-4303 (2000).

45. For example, COLO. REV. STAT. § 16-18.5-103 (2000); S.C. CODE ANN. § 17-25-323 (Law. Co-op. 2000); UTAH CODE ANN. §§ 76-3-201, 77-18-6 (2000).

46. For example, DEL. CODE ANN. tit. 11, § 4101 (2000); GA. CODE ANN. § 42-8-34.2 (2000).

47. "How To Enforce Your Restitution Order as a Civil Judgment," California Victim Compensation and Government Claims Board, formerly the California State Board of Control, www.boc.cahwnet.gov/RRCD_Pubs/Civil.pdf.

The OVC Legal Series bulletins were created by the National Center for Victims of Crime (NCVC) under grant number 1999-VF-GX-K007 awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this bulletin are those of the author/NCVC and do not necessarily represent the official position or policies of the U.S. Department of Justice.

The Office for Victims of Crime is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office of Juvenile Justice and Delinquency Prevention.