

MAKING RESTITUTION REAL

Five Case Studies on Improving Restitution Collection





The mission of the National Center for Victims of Crime is to forge a national commitment to help victims of crime rebuild their lives. We are dedicated to serving individuals, families, and communities harmed by crime. Through collaboration with local, state and federal partners, the National Center:

- Provides direct services and resources to victims of crime across the country;
- Advocates laws and public policies that create resources and secure rights and protections for crime victims;
- Delivers training and technical assistance to victim service providers and allied professionals serving victims of crime; and
- Fosters cutting edge thinking about the impact of crime and the ways in which each of us can help victims regain control of their lives.

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Introduction

MAKING RESTITUTION REAL

Across the country, policymakers, criminal justice officials, and victim advocates are becoming increasingly attuned to the problem of uncollected victim restitution. Even when ordered by the court, restitution often goes uncollected and victims remain without the financial resources they need to rebuild their lives after crime.

While most jurisdictions do not track the amount of restitution ordered or collected (a problem itself), existing reports indicate a widespread failure to collect vast amounts of victim restitution. The most recent public figures show uncollected criminal debt at the federal level to be over \$50 billion—most of which is restitution owed to individuals and others harmed by defendants.¹ A study released in 2005 by the Government Accountability Office examined five high-dollar white collar financial fraud cases and found that only about seven percent of the restitution ordered in those cases was collected, up to eight years after the offenders' sentencing.²

The experience at the state level is equally discouraging. In Iowa, for example, outstanding court debt, including restitution, amounted to \$533 million as of 2010.³ Recent figures show that in Maryland, the Division of Parole and Probation had collected only 12 percent of the restitution that judges had ordered in fiscal year 2007 by December of 2008. In Texas, a 2008 examination found that more than 90 percent of offenders discharged from parole between 2003 and 2008 still owed their victims restitution.⁴ In Pennsylvania, \$638 million in restitution was outstanding; in Arizona, the amount of unpaid criminal debt, including restitution, totaled \$831 million; and in a single Nevada county, \$70 million in victim restitution went uncollected during an eight year period.⁵

Behind these numbers are real crime victims in need—individuals trying to recover from financial losses related to the crime they experienced. They include victims without medical insurance

1 Testimony of U.S. Senator Byron Dorgan before the U.S. House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security Hearing on Legislation to Improve the Collection of Federal Court-Ordered Restitution, April 3, 2008.

2 U.S. General Accounting Office, "Criminal Debt: Court-Ordered Restitution Amounts Far Exceed Likely Collections for the Crime Victims in Selected Financial Fraud Cases," GAO-05-08 (Washington, DC: January 2005), 3. See also Michael Hinkelman, "Paybacks Are a Glitch," *The Philadelphia Daily News*, April 26, 2010, p. 5.

3 Darren Waggoner, "Iowa Approves Bill To Help Recover Millions In Debt," *Collection & Credit Risk*, March 25, 2010.

4 Chris Vogel, "Crime Doesn't Pay(back): A Houston Press Special Report on Court-Ordered Restitutions in Texas; More than 90 percent of Texas parolees walk away without paying off what the state ordered them to," *Houston Press*, December 4, 2008.

5 Mark Scoloro, "AP Exclusive: PA Courts Say Criminals Owe \$1.55 Billion," *Associated Press State & Local Wire*, December 22, 2007; Erica Blake, "Crime Victims Struggle to Collect Restitution," *The Blade*, January 27, 2008; Martha Bellisle, "Justice calls for new fee system," *Reno Gazette-Journal*, April 6, 2010.

struggling to pay off their hospital bills; victims suffering from posttraumatic stress disorder but forgoing counseling because they can't afford it; small-business owners struggling to keep their businesses open after being defrauded by employees; and elderly victims who have lost their life savings to fraud and are suffering not only financial loss, but also the loss of their dignity, security, physical health, and independence. The recent economic downturn has further hampered the ability of victims to recover from crime-related financial losses.

Repayment of victims' financial losses from a crime, including property losses, can be crucial in helping to repair the damages from the offense. Repayment is also important as a tangible demonstration that the state—and the offender—recognizes the harm the victim suffered and the offender's obligation to make amends. Failure to collect the ordered restitution creates another, even more insidious, harm: when court orders are regularly disregarded with no apparent consequence, it causes crime victims and the public to lose faith in the criminal justice system.

Restitution is important for offenders as well. Courts have recognized that restitution is significant and rehabilitative because it “forces the defendant to confront, in concrete terms, the harm his or her actions have caused.”⁶ In fact, a study that examined the connection between restitution and recidivism found that individuals who paid a higher percentage of their ordered restitution were less likely to commit a new crime.⁷ Significantly, the payment of criminal fines did not have this effect, indicating that it is the act of reparation to the victim that is important.⁸

To improve the collection and payment of victim restitution nationwide, the National Center for Victims of Crime, with support from the U.S. Department of Justice, Office for Victims of Crime, commissioned five papers by expert practitioners in the field of restitution who discuss their jurisdictions' current issues, challenges, and promising practices. Drafts of these papers were presented at a national roundtable discussion with invited criminal justice practitioners, policymakers, and victim advocates to review these promising programs.⁹ That event was Webcast to another 200 professionals located throughout the United States.

The five papers presented here offer valuable case studies. Two of those reflect statewide efforts—in **California** and **Michigan**—to promote and support greater collections. While these efforts differed in scale and some of the methods used, both were grounded in a commitment by their state's chief justice to make increased collections a priority. Both states used deliberate approaches that sought input from stakeholders at the state and local levels. Both adopted statewide mandates that allowed for elements of local flexibility, allowing local jurisdictions to adopt a certain number of best practices from a list developed at the state level. And both created tools to help local courts improve their tracking and reporting of collections.

⁶ *People v. Moser*, 50 Cal. App. 4th 130, 135 (1996).

⁷ Cynthia Kempinen, “Payment of Restitution and Recidivism,” Research Bulletin 2, No. 2 (State College, PA: Pennsylvania Commission on Sentencing, October 2002).

⁸ *Ibid.*

⁹ Restitution Roundtable, April 6, 2010, Washington, DC. (See Appendix for participants list.)

A third paper also addresses a statewide effort, but one using a far different framework. Rather than improving local collection efforts throughout the state, **Vermont** created a centralized Restitution Unit that pays individual victims upfront and then takes on the burden of collecting from offenders. This program represents fresh thinking, as it reconceptualizes the process to restore victims through restitution.

Two local programs are also featured. **Maricopa County, Arizona**, through the commitment of a local judge and the probation department, created a Restitution Court using existing legal tools to improve collection from offenders. And Project Payback, in **Florida's Eighth Judicial Circuit**, embraced victim restitution as a means to rehabilitate juvenile defendants as well as restore their victims.

Despite the variation in approaches among the five programs highlighted, they share important elements in common:

- **Leadership.** Each program exists because an individual stepped forward with the authority to change the status quo. In two statewide programs it was the state's chief justice; in the third it was the statewide victim services center. For one local program, it was the state's attorney; for the other it was a superior court judge.
- **Commitment.** Each program demonstrates a commitment to change, coupled with the development of partnerships and collaborations to transform good intentions into measurable progress. For four of the programs highlighted, this commitment included dedicated staff.
- **Openness to new thinking.** In different ways, the approach of each program reflects an openness to new thinking. For some, that new thinking involved reframing the issue of uncollected criminal debt as an issue of the failure of courts to enforce their own orders. For the juvenile restitution program in Florida, it involved recasting the issue of financial responsibility as central in the rehabilitation of juveniles. And for Vermont, it was openness to a new model for victim restitution.

The papers highlighted here address important lessons learned and the challenges that remain. From statewide, multi-year initiatives to vigorous local programs, it is our hope that these examples will inspire advocates and officials around the country to reexamine their own policies and programs and renew their commitment to improving the lives of crime victims through the collection of restitution.

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1 Michigan's Trial Court Collections Project: Collection of Court-ordered Fines, Fees, Costs, and Victim Restitution

by Elizabeth A. Barber, Trial Court Collections Project Manager, Michigan Supreme Court, State Court Administrative Office

OVERVIEW

In 2004, the Michigan Supreme Court launched a statewide effort to improve court collections. While the approach of court collections personnel is an important factor in the success of a collections program, judicial leadership is critical. Therefore, achieving the Court's goal of improving trial court collections requires a partnership. At the initiative of then-Chief Justice Maura Corrigan, the State Court Administrative Office (SCAO) convened a Collections Advisory Committee to develop a statewide strategy for improving the collection of court-ordered financial sanctions.¹ The committee was to consider and promote methods to bring about cultural change, encourage data collection, review and promote training of judges and court staff, and identify and assist with the implementation of cost-effective collections practices. Members of the committee included circuit, district, and probate court judges, and a court administrator.

Judicial cooperation and consistency are essential for successful collections efforts because that approach reinforces the importance of collections at the highest level of the court, and increases effectiveness of collections programs. Committee members were selected for their combined experience and leadership, giving the committee's work credibility with judges and resulting in an effective strategy for improving enforcement and collections statewide.

The efforts, leadership, and commitment of the committee and regional subcommittee members have caused the cultural change that was necessary for the improvement of collections enforcement. I am convinced that we would not have had the buy-in of the judges and courts without the committee's involvement.

¹ Financial sanctions include fines, costs, fees, assessments (e.g., crime victim's rights assessment), and restitution.

INTRODUCTION

Enforcement of court-ordered financial sanctions is a high priority for the Michigan judiciary for two reasons: first, such enforcement improves the judiciary's credibility, and second, doing so is a core function of the judiciary's responsibility to the state as the third branch of government. The judiciary, through the committee, needed to persuade judges that enforcing collections is their responsibility for those two reasons. Fiscal constraints make us all acutely aware of our responsibility to enforce sanctions as a source of revenue for the local court funding units and the state. The restitution, fines, costs, and assessments that courts collect assure victims are made whole, and support law enforcement, libraries, the crime victim's rights fund, and local governments; but even more important is the judicial branch's credibility. Effective enforcement of court orders, including financial sanctions, enhances the integrity and credibility of our state courts, and increases respect for both the courts and their orders. Courts must send the public a firm and consistent message that offenders will be held accountable. We also need to inform the public so that collections enforcement is perceived, properly, as part of law enforcement and not as creating "debtors' prisons."

Judges and court staff must be committed to the goal of improving collections enforcement. The importance of judicial leadership is best summarized by the chair of the Collections Advisory Committee, former Judge Philip Schaefer, in his introduction to the SCAO's collections training videos, in which he states:

In the final analysis, the success of any collections effort is directly proportional to the level of commitment of the judiciary. A court may have the most capable and devoted employees in the world, but unless the judge leads, they cannot follow.

In that regard, I have developed what I like to think of as the "Judicial 3 D's" of collections: DUTY, DEDICATION, and DILIGENCE.

First, every judge has the DUTY to enforce court orders and sanctions, if only because it enhances the integrity of the court and what you do.

Second, as a judge, you must specifically DEDICATE yourself to implementing an effective collections program in the proper discharge of your duty.

Finally, DILIGENCE requires that you constantly monitor these efforts to assure that there is fair and efficient application of your mandates.

COLLECTIONS ADVISORY COMMITTEE

Goals and Strategy

The Collections Advisory Committee met for the first time on July 7, 2004. As Trial Court Collections Project Manager, I provide primary staff support to the committee. The primary goals established by the committee at its first meeting were to heighten judicial awareness, increase collections and enforcement, recommend court rule and statutory changes, develop standards, address interdepartmental issues, address education needs, and examine collections alternatives.

In order to achieve its goal of improving the enforcement of court-ordered financial sanctions, the committee determined that it was first necessary to obtain a more accurate appraisal of the enforcement and collections procedures currently used by Michigan's trial courts. In addition, the committee wanted to identify collections issues that the trial courts believed should be addressed by the committee. Further, to assist with assessing and evaluating the enforcement and collections procedures being used by trial courts, the committee wanted to receive outstanding receivables reports, formal collections policies, if any, and collections outcome/performance measures, if any. In order to obtain the above-mentioned information in a timely manner, the committee decided that a survey should be sent to the courts. As requested by the committee, the SCAO developed separate surveys for district and circuit courts and family divisions of circuit court, and after the committee's approval, distributed these surveys to the trial courts. The survey response rate exceeded ninety-five percent overall, but not all courts that responded provided an outstanding receivables report.² Reasons outstanding receivables reports were not provided are: (1) courts maintain this information manually, (2) automated systems may not have the ability to provide the report, or (3) courts may not maintain reliable account data. The SCAO assisted with assimilating and summarizing the data for the committee so that the committee could obtain a baseline of information regarding collections practices statewide.

The committee was aware that certain states placed a high priority on court collections and were in the process of developing fairly sophisticated collections programs. In January 2005, the committee interviewed individuals from the Arizona judiciary to build on their experiences and learn what emerging trends and technologies exist to assist courts in the process of collections. The committee was interested in their historical perspective; the process they used to create the solution; what collaborative efforts were important or necessary to the process; what changes, if any, were required in statutory or court rule provisions; what technical support and services are necessary within the court structure or available from the private sector; and why collections are important from a judicial perspective. The committee then brought in a facilitator to distill the issues and narrow the focus of the committee. Several months later, the committee had developed recommendations for the creation of various specific elements as part of an overall strategy for improving the collection of court-ordered financial sanctions. The committee recommended

² Seventy-six percent of the district courts, 71 percent of the circuit courts, and 64 percent of the family divisions answering the survey provided an outstanding receivables report.

development of a mandated SCAO collections policy, standardized reporting, voluntary participation in pilot programs, communication, and education. The recommended strategy would be implemented in three phases, resulting in all trial courts implementing a mandated SCAO collections program three to four years from issuance of the committee's report. (See *Statewide Collections Strategy in Attachment 1-A.*)

Phase 1

Phase 1 would include an update of SCAO's current design and implementation guide for collections programs, and development of a mandated collections policy based on best practices, including the use of a third party for collections. In addition, mandated standard reports would be developed and collected. Standard reports are necessary to provide improved collection management information to the courts and SCAO, and to monitor and measure court collections. Further, the committee would consult with Marcia McBrien, Michigan Supreme Court's Public Information Officer, to develop a communications strategy. Communication and education are crucial to successful implementation of effective collections policies. The committee would develop a standard presentation that focused on the extent of any problems, survey results, success stories that illustrate return-on-investment, and technical assistance and resources available through the SCAO and other courts. Committee members would make presentations at judges' meetings, court administrator meetings, and to other governmental groups relevant to implementation. Phase 1 also would include the development and implementation of technical support and training. The SCAO would provide tangible and practical training materials with real examples of successful implementation. The SCAO also would provide technical support to assist courts with training. It was anticipated that implementation of Phase 1 would conclude six to twelve months from issuance of the committee's report.

Phase 2

Phase 2 would include identification of best practices throughout the state and voluntary participation in pilot programs. Utilizing the mandated standard reports, the SCAO would monitor the results of these pilot programs. In addition, policies and pilot programs would be refined during this phase. Further, a plan would be developed for mandatory statewide implementation of these programs. Courts that participate in the voluntary pilot phase would serve as mentor courts during mandatory implementation. Again, communication and education would play a vital role during Phase 2. It was anticipated that implementation of Phase 2 would conclude six to twelve months from the culmination of Phase 1.

Phase 3

Phase 3 would be the mandatory statewide implementation of the collections policies and programs developed and refined during Phases 1 and 2. In addition, the reconstituted Collections Advisory Committee would continue to guide and review the pilot programs and implementation process. It was anticipated that implementation of Phase 3 would conclude one to two years from the culmination of Phase 2.

In June 2005, the Supreme Court approved the committee's recommended collections strategy. The approved strategy was unveiled at the 2005 Annual Judicial Conference, which allowed the committee to begin communications and the educational processes that are necessary for successful statewide implementation. The Collections Advisory Committee members were leaders in communicating the strategy to the courts.

Because in most instances trial court administrative staff would be responsible for implementing collections programs, the strategy included reconstituting the committee to include more trial court administrative staff. Four regional subcommittees were established to continue in the collections efforts. In addition, a new set of goals were established. The subcommittees were chaired by members of the Collections Advisory Committee and met regularly throughout the state. A kick-off meeting was held October 17, 2005, that brought together the newly created regional subcommittees. At this meeting, subcommittee organizational issues were decided and the primary goals of the subcommittees and proposed tasks and timeline (*see Attachment 1-B*) were distributed and reviewed.

The regional subcommittees were instrumental in implementing and monitoring pilot programs throughout the state. These pilot programs and their results would later assist the committee in determining which collections components to include in any required collections program. In addition, each regional subcommittee provided collections training to the courts in its region. This training was developed by court staff for court staff, and provided practical and tested collections techniques. The trainers were judges and court staff from each region who are extremely knowledgeable in various collections techniques.

The subcommittees met less frequently after courts began piloting various collections tools. To maintain momentum, all members of the committee and subcommittees were formally invited to an appreciation luncheon to honor and celebrate the accomplishments of the members. This meeting also was used to facilitate group discussions. The roundtable discussion groups were comprised of assigned participants with diversity as to region, position, and court type to encourage an exchange of ideas to assist in identifying best practices, determining communication and education needs, and developing plans for statewide implementation of collections programs. The meeting included a formal luncheon on the sixth floor rotunda (the Justices' floor) of the Hall of Justice. Justice Corrigan and then-Chief Justice Clifford Taylor spoke at the luncheon. Committee and subcommittee members received a certificate and had their pictures taken with Chief Justice Taylor. Group pictures were also taken. Courts with pilot projects also received a certificate for putting forth the effort to implement a pilot and documenting the results. There was a tremendous turnout and everyone was involved in the group discussions. The information gleaned from the discussions helped the committee and subcommittees move into the final phase of the implementation schedule.

COMMITTEE RECOMMENDATIONS

In July 2009, the Collections Advisory Committee submitted its final report to the Michigan Supreme Court with recommendations (see *Attachment 1-C*) that detailed its proposed plan to implement court collections programs and collections-related reporting requirements statewide. The committee recommended that the Court adopt an administrative order that would require courts to comply with court collections program requirements established by the SCAO to ensure that courts are attempting to enforce their orders and collect restitution, fines, and costs established by the Legislature. Courts would also be required to submit collections reports to the SCAO annually. In addition, the committee recommended pursuit of statutory changes to help defray the costs of courts' collections efforts and to enhance enforcement and collection of court-ordered financial obligations. Further, the committee recommended that the SCAO be charged with certain responsibilities to facilitate compliance with collections program requirements.

Under the committee's recommendations, courts would be required to implement a collections program that conforms to a model developed by the SCAO. If a court does not meet the minimum standards for an adequate collections program, the court would be required to submit to the SCAO an action plan to implement program components that includes a timetable for its intermediate and full implementation, which should not exceed one year. In addition, courts would be required to submit an initial collections program survey that would include information regarding the collections program currently in place, and would allow periodic audits to verify compliance with reported program components.

A successful court collections program is ultimately about compliance, and revenue is a by-product of that compliance. The goal of any collections program should be to increase voluntary compliance. The best way to achieve this is to impose realistic assessments and reasonable payment plans, and to establish personal contact with litigants. Because local trial courts are most familiar with their litigants' particular circumstances, local trial courts are best able to facilitate voluntary compliance. In addition, our experience has demonstrated that litigants are more likely to comply with orders when the trial court uses enabling (e.g., payment plans) or persuasive strategies (e.g., late penalty, delinquency notices) as opposed to coercive collection techniques. Coercive collection methods, such as contempt and jail, are more costly and, therefore, should be used as a last resort.

While the committee recommends that each court maintain an approved collections program, no court would be required to adopt any particular program. Rather, courts would be required to adopt programs that meet requirements established by the SCAO that contain certain key components identified by the SCAO as foundations of a successful collections program. In particular, the program would be required to meet at least seven of ten components to be considered adequate. But the results of the pilot projects and experience have shown that, with regard to the details of each component, what may serve one jurisdiction's needs may not work as well in another. For that reason, the decision on how to implement the key components is best left to individual courts, because they are in the best position to determine the type of program feasible within the limitations of their jurisdiction. Courts would be required to implement the broad components, but

would not be required to adopt each detail provided for each broad component. The details provide further clarification of the component, or are suggestions and/or best practices for implementation of the component. A court also may decide to implement a required component using a practice that is not listed in the details of the court collections program components.

In addition to the creation of a structured program that specifically identifies how courts will enforce their collections, the committee recommended that courts be required to submit collections reports to the SCAO annually. These standard reports would provide improved collections management information to the individual court that submitted the data and to the SCAO, and would help the SCAO and reporting courts evaluate trends of collections programs, and also provide collections rates. In conjunction with the collections reports, compliance with program requirements and components provides courts with a mechanism to demonstrate and more accurately reflect their collections enforcement efforts. Regardless of collections rates, a court that has implemented a SCAO acceptable collections program is in compliance with the court collections program requirements.

Various legislative amendments enacted over the past several years have increased the ability of courts to enforce court-ordered sanctions, but some legislative challenges remain. There are inconsistencies in certain statutes that should be corrected, and additional amendments could be proposed to increase a court's ability to improve collections. However, the committee strongly believes that the key legislative component that would benefit court collections efforts is one that would allow a court to assess a time payment fee when a litigant does not pay the court in full on the date the financial obligation is imposed. Further, the committee recommended that the proposed legislation should allow the local court to retain the time payment fee to improve, maintain, and enhance their ability to collect and manage the money assessed or received. This type of legislative approach would help provide independent funding sources to courts for their collections efforts. The committee also recommended that this fee be placed high in the priority level of payment received (after the minimum state cost and before other costs).

The committee anticipated that the SCAO would continue to play an active role in court collections. The committee recommended that the SCAO would facilitate compliance with collections program requirements by encouraging judicial cooperation, effectuating cultural change, educating stakeholders, and establishing reporting requirements and other automated standards for collections.

Finally, the Collections Advisory Committee and subcommittees would remain intact during statewide implementation of court collections programs. The experience and accumulated knowledge of the committee and subcommittee members would be invaluable in educating courts on collections program requirements, and guiding and reviewing the implementation process.

On January 27, 2010, the Supreme Court approved all of the committee's recommendations, and adopted Administrative Order No. 2010-1, effective May 1, 2010. (*See Administrative Order No. 2010-1, Court Collections Program Requirements, Court Collections Program Models, and Court Collections Program Components and Details in Attachments 1-D and 1-E.*)

CURRENT CHALLENGES AND NEW APPROACHES

The committee determined that general methods used for overcoming obstacles center on leadership, commitment, and dedication by judges, administrators, and court employees. Pilot programs and successes can assist with addressing perceived obstacles. The committee also identified the following specific obstacles to implementation, and solutions to address these obstacles.

Obstacle	Solutions
Lack of judicial and/or administrative leadership and commitment	<ul style="list-style-type: none"> • Increase awareness and keep collections in the forefront with positive and increased visibility • Provide actual results (costs and revenues) • Focus on “compliance” and “enforcement” rather than “collections”
Lack of ownership by court staff	<ul style="list-style-type: none"> • Prioritize collectible accounts, decide what to go after first, and implement one tool at a time rather than trying to do it all at once • Set realistic goals and share results and successes • Keep staff informed and involved
Inadequate staffing levels	<ul style="list-style-type: none"> • Demonstrate to the funding unit that a collections position will pay for itself • Pursue time payment fee legislation—use restricted revenue to fund collections position
Technology limitations	<ul style="list-style-type: none"> • SCAO provides COLLECT software at no cost to the courts • Pursue time payment fee legislation—use restricted revenue to fund enhancements or programming of collections component
Economy	<ul style="list-style-type: none"> • Educate defendants on where to cut spending or how to prioritize spending • Refer defendants to employment agencies • Offer payment alternatives, such as community service

In addition to these obstacles, a major concern for Michigan’s trial courts is that the current economic climate is not conducive to the implementation of a collections program that requires additional resources. I would argue that the present economic climate is the perfect time to implement a collections program that efficiently and effectively enforces collections. Michigan’s trial courts are funded locally; therefore, any costs of collection are borne by the local funding units. In most courts, the majority of revenue collected by the courts is distributed to the local funding units; therefore, effective collections enforcement will increase revenue at the local level. Courts that have implemented collections tools and programs have found that they can demonstrate to their funding units both the success of their efforts and increases in revenues.

At the state level, restricted revenue is used to fund the trial court collections project. In 2003, legislation was enacted that streamlined the assessment and transmission of fees and costs in civil infraction and criminal cases by collapsing nine different fees distributed to the state into one state minimum cost. This legislation also created the justice system fund for the deposit of all new civil infraction and criminal assessments and minimum state cost, and provided for the Department of Treasury to divide money received by percentages established in statute to various funds. The SCAO receives 0.98 percent of the fund balance of the justice system fund for the trial

court collections project, which amounts to approximately \$500,000 a year, and uses this revenue to fund, among other things, collections project staff, software enhancements and development, committee and subcommittee meeting expenses (including member travel), and training.

The SCAO has played an active role in this process. Early in the process, the SCAO purchased software known as COLLECT, which keeps track of money owed, payments made, and enforcement methods pursued by a court. The SCAO made this software available at no cost to courts. In addition, the SCAO worked with the Department of Corrections (DOC) to develop a process and form that enabled an effective process to collect funds available from prisoner accounts for payment toward fines and costs. Approximately \$1 million a year is collected from prisoners statewide for the payment of fines and costs. Further, the SCAO has conducted numerous training seminars and consultations with individual courts to help them implement collections programs in their courts.

The SCAO also created a collections Web site that provides collections information and resources for the courts. (*See Attachment 1-F.*) This Web site includes collections training videos developed by the SCAO to help courts communicate the expectation of payment and improve their performance collecting court-ordered financial obligations. The videos follow courtroom proceedings in eight different district and circuit courts, including family divisions of circuit court, and include guilty pleas, sentencings, show cause hearings, and probation violation hearings. There also is a video of a court collections department at work, and videos featuring judges and a court administrator answering questions about their collections programs. These videos include demonstrations of successful practices as well as practices to avoid.

PROGRAM IMPACT

The leadership and commitment of the committee and subcommittee members have caused the cultural change that was necessary for the improvement of collections enforcement. Courts and judges who told me collections was not their job have implemented effective collections programs. These courts have been pleasantly surprised by the results of their efforts, and are the first ones to share their success stories. This cultural shift would not have been possible without the committee's involvement.

Despite a worsening economy, courts have seen an increase in collections when they implement the collections tools that have proven to be effective. Courts distribute all payments received according to the priority of payment established by statute, which requires that fifty percent of all money collected be applied to victim payments.³ Therefore, any increase in court collections has a positive impact on the collection of victim restitution. The remaining fifty percent is applied in the following order: (1) state minimum cost, (2) other costs, (3) fines, (4) probation or parole

³ Victim payment means restitution to the victim, or the victim's estate, but not to a person who reimbursed the victim for his or her loss, or a crime victim's rights assessment.

supervision fees, and (5) assessments and other payments. There are statutory exceptions to this priority of payment. A person who makes a payment may designate that the payment be applied 100 percent to victim payments. Also, if a payment is received as a result of a wage assignment for restitution, or from the department of corrections or sheriff for restitution, the court must apply the entire amount received to victim payments until the victim payments are paid in full. In addition, if a person has more than one proceeding in a court and if the person making the payment does not indicate the proceeding for which the payment is made, the court must apply the entire payment to a proceeding in which there is unpaid restitution.

Courts have also shared that employee morale increases when employees see the results of their collections efforts. Acknowledging and celebrating the successes provides employees with a sense of ownership, accomplishment, and responsibility.

Because collections enforcement is ultimately about compliance, holding offenders accountable also provides them with a sense of ownership, accomplishment, and responsibility. By facilitating compliance and providing payment alternatives (such as community service) for those that do not have the ability to pay, offenders feel they have accomplished something worthwhile when they satisfy their obligations by either paying or helping the community in which they committed their crime.

NEXT STEPS

The SCAO will distribute a survey to each individual trial court to gather information about the court's collections program. We will analyze this information to identify successful collections programs and best practices, and determine which courts may need technical assistance in implementing an acceptable collections program. The SCAO will annually collect and analyze the required collections reports and information regarding courts' collections programs in order to update collections data and best practices.

LESSONS LEARNED

Because Michigan's trial courts are funded locally, it is important to involve the local funding units and their respective associations early in the process in order to address potential funding issues. In addition, local courts should inform, cooperate, and collaborate with their funding units very early on in the process. The SCAO and associations could have collaborated sooner on statutory changes needed to defray the costs of collections efforts. The committee addressed funding in its final recommendations, and the court approved pursuit of time payment fee legislation; however, it will take time to provide the courts with independent funding for collections efforts.

Statewide Collections Strategy Tentative Implementation Schedule

Phase 1: duration 6 to 12 months

- Update policy
- Refine standard report
- Set system capability requirements
- Define and implement communication strategy
- Develop and implement technical support and training

Phase 2: duration 6 to 12 months

- Voluntary participation
- Refine policy and systems; identify best practices throughout the state
- Communication and education for jurisdictions not in the initial (voluntary) implementation
- Develop plan for statewide implementation

Phase 3: duration 1 to 2 years

- Mandatory statewide implementation
- Advisory Committee to continue to guide/review pilots and implementation

**Primary Goals of Subcommittees
Proposed Tasks and Timeline**

GOAL	PROPOSED TASKS	DEADLINE
Heighten awareness and promote cultural change	Develop and refine communications strategy	Ongoing
	Presentations to all groups relevant to implementation	Ongoing
	Identify obstacles to overcome in order to achieve goal	06/30/06, then ongoing
Revise SCAO collections policy for mandated implementation	Update collections standards	06/30/06
	Address interdepartmental issues: 1. Department of Corrections 2. Local government associations (MAC, MML, MTA) 3. Law enforcement 4. Funding unit 5. Courts	06/30/06, then ongoing
	Recommend court rule and statute amendments and examine collections alternatives and roles of: 1. Courts 2. Local executive branch 3. Department of Treasury 4. Private collection agency	06/30/06, then ongoing
Promote training for judges and court staff	Assess education needs and make recommendations as to how to address those needs	12/31/06, then ongoing
Establish and guide pilot programs	Identify and implement best collections practices (pilots)	12/31/06
	Monitor progress of pilot programs	Ongoing after 12/31/06
	Refine policies and practices based on experiences of pilot programs	Ongoing after 12/31/06
Develop plan for statewide implementation of collections programs	Assess technical support needs and identify the following: 1. Support to be provided by SCAO 2. Support to be provided by mentor courts (pilots)	06/30/07, with full implementation by 06/30/09

Recommendations

Recommendation 1:

Administrative Order – Program Requirements

The Supreme Court should adopt an administrative order directing all circuit courts, circuit court family divisions, district courts, and municipal courts to comply with court collections program requirements established by the SCAO.

Discussion. In order to hold courts accountable for improving collections, courts should be required to comply with court collections program requirements established by the SCAO, including the implementation of a collections program that meets specific minimum standards. See Court Collections Program Requirements and Court Collections Program Models for further details.

Recommendation 2:

Administrative Order – Reporting Requirements

The Supreme Court should adopt an administrative order requiring all circuit courts, circuit court family divisions, district courts, and municipal courts to submit receivables and collections reports to the SCAO annually.

Discussion. The SCAO has established deadlines and standards applicable to the reports required from all circuit courts, circuit court family divisions, district courts, and municipal courts. These reports are necessary to monitor and measure the impact of the collections program. Although all courts are cooperating in this initiative, not all courts are yet submitting these reports to the SCAO for a variety of reasons unique to each court.

Recommendation 3:

Funding for Collections Programs

The Supreme Court should support legislation that allows courts to assess a time payment fee to defray the costs of collecting and managing moneys assessed or received by the courts.

Discussion. If collections programs are required, independent funding sources will be important. Legislation should be enacted that allows courts to assess a time payment fee if the litigant does not pay in full on the day the court imposes financial obligations. The money collected for this fee should be dedicated solely to improve, maintain, and enhance the ability to collect and manage moneys assessed or received by the courts. This fee should be placed high in the priority of payment (after minimum state cost and before other costs).

Recommendation 4:**Proposed Changes to Court Rules and Legislation**

The Supreme Court should work with the appropriate staff, agencies, and/or associations to amend or enact legislation that enhances the courts' ability to enforce and collect court-ordered financial obligations.

Discussion. Lack of enabling legislation is a barrier to efficient and effective collection of court-ordered financial obligations. In addition, there are inconsistencies in certain statutes that should be corrected. The Supreme Court should work with Trial Court Services to prioritize the legislative and court rule changes recommended by the Collections Advisory Committee and work towards enacting the proposed changes.

Recommendation 5:**Responsibilities of the SCAO**

Collections should remain a high priority for the Supreme Court and the SCAO should be charged with the responsibilities of encouraging judicial cooperation, effectuating cultural change, educating the stakeholders, and establishing reporting requirements and other automated standards for collections.

Discussion.**1. Encouraging judicial cooperation**

Judicial cooperation and consistency is essential. This applies equally to staff and officials affiliated with court operations. In that regard, the SCAO should consider these options, among others:

- Present collections program requirements to judges and court administrators at administrative and judicial meetings and conferences.
- Provide actual program results (costs and revenues).
- Convey how a collections program can create positive public relations for the judge and court.
- Provide courts with collections information such as collections rates and collections programs implemented by the courts.
- Commitment and leadership in this area should be one of the factors considered when appointing a chief judge.

2. Effectuating cultural change

It is important to continue to increase awareness and keep collections in the forefront with positive and increased visibility. To accomplish this, the SCAO could:

- Emphasize the benefits to the various stakeholders.
- Focus on the importance of compliance and enforcement in the judicial process rather than meeting financial quotas.
- Demonstrate the value of collections programs, share credit for successes, and provide constant feedback on successful collections efforts at administrative and judicial meetings and conferences.
- Promote statewide consistency among judges.
- Provide simple starting points, resources, tools, strategies, software, etc.
- Facilitate problem solving to address the needs of the courts.
- Have a resource person available to court staff.

3. Educating the stakeholders

It is also important to continue to educate the stakeholders, particularly the judges. When facilitating or developing educational programs, the SCAO should consider the following:

- Promote communication and cooperation, which are critical to success.
- Have other courts, agencies, and the SCAO present ideas and best practices.
- Focus on programs and tools that create the expectation that financial obligations will be met and payers will be held accountable for meeting them.
- Educate and communicate through press releases, public relations, the collections Web site, regional meetings or training sessions, SCAO mail, and local and statewide association meetings.
- Education and communication with judges should include a presence at new judges schools to demonstrate the value of collections.
- Have judges present at regional judges meetings, where regional collections rates and collections programs implemented by the courts can be shared.
- Provide tools to educate and communicate collections strategies with the funding units and the public at large.
- Encourage courts to share knowledge and experiences with other courts and their staffs.

4. Establishing reporting requirements and other automated standards for collections

The SCAO should:

- Continue and expand the data collections process so that courts can review their progress on collections over time.
- Keep abreast of emerging technologies and systems that will enhance the collections process and educate courts on their availability.

Order

Michigan Supreme Court
Lansing, Michigan

February 2, 2010

Marilyn Kelly,
Chief Justice

ADM File No. 2005-13

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Administrative Order No. 2010-1

Adoption of Administrative Order to
Establish and Require Compliance with
Court Collections Program and
Reporting Requirements

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following administrative order is adopted, effective May 1, 2010.

Enforcing court orders, including financial sanctions, is a responsibility of the courts that, if done effectively, enhances the courts' integrity and credibility while providing funds to assure victims are made whole and support law enforcement, libraries, the crime victim's rights fund, and local governments. In order to improve the enforcement and collection of court-ordered financial sanctions, it is ordered that the State Court Administrator establish court collections program requirements and that all circuit courts, circuit court family divisions, district courts, and municipal courts comply with those requirements. The State Court Administrative Office shall enforce the requirements and assist courts in adopting practices in compliance with those requirements.

In order to effectively monitor and measure the effect of collections programs, it is ordered that the State Court Administrator establish reporting requirements regarding outstanding receivables and collections efforts undertaken by courts, including establishment of the reporting format, method, and due dates. It is further ordered that all circuit courts, circuit court family divisions, district courts, and municipal courts comply with those requirements. The State Court Administrative Office shall facilitate compliance with and enforce the requirements.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 2, 2010

Corbin R. Davis

Clerk

Court Collections

Program Requirements

- Each court must implement or have a collections program in place that conforms to a model developed by the SCAO and is designed to improve collections through application of best practices.
- Each court will submit to the SCAO an initial collections program survey with information regarding their court's program. Courts will update information regarding collections programs when requested by the SCAO.
- Courts that do not meet the minimum requirements for an adequate collections program will prepare an action plan to implement program components, with a timetable for intermediate and full implementation, which should not exceed one year. Action plans will be submitted with the collections program survey to the SCAO for approval by the state court administrator. The court will provide a progress report to the SCAO one month after implementation. The Collections Advisory Committee has found that compliance with these requirements should not require additional staff or resources. The SCAO will assist courts in meeting the program requirements in the most effective and efficient manner.
- Information and records collected for purposes of collection activity shall be considered confidential, shall be maintained in a separate file marked confidential, and shall not be accessible to the general public. Judges and collections staff shall have access to all collections information and records of their court. Judges or collections staff shall permit designated representatives of a third-party vendor that provides collections services to the court to have access to the records pertaining to litigants whose debts have been assigned to the third-party collector. Courts shall ensure that vendors are subject to the same confidentiality rules as the courts. Auditors must be given access to records required to perform their audit functions.
- The SCAO shall provide for periodic audits of the courts to verify information reported and confirm that the court is complying with their reported program components. Compliance audit standards include:
 - To be in substantial compliance with program components, the requirement must be met for at least 80 percent of the cases at that stage of collection.
 - To be in partial compliance with program components, the requirement must be met for at least 50 percent of the cases at that stage of collection.
 - To be in compliance with the reported program, a court cannot be in less than partial compliance with any required component, may be in partial compliance with maximum of one required component, and must be in substantial compliance with all other required components. If an audit reveals that a court is not in compliance with a collections program, the court must submit a corrective action plan to implement program components, with a timetable for intermediate and full implementation, which should not

exceed one year. Corrective action plans will be submitted to the SCAO for approval by the state court administrator. A follow-up compliance audit will be performed within a year of implementation.

- The SCAO shall:
 - Make available on its collections Web site collections program requirements and best practices.
 - Assist courts in implementing a program by providing training, consultation, and technical assistance.
 - Provide courts with current collections data, which includes collections rates and collections programs implemented by the courts.
 - Ensure that appropriate training programs are in place to educate all stakeholders.

Program Models

Ideal

- Must consist of all 10 components

Satisfactory

- Must consist of components either 1 through 9 or 1 through 8

Adequate

- Must consist of components 1 through 7

These are the minimum requirements for each model. Court collections programs may have additional components not included in these models.

Regardless of collections rates, a court that has implemented an *ideal*, *satisfactory*, or *adequate* collections program is in compliance with the Court Collections Program Requirements. A court that does not meet the requirements for an *adequate* collections program is not in compliance with the Court Collections Program Requirements and must prepare and submit an action plan to become compliant.

Compliance with the Court Collections Program Requirements means that a court has adopted a program that includes the required components. Compliance does not require that a court implement each detail listed below each component. Rather, the details provide additional information about the component or concrete examples of ways a court may fulfill the listed requirement. Each court, in consultation with the SCAO, should assess the court's needs and abilities, and implement a program that maximizes collections efforts without necessitating additional staff or financial resources.

Program Components and Details

Component 1. Staff or staff time is dedicated exclusively to collections activities.

Details:

- a. Staff devoted to collections activities may include court employees, funding unit employees, or contractual employees.
- b. Staff or staff time is dedicated to performing some or all of the following functions:
 - Respond to all collections-related phone calls and written correspondence.
 - Ensure that financial assessments are properly entered into the automated system.
 - Ensure that payments and adjustments are properly entered into the automated system.
 - Ensure proper removal of discharged debts from the system.
 - Use available resources to locate litigants.
 - Review dockets for all judges, magistrates, and referees to determine if an individual who is delinquent will be present for a court proceeding for any reason.
 - Obtain jail release dates from the sheriff and make payment arrangements with litigants prior to release.
 - Make payment arrangements with litigants as they leave the courtroom.
 - Review and verify all financial statements to determine a litigant's ability to pay.
 - Establish and monitor all installment payment plans.
 - Generate default judgments.
 - Ensure costs to compel appearance are properly assessed pursuant to statute.
 - Generate 14-day notices and noncompliance notices.
 - Notify Secretary of State to suspend drivers' licenses.
 - Ensure 20 percent late penalty is properly assessed pursuant to MCL 600.4803.
 - Prepare orders to remit prisoner funds (SCAO-approved form MC 288) pursuant to MCL 769.11.
 - Prepare wage assignments.
 - Issue delinquency notices.
 - Prepare orders to show cause.
 - Prepare bench warrants.
 - Prepare state income tax garnishments/intercepts.
 - Prepare cases for referral to outside agency for collections.

Component 2. Enforcement of the requirements of MCR 1.110 and communication of the expectation of payment.

Details: All correspondence and contact with the litigant refer to MCR 1.110, which states that payment is due at the time of assessment. In addition, an estimated amount that the litigant will be expected to pay is included in all correspondence. The court:

- Informs litigants from the bench at the initial hearing or pretrial that payment is due upon assessment and provides an estimated amount due.
- Prints the text of MCR 1.110 on all notices to appear.
- Advises litigants at the probation screening of the date payment is due and the amount of the expected payment.
 - The court educates the local legal community as well as the general public that payment is required at the time of assessment.

Component 3. Payment requirement on the day of assessment.**Details:**

- a. Litigants unable to pay in full on the day of sentencing or disposition are expected to make a payment on the day of assessment. In addition, they are required to complete an application/financial statement for either an extension of time to pay or installment payments.
- b. Discussions that relate to requests for additional time to pay, installment payment plans, or wage assignments do not occur in the courtroom. The litigant is directed by the court to discuss payment options with an individual who has been given the responsibility to set up payment plans.

Component 4. Application/financial statement information is verified and evaluated to establish an appropriate payment plan.**Details:**

- a. Litigants are not automatically given time to pay. Before granting additional time to pay or approval for participation in an installment payment plan, the litigant is required to submit proof that he or she needs more time to pay. The litigant is required to complete an application or financial statement that the court analyzes to determine if extra time to pay or an installment payment plan is justified.
- b. Payment plans require the highest payment amounts in the shortest period of time that the litigant can successfully make, considering the amount owed and the litigant's ability to pay.
- c. If the court determines that an installment payment plan is warranted, the litigant is required to sign an installment payment agreement. This document states that the litigant agrees to make payments of the court-ordered assessments, and includes the following information:
 - Total amount owed.
 - Amount of installment payment.
 - Payment intervals (weekly/biweekly/monthly).
 - Specific due dates of each payment.
 - Date the balance should be paid in full.
 - Statement detailing any sanctions that will be imposed if the litigant fails to comply with the agreement.
 - Litigant's signature signifying his or her understanding of the agreement.
- d. For prisoners, the court submits an order to remit prisoner funds (SCAO-approved form MC 288) to the MDOC for the collection of fines, costs, fees, and assessments pursuant to MCL 769.11. Pursuant to MCL 791.220h, the MDOC collects restitution based on the judgment of sentence or other restitution order. If the defendant is sentenced to prison by your court, it is not necessary to attach the judgment of sentence to the order to remit prisoner funds. If the defendant is sentenced to prison by another court and owes your court restitution, then your court attaches the judgment of sentence or other restitution order to the order to remit prisoner funds.

Component 5. Payment alternatives such as community service are available for those who do not have an ability to pay.**Details:**

- a. Payment alternatives such as community service are not considered unless the litigant is in jeopardy of failing to comply with the court order and has demonstrated that he or she has exercised due diligence in attempting to comply.
- b. Payment alternatives may not be used to satisfy certain required assessments such as restitution, crime victim's rights assessment, minimum state cost, and the like.

Component 6. Litigants are closely monitored for compliance, and actions such as delinquency notices, costs to compel appearance, and wage assignments are taken promptly for noncompliance.

Details:

- a. The court has established a consistent time standard for initiating enforcement action when a debt becomes past due. This time standard is not so lengthy as to diminish the effectiveness of enforcement.
- b. The court promptly notifies the litigant of delinquency.
- c. The court promptly enters default judgments as required by statute.
- d. The court promptly issues 14-day notices and notices of noncompliance as required by statute.
- e. The court promptly notifies the Secretary of State to suspend drivers' licenses as required by statute.
- f. The court assesses costs to compel appearance.
- g. The court requires a wage assignment for all litigants who are employed and who are granted an installment payment plan; or when an installment payment plan is granted to a litigant, he or she is required to complete a wage assignment with the understanding that if a payment is missed, the court will immediately send the wage assignment to the employer.

Component 7. Submit required receivables and collections reports to the SCAO annually.

Details:

- a. The SCAO has established deadlines and standards applicable to the reports required from all circuit courts, circuit court family divisions, district courts, and municipal courts.
- b. The court reviews and utilizes these reports to monitor court collections.

Component 8. Promptly and consistently use statutorily permitted graduated sanctions such as 20 percent late penalty, costs to compel appearance, show cause hearings, bench warrants, and/or state income tax garnishment/intercept.

Details:

- a. The 20 percent late penalty is assessed as required by MCL 600.4803. In addition, the court informs the litigant of the penalty.
- b. Costs to compel appearance are assessed as allowed by statute.
- c. If a litigant fails to respond to initial collections efforts, the court sends an order to show cause that requires the litigant to come into court to explain why he or she has not paid the court-ordered assessments. If the litigant fails to appear as ordered, then a warrant for failure to appear is issued for the person's arrest.
- d. The court garnishes or intercepts state income tax refunds.

Component 9. Use of locator services.

Details:

- a. A litigant's personal contact information (home phone number, cell phone number, address, etc.) is verified every time a contact is made with the court.
- b. A litigant's financial and employment information is verified every time a collections and/or probation contact is made with the court.
- c. The court uses a locator service(s) to help maintain accurate contact information. While the SCAO does not recommend, endorse, or certify any specific locator service, there are several

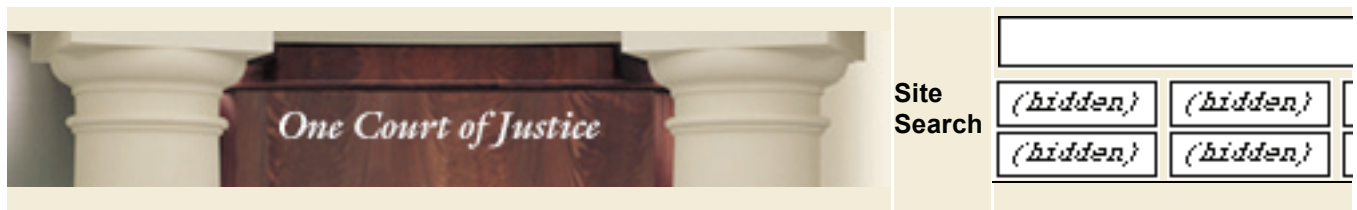
that have been used by courts. Some will be at a cost, and others will not. These services include:

- www accurint.com
- www choicepoint.com
- www switchboard.com
- www yellowpages.com
- www daplus.us
- www zabasearch.com
- www whitepages.com
- Judicial Data Warehouse at www scao.us
- Michigan Department of Corrections Offender Tracking Information System (OTIS) at www michigan.gov/corrections
- For company information:
 - www michigan.gov/corporations
 - www bbb.com

Component 10. Referral to outside agency for collections after all in-house collections efforts are exhausted.

Details: The determination to use a third party for collections should be made on a court-by-court basis. A court must determine at what point in the collections process the court has little hope of collecting the obligation and when the expense of using a third-party collector is justified. For more complex collections cases, the costs of a third-party collector may not be a factor, because after the court's internal collections efforts have failed and the court has deemed the debt to be uncollectible, any money that a third party collects is money that would not have been collected otherwise.

WEB SITE RESOURCES



MICHIGAN COURTS

STATE COURT ADMINISTRATIVE OFFICE Administration of the Courts - State Court Administrative Office | [Site Map](#)

<http://courts.michigan.gov/scao/services/collections/collections.htm>

Trial Court Collections

Collecting court-ordered financial sanctions is a top priority for the Michigan judiciary. Enforcing court orders, including financial sanctions, is a court responsibility that, if done effectively, improves courts' credibility and effectiveness while providing funds to support law enforcement, libraries, the Crime Victims Rights Fund, and local governments.

To improve collections, the State Court Administrative Office (SCAO) convened a Collections Advisory Committee in 2004. The Supreme Court approved the committee's recommended collections strategy on June 5, 2005. The strategy includes training, data collection, and cost-effective practices. When this three-phase strategy is complete -- in approximately June 2009 -- all trial courts will have a collections program.

Child support and civil judgments are not included in this collections initiative. For questions regarding child support, please go to [Friend of the Court Services](#). For questions regarding collecting money on civil judgments, please go to the [Self-Help Center](#).

Court Collections Program Requirements

[Administrative Order 2010-1](#) requires that all circuit courts, circuit court family divisions, district courts, and municipal courts comply with court collections program requirements established by the state court administrator. The State Court Administrative (SCAO) has established [Court Collections Program Requirements](#), [Court Collections Program Models](#), and [Court Collections Program Components and Details](#).

One of the requirements is that each court must implement or have a collections program in place that conforms to a model developed by the SCAO. The Court Collections Program Models provide the minimum requirements or components for each acceptable model. Compliance with the Court Collections Program Requirements means that a court has adopted a program that includes the required components provided in the Court Collections Program Components and Details. Compliance does not require that a court implement each detail listed below each component. Rather, the details provide additional information about the component or concrete examples of ways a court may fulfill the listed requirement.

Collections Training Videos

The SCAO has developed [collections training videos](#) for judges and court staff that demonstrate how and when to communicate the expectation of payment and how to neutralize common objections. A passcode is required to view the videos. Judges and court staff may contact Katha Moye at 517-373-4831 to obtain a passcode.

Collections Resources

[Best Practices and Successes](#)
[COLLECT Applications -- JIS Circuit and District Courts](#)
[Collections Advisory Committee](#)
[Collections Reporting Materials](#)
[Collections Standards and Guidelines](#)
[Communications](#)
[Court Rules, Laws, and Administrative Orders Associated with Collections](#)
[Fines, Costs, and Assessments Information](#)
[Forms](#)
[Policies](#)
[Press Releases and News Articles](#)
[Training Materials](#)

Staff and Contact Information

Trial Court Collections
 State Court Administrative Office -- Trial Court Services
 Michigan Hall of Justice
 PO Box 30048
 Lansing, MI 48909
 (517) 373-4831
 FAX: (517) 373-0974
 E-Mail: collections@courts.mi.gov

Links of Interest

National Center for State Courts

- [Trial Court Performance Standards & Measurement System -- Responsibility for Enforcement](#)
- [CourTools -- Trial Court Performance Measures -- Collection of Monetary Penalties](#)
- [CourTopics -- Collection of Fines and Costs](#)

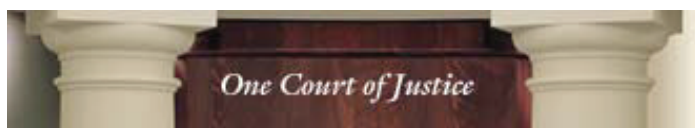
Prisoner, Parolee, and Probationer Information

- [Department of Corrections' Offender Tracking Information System \(OTIS\)](#)

U.S. Courts

- [Bankruptcy Basics](#)

Get the latest version of [Internet Explorer](#). Some of the files on this site are PDF files. To view PDF files, you need [Acrobat Reader](#). Download your free copy [here](#).
 Questions about this site should be sent to webinfo@courts.mi.gov.
 This site was last updated on .


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MICHIGAN COURTS

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[Statistics/Reports](#)

[Offices/Programs](#)

Collections Training Videos

The State Court Administrative Office (SCAO) has developed videos to help courts communicate the expectation of payment and improve their performance collecting court-ordered financial obligations. The videos follow courtroom proceedings in eight different district and circuit courts, including family divisions of circuit court, and include guilty pleas, sentencings, show cause hearings, and probation violation hearings. There is also a video of a court collections department at work and videos featuring judges and a court administrator answering questions about their collections programs. These videos also include demonstrations of successful practices and practices to avoid.

Most collections issues are universal and not specific to a particular court type. Therefore, we encourage judges and court staff to view all video clips regardless of court or proceeding type. In addition, we recommend viewing each clip in the sections titled "Don'ts & Do's" and "From the Court's Perspective."

Please begin by viewing the [Introduction](#). **Note: When the video begins to play, double click on it to increase the viewing size.**

Introduction

Plea

[Circuit Court](#)

[District Court](#)

Sentencing

[Circuit Court](#)

[District Court](#)

Arraignment/Plea/Immediate Sentencing

Show Cause Hearing

[Family Division](#)

[District Court](#)

Probation Violation Hearing

Collections Department

Misdemeanor Plea

Misdemeanor Sentencing

Felony Plea

Felony Sentencing

From the Court's Perspective


Court Administrator, 47th District Court

Judge, 47th District Court

Judge, 52-3 District Court

Judge, 46th Circuit Court

We wish to acknowledge the contributions of the judges, court administrators, and staff of the courts who allowed us to record in their courtrooms and offices. We also wish to acknowledge the efforts and commitment of the Collections Advisory Committee and regional subcommittees, especially the committee chair, Mr. Philip D. Schaefer, retired 9th Circuit Court judge. Finally, we wish to thank SUCH VIDEO for producing the videos.



2 The Vermont Model: A Victim-centered Approach to Restitution

by Judy Rex, Executive Director, Vermont Center for Crime Victim Services

Elaine Boyce, Vermont Restitution Unit Manager, Vermont Center for Crime Victim Services

OVERVIEW

In 2002, Vermont began the process of reforming how restitution is ordered, collected and paid to crime victims. It culminated in the passage of Act 57, which created a Restitution Fund and a centralized Restitution Unit attached to the Vermont Center for Crime Victim Services. A 15 percent surcharge is now added to all criminal and traffic fines and is deposited into a Restitution Fund. When the court orders restitution, a restitution judgment order is sent to the Restitution Unit. The Unit verifies the amount on the order and can advance restitution payments from the Restitution Fund to individual crime victims, up to a \$10,000 cap. For business crime victims and amounts above the \$10,000 cap, the unit collects from the offender and disburses that money to the victims.

The Restitution Unit is structured and operates as a collection agency. Collection analysts manage a caseload of offenders who owe restitution, maintaining regular contact with the offenders and using a number of collection tools to promote compliance. Since July 1, 2004, the unit has advanced a little over \$6 million to 5,600 individual crime victims. The overall collection rate of the Unit is 24 percent. One positive outcome has been the coordination between the Restitution Unit and the Victims Compensation Program, which has tripled the amount of restitution ordered to the Compensation Program.

Moving forward, the Unit will work with the Vermont Legislature to improve the collection tools and the overall collection rate of the Unit. Lessons learned from this project include the realization that decoupling restitution from probation was a mistake. The ability to tell offenders that they won't be released from probation until they pay their restitution is a motivation to pay.

RESTITUTION REFORM IN VERMONT

Vermont's Restitution Fund was established in response to a clear need. In a 2001 Special Report to the Vermont Legislature entitled *Vermont's Restitution System: Failing to Pay the Victim*, State Auditor Elizabeth M. Ready wrote: "An average of only 13 cents of every dollar owed for restitution in Vermont has been collected and repaid to victims during the past ten years. Nearly 5,000 people are currently owed restitution, many of whom will wait years to be paid." Ready concluded that this woeful state of affairs had several causes. Among them: the collection of restitution was not a high priority for the agencies responsible; the collection process was inefficient and ineffective; and there was no coordinated system among the myriad public and private offices involved in the restitution process. Finally, she observed that the Courts have no systems in place to help carry out their statutory obligations to follow through on the imposition of restitution.

At the time of the 2001 report, the Vermont Department of Corrections (DOC) was handling the collection of restitution. Offenders sent their payments to a collection agency contracted by the DOC. After the collection agency's commission was deducted, the net amount was sent to the DOC, which in turn paid this amount to victims. This system was slow, cumbersome, and an accounting nightmare. Victims not only suffered loss at the time of the crime; they then continued to suffer during an unreasonably long collection process. Many victims never received a penny of the ordered restitution.

ESTABLISHMENT OF THE VERMONT RESTITUTION UNIT

The restitution reform process began in 2002, when the Vermont Legislature mandated key stakeholders to come together to create a new restitution model. Stakeholders included the Commissioner of Corrections, the Executive Director of the Department of State's Attorneys, the Court Administrator, the Defender General, and the Executive Director of the Center for Crime Victim Services. This committee examined what restitution reform might look like: whether the existing model could be improved, models for funding, and effective restitution models in other states. This exploratory process took the better part of a year.

As the result of its work, the committee recommended the creation of a Restitution Fund. In 2002, the Legislature responded by passing Act 57, which made significant changes to Vermont's system of ordering, paying and collecting restitution. The Act capitalized a Restitution Fund 13 V.S.A. § 5363 (*see Attachment 2-A*) through a 15 percent surcharge added to criminal and traffic fines. The surcharge generated revenue of \$1.2 million into the Fund during FY04. The creation of this Fund meant that victims would be paid at the time restitution was ordered and would not have to wait for restitution to be collected from the offender—which, in some cases, was not even possible, because the offender was in jail.

The following year, the Restitution Unit became operational, pursuant to 13 V.S.A. §5362. (See *Attachment 2-B*.)

HOW THE UNIT FUNCTIONS

The State of Vermont Restitution Unit, created by the Vermont Center for Crime Victim Services, took over the collection of restitution from the Vermont Department of Corrections in 2003. Individual victims currently may receive up to \$10,000 of their restitution out of the Fund. In order to receive restitution, victims must provide evidence of uninsured material losses suffered as a result of the crime, and the court must order restitution pursuant to 13 V.S.A. § 7043 (see *Attachment 2-C*). When the Court does so, the restitution judgment order is sent to the restitution unit (see *Attachment 2-D*.) This order identifies the offender, the name of the victim, the total amount of restitution owed, and, in some cases, a payment schedule. The court may also determine that the offender has no ability to pay at the current time: for example, if the offender is, or will be, incarcerated. The unit receives a report from the prosecutor-based victim advocate containing the confidential address of the victim. An affidavit is sent to the victim to be signed and returned to the unit, verifying that he/she is owed the restitution and that he/she has not been compensated for this loss by any other source such as insurance. The payment is then sent to the victim.

ENFORCEMENT OF COLLECTION

Under the Vermont model, the restitution judgment order has become a civil judgment, giving the unit the ability to file an action to enforce the order in Superior or Small Claims Court. If the court finds that the offender has failed to comply with the order, it can amend the payment schedule; order the disclosure, attachment, and sale of assets; order the withholding of the offender's wages; or order the suspension of recreational licenses. In addition, the unit has the right to intercept lottery winnings and Vermont state tax returns belonging to any offender who owes restitution. When the collection analyst has exhausted all negotiations and avenues with an offender, the case is given to the unit manager for possible legal enforcement either in Small Claims Court or Superior Court.

STRUCTURE OF THE VERMONT RESTORATION UNIT

The Vermont Restoration Unit was set up to operate as a collection agency. At the present time, it employs a unit manager, a general data specialist, another data specialist who serves as a victim liaison, four collections analysts, and a contracted attorney from a private law firm specializing in collection work.

RESPONSIBILITIES OF THE UNIT STAFF

The Restitution Unit Manager performs all the usual duties of a department manager, including the supervision, training and evaluation of staff. The unit manager is responsible for monitoring operations, functions and procedures in accordance with the mission of the Vermont Center for Crime Victim Services as well as with external state laws and regulations. In addition, the unit manager reviews all new orders for compliance with state statute, investigates and verifies restitution claims, and approves files for advance payment from the Fund. The unit manager handles all enforcement in Small Claims Court in cases under \$5,000 and works with the unit's contractual attorney when bringing cases over \$5,000 to Superior Court.

The data specialist/victim liaison is the primary contact person for all victims who contact the unit. The victim liaison is responsible for answering questions from victims about forms and process and is responsible for ensuring that payments to victims are timely and accurate. This staff person also provides administrative support to the unit manager.

The general data specialist is responsible for tracking, recording and depositing checks or payments collected from offenders. This staff person also provides general office support to the unit manager and staff.

The collections analysts are responsible for collecting all court-ordered restitution from offenders in criminal cases. Each collections analyst has his or her own caseload and is the primary contact with the offenders in that caseload. Currently, each analyst is expected to make approximately 1,000 outbound calls per month to offenders and bring in approximately \$15,000 per month in restitution. Other responsibilities including posting payments, negotiating payment schedules, communicating with probation officers, and maintaining regular contacts with offenders in their respective caseloads.

OPERATIONS AND PROCEDURES

Restitution judgment orders are sent to the unit either by the courts or by the victim advocates in the State's Attorney's offices. According to state statute, an order should come to the unit with the following information: docket number, county, offender's full name, address, and social security number, as well as the employer's name, address, and telephone number. The order should also show the victim's name, amount ordered, and any negotiated payment arrangement.

The unit also receives a restitution report from the prosecutor-based victim advocate that provides all the necessary contact information for the victim and any special notes (*see Attachment 2-E.*) Along with the restitution report, the victim advocate sends the documentation used to support the order.

The collections analysts begin working on new cases as soon as the unit receives the restitution report. A letter is mailed, and then calls are scheduled to offenders. As each new order/report comes in, the assigned collection analyst enters it into the collections database and creates a paper file for the case. The collections analyst also prints the appropriate affidavits, which the victims must sign prior to receiving payment. (Victims are required to sign affidavits affirming that they have not been compensated for losses from other sources, such as insurance.)

By statute, the courts can order restitution to the Victims Compensation Program, and they often include a restitution amount to the compensation program on the order. In order to make sure that restitution to the compensation program has not been overlooked, the unit sends every case involving an individual victim to the program for their review. After this review, the file is then sent back to the unit manager. If the compensation program had advanced money to the victim, then the manager will file a motion with the court to amend the order so that the compensation program can receive its share of restitution.

The unit manager then conducts her own review of the case before sending any correspondence to the victim. The case is reviewed to assure it is in compliance with state statute and the unit's administrative rules. There must be a conviction on at least one count. The unit manager also looks for any indications that the victim might actually be a business, in which case it would not be eligible for advance payment from the fund. If the file passes the review, the affidavit and a verification form asking questions about the type of loss and insurance coverage will be sent to the victim. The file is then passed to the data specialist/victim liaison to hold for the return of the signed affidavit and verification form. If the prosecutor-based victim advocate has not sent appropriate documentation to support the dollar amount on the order, she will then contact the victim and ask for the documentation.

When the victim returns the affidavit, the file is again given to the unit manager for review to determine that the documentation, affidavit, and verification support the amount ordered and that the victim is eligible for advance payment from the fund. If the documentation is not clear or verifiable, further investigation may be required before payment can be made from the fund. When victims state that their loss is less than the amount of the restitution order, the unit manager will file a motion with the court to amend the order. The unit waits a minimum of 40 days from the date the order is signed by the judge, in case the offender files an appeal. Once the 40-day period has elapsed and the file passes review, the unit manager approves the payment from the fund and sends it to the victim liaison to process.

COST OF THE RESTITUTION UNIT AND HOW IT IS FUNDED

Revenue to the restitution fund is generated through a 15 percent surcharge on criminal and traffic fines. The surcharge brings in between \$1.5 to \$2 million each year. The restitution unit pays out on average \$1.7 million in restitution to crime victims each year. The unit collects approximately \$1 million per year from offenders. The restitution fund is also used to pay for the cost of operating the restitution unit, which is currently \$500,000. This amount covers all personnel and operating expenses described above.

The restitution fund only advances restitution payments to individual victims up to a \$10,000 cap. Business victims and individual victims who are owed more than \$10,000 get paid as the unit collects from the offender. For example, in FY 09, there were 1,572 restitution orders issued by the courts, totaling \$2,168,161. Of that total, 809 were restitution orders to individual victims who were paid \$890,223 from the restitution fund. The remaining 763 victims are being paid as the unit collects from the offender. Since its beginning, the unit has advanced \$6,038,267 dollars from the Restitution Fund to 5,648 crime victims.

In terms of collection, the unit's overall collection rate is 24 percent for both business and individual crime victim restitution orders. However, when orders are broken down by age, collection rates increase with older orders. For example, the collection rate for orders issued in FY 09 is 14 percent while the collection rate for orders issued in FY 05 is 35 percent. This reflects the fact that restitution is rarely paid in full at the time it is ordered. The vast majority of offenders pay their restitution over time on a payment plan. These collection rates also reflect the fact that a certain percent of restitution is uncollectible. We have determined that at any given time, approximately 35 percent is uncollectible because offenders are incarcerated, unemployed, or unable to be located. The two most useful collection tools are the tax offset program and the interception of lottery winnings. To date, the unit has collected \$1,146,607 through the Vermont Tax Offset program (which intercepts offenders' state tax refunds) and \$43,000 in offender lottery winnings. (*See Attachments 2-F and 2-G for more information on the five-year restitution fund's financial history.*)

ADDRESSING CHALLENGES

Data entry has proven to be a very labor-intensive part of the operation. The Vermont Restitution Unit processes large numbers of small payments from offenders, which are sometimes divided among several victims. The unit uses COLLECT, a collection software system, that allows for the management of individual accounts. It also uses the State of Vermont's financial system for deposits to and payments from the restitution fund. Because this collection software is designed for traditional types of collection accounts, we have encountered some challenges. For example, managing cases with multiple co-defendants and extracting data-specific reports are both cumbersome when using this system. We are currently analyzing this collection software and will be addressing our concerns and needs with the vendor.

Finding offenders is another ongoing challenge. We currently use LexisNexis, which has a skip-tracing program that helps to find people's addresses and contact information, but we are looking at other options because it is so expensive. We work closely with the Department of Corrections, but very often they cannot locate the offender, especially if he or she is not on probation. One of the changes made by the Vermont legislature during the restitution reform process was that an offender could not be placed on probation for the sole purpose of collecting restitution. In hindsight, decoupling restitution from probation was not a good idea.

There is also the issue of providing regular training to our partner agencies, including state's attorneys, victim advocates, judges, court staff, and the defense bar on changes to the restitution statute, court forms, and unit procedures. There is a lack of consistency from county to county on how orders are issued and how victims are informed about what to expect during the process. Prosecutors and judges often interpret the restitution statute differently, which is challenging for the unit.

IMPACT OF THE REFORMED RESTITUTION MODEL

The vast majority of individual crime victims in Vermont receive, through the Restitution Fund, all of the restitution that is owed to them. While there is a \$10,000 cap on what can be paid out of the fund to individual crime victims, most orders are under \$10,000. For example, in FY 09, of the 1,572 restitution orders processed by the unit, only 3 percent were over \$10,000. These victims are very appreciative of the unit and the fund. Employees of the unit take great pride in their work. The collectors feel very strongly that it is their job to hold offenders accountable for their actions and the harm they have caused victims. Everyone at the unit takes pride in playing their part to make sure crime victims receive their restitution. They also work as a team and provide each other with encouragement and support to do this difficult and important work.

Coordination of restitution with the Victims Compensation Program dramatically increased the amount of restitution that the program receives. Prior to restitution reform, the program received approximately \$30,000 a year in restitution. Now, it receives closer to \$90,000.

We have very little statistical data on offender attitudes and recidivism, but we do know anecdotally that there is a core group of offenders in our caseload who re-offend, cycle in and out of jail, and never pay their restitution. However, there are also conscientious offenders who want to pay their restitution and move on with their lives.

NEXT STEPS

With the creation of the Vermont Restitution Unit came several tools to assist in the collection of restitution from offenders. In practice, we have found that most of these enforcement options are problematic or not useful at all. This will be an area for us to redevelop in next year's legislative session.

13 V.S.A. § 7043 gives us the authority to file an action to enforce in Superior or Small Claims court. Civil enforcement is time-consuming and costly. It involves asking for another judgment in civil court, even though the higher burden of proof has already been met in criminal court, resulting in the restitution judgment order.

We have had some moderate success through civil enforcement such as attaching bank accounts, placing a lien against real estate, and liens against estate and future proceeds of house sale. We are currently testing the reach of this civil enforcement tool by filing the action in Vermont court while the defendant lives in another state. We have also obtained wage garnishment through Superior Court.

In an amendment to § 7043, mandatory wage garnishment was required with every order. However, this has not been workable because of the lack of financial disclosure in District Court and the Judge's inability to make future decisions without sufficient information. We have met with the District Court Oversight committee to discuss this problem, and the administrative judge has agreed to convene a workgroup of judges to look at this issue so we can make a recommendation to the legislature.

Suspension of recreational licenses (hunting and fishing) has not become operational because the Department of Fish and Wildlife does not have the appropriate technology to support this statutory requirement. Most licenses are issued by local sporting and gun stores, and it is largely a paper system. When the stores submit the paperwork to the state, it takes months for the data entry to be completed at the state level. The system needs to be completely automated before suspensions can be done in a timely manner.

As stated before, interception of Vermont lottery winnings and Vermont tax refunds has been very successful.

13 V.S.A. § 5365 gives us the authority to request account information from Vermont financial institutions. We have had initial meetings with the Vermont Department of Banking and Insurance to discuss the process, but have not yet tested it.

We have not yet reported to the credit bureaus because of strict regulations around transmission of this information. Our collection software has some limitations, especially with regard to co-defendants. We will be exploring credit reporting in the future.

LESSONS LEARNED

We have found that the various players in the criminal justice system may take advantage of the availability of a Restitution Fund to pay victims. As part of a plea agreement, the State's Attorney may propose no jail time if the offender agrees to pay a certain amount of restitution. Often the

amount ordered cannot be verified as the actual material loss, and only verifiable amounts can be paid to victims from the Restitution Fund. If the “agreed-upon” amount on the order is not the actual material loss, victims may receive less than they expected from the fund, and they must then wait for the offender to pay the balance of the agreed-upon amount before receiving the additional money. Victims are not told this at the time the restitution is ordered and are therefore frustrated and angry when they receive less than they expected. Another concern about this method is the lack of offender accountability. The message to offenders is that they can agree to an amount and avoid jail time. Although we currently do not request that the plea agreement be sent with every order, it is now clear that we need it. Frequently cases may be settled involving several different dockets, which has made it very time-consuming to determine if there was at least one conviction necessary for a restitution advance payment.

Due to the inherent slowness and current structure of the criminal justice system, the unit does not become involved with the victim until after the restitution has been ordered. A better model would be to have the unit function as the clearinghouse for the entire process. Under this model, the court-based victim advocate would tell the victim at the time of arraignment that all paperwork and requests for restitution will go to the unit. The unit could then verify crime-related losses and amounts, verify collateral resources such as insurance or victims compensation program payments, and then provide an accurate restitution figure to the prosecutor at the time of sentencing.

When the collection of restitution was moved from the Department of Corrections to the unit, the law was changed to sever probation from restitution. Prior to the unit’s creation, an offender could be kept on probation until restitution was paid in full. Obviously, this could result in burdensome caseloads for probation officers when an offender had met all other conditions of probation but had not—and in some cases could not—pay restitution. Since the creation of the unit, the only condition of probation that is connected to restitution is that an offender must “cooperate with the Restitution Unit.” Once offenders are released from probation, they are free to leave the state. And once offenders leave the state, the chances of the unit collecting restitution decrease dramatically.

Another issue that surfaced in the first year of the unit’s operations was that many of the business victims were large corporations, such as national store chains and large banking institutions. The original legislative intent was to reimburse individual Vermonters from the fund and not large corporations, which some argued were self-insured and therefore not entitled to restitution. As a result, the legislature amended the statute so that only individuals could be paid from the fund and businesses must wait until the offender pays what was ordered to the unit.

This change in statute after the first year of operation to exclude business victims from receiving advance payments from the fund created confusion and dramatically increased the workload for unit staff. In addition, small “mom and pop” businesses can no longer receive restitution up front, which can create a very real financial hardship for a small business. The legislature and

the unit struggled to draft language that would still allow small businesses to be paid from the fund while not allowing large banks and other corporate entities (who can easily afford to wait for the offender to pay with little or no consequence to their survival) to be paid from the fund. However, there appears to be no way to define a “small business” without opening ourselves up to a discriminatory practice.

We also discovered during the first year of the unit’s operation that victims sometimes receive insurance payments after restitution has been ordered by the court, and although obtaining a signed affidavit helps to avoid overpayments, it is almost impossible to prevent this from happening in all cases.

One of the most important lessons learned is that our model of restitution is a work in progress. It was not possible to anticipate all of the challenges that come with creating a restitution fund since it had not been done before. We hope that the Vermont experience will pave the way for other states and jurisdictions to pursue this model while avoiding some of our pitfalls.

References:

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Title 13: Crimes and Criminal Procedure

Chapter 167: CRIME VICTIMS

13 V.S.A. § 5363. Crime victims' restitution special fund

§ 5363. Crime victims' restitution special fund

(a) There is hereby established in the state treasury a fund to be known as the crime victims' restitution special fund, to be administered by the restitution unit established by section 5362 of this title, and from which payments may be made to provide restitution to crime victims.

(b)(1) There shall be deposited into the fund:

(A) All monies collected by the restitution unit pursuant to section 7043 of this title.

(B) All fees imposed by the clerk of court and designated for deposit into the fund pursuant to section 7282 of this title.

(C) All monies donated to the restitution unit or the crime victims' restitution special fund.

(D) Such sums as may be appropriated to the fund by the general assembly.

(2) If a person donates funds, or if a restitution recipient has declined to accept payment of restitution, the donated or declined amounts shall be retained in the crime victims' restitution special fund.

(3) If a victim who is entitled to receive an advance payment of restitution from the crime victims' restitution special fund cannot be located, the restitution unit shall report the amount to the treasurer within the time limits provided by subsection 1247(d) of Title 27, and the treasurer shall report it as unclaimed property. Notwithstanding any other provision of law, in no event shall the advance payments from the restitution special fund to which the victim is entitled be subject to ultimate deposit in the general or education fund.

(c) The restitution unit shall make disbursements from the restitution special fund only to pay restitution obligations arising under section 7043 of this title, to support the restitution unit, or pursuant to subsection (d) of this section.

(d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; and

(C) has not been reimbursed under subdivision (2) of this subsection.

(2) The restitution unit may make advances of up to \$10,000.00 under this subsection to the following persons or entities:

(A) A victim service agency approved by the restitution unit if the agency has advanced monies which would have been payable to a victim under subdivision (1) of this subsection.

(B) A victim who is a natural person or the natural person's legal representative in a case where the defendant, before or after an adjudication of guilt, enters into a drug court contract requiring payment of restitution.

(3) An advance under this subsection shall not be made to the government or to any governmental subdivision or agency.

(e) If the restitution unit collects in excess of \$10,000.00 from an offender, the amount in excess of \$10,000.00 shall first be paid to that offender's victims until the victims have received the full amount of restitution ordered. Any excess remaining after the victims have received the full amount of restitution ordered shall be divided between the victims' compensation fund and the crime victims' special restitution fund in proportion to the amount which each paid.

(f)(1) In no event shall the amount of restitution advanced to the victims of a single crime spree during a single fiscal year under this title exceed five percent of the balance of the fund at the end of the prior fiscal year. If this section applies, an advance payment to a victim shall be reduced by the same percentage that the restitution unit reduces the total amount advanced to all victims in connection with the crime spree. Unless otherwise ordered by the court, the restitution unit shall determine the offenders and crimes encompassed within a crime spree.

(2) A victim whose advance payment is reduced pursuant to this subsection shall be entitled to receive additional advance payments during subsequent fiscal years until the restitution order has been satisfied or the \$10,000.00 cap has been reached, whichever occurs first.

(g) All balances in the fund at the end of any fiscal year shall be carried forward and remain a part of the fund. Disbursements from the fund shall be made by the state treasurer on warrants drawn by the commissioner of finance and management.

(h) Notwithstanding anything in this section or any other provision of law to the contrary, revenue from the surcharge fees deposited into the crime victims' restitution special fund shall be used exclusively to support the restitution unit and restitution for crime victims, and for no other purpose. (Added 2003, No. 57, § 4, eff. June 4, 2003; amended 2003, No. 92 (Adj. Sess.), § 2; 2005, No. 51, § 3; 2007, No. 40, § 4, eff. July 1, 2012.)

Title 13: Crimes and Criminal Procedure

Chapter 167: CRIME VICTIMS

13 V.S.A. § 5362. Restitution unit

§ 5362. Restitution unit

- (a) A restitution unit is created within the center for crime victim services for purposes of assuring that crime victims receive restitution when it is ordered by the court.
- (b) The restitution unit shall administer the restitution fund established under section 5363 of this title.
- (c) The restitution unit shall have the authority to:
- (1) Collect restitution from the offender when it is ordered by the court under section 7043 of this title.
 - (2) Bring an action to enforce a restitution obligation as a civil judgment under section 7043 of this title. The restitution unit shall enforce restitution orders issued prior to July 1, 2004 pursuant to the law in effect on the date the order is issued.
 - (3)(A) Share and access information, consistent with Vermont and federal law, from the court, the department of corrections, the department of motor vehicles, the department of taxes, and the department of labor in order to carry out its collection and enforcement functions.
 - (B) Provide information to the department of corrections concerning supervised offenders, including an offender's restitution payment history and balance, address and contact information, employment information, and information concerning the restitution unit's collection efforts.
 - (C) The restitution unit is specifically authorized to collect, record, use, and disseminate Social Security numbers as needed for the purpose of collecting restitution and enforcing restitution judgment orders issued by the court.
 - (4) Investigate and verify the amount of insurance or other payments paid to or for the benefit of a victim, and reduce the amount collected or to be collected from the offender or disbursed to the victim from the crime victims' restitution special fund accordingly. The restitution unit shall submit to the court a proposed revised restitution order stipulated to by the victim and the unit, with copies provided to the victim and the offender. No hearing shall be required, and the court shall amend the judgment order to reflect the amount stipulated to by the victim and the restitution unit.

(5) Adopt such administrative rules as are reasonably necessary to carry out the purposes set forth in this section.

(6) Report offenders' payment histories to credit reporting agencies, provided that the unit shall not report information regarding offenders who are incarcerated. The unit shall not make a report under this subdivision until after it has notified the offender of the proposed report by first class mail or other like means to give actual notice, and provided the offender a period not to exceed 20 days to contest the accuracy of the information with the unit. The unit shall immediately notify each credit bureau organization to which information has been furnished of any increases or decreases in the amount of restitution owed by the offender. (Added 2003, No. 57, § 3, eff. June 4, 2003; amended 2003, No. 92 (Adj. Sess.), § 1; 2005, No. 51, § 2; amended 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; No. 162 (Adj. Sess.), § 4, eff. Jan. 1, 2007; 2007, No. 40, § 3.)

Title 13: Crimes and Criminal Procedure

Chapter 221: JUDGMENT, SENTENCE AND EXECUTION

13 V.S.A. § 7043. Restitution

§ 7043. Restitution

(a)(1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title, has suffered a material loss.

(2) For purposes of this section, "material loss" means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.

(b)(1) When ordered, restitution may include:

(A) return of property wrongfully taken from the victim;

(B) cash, credit card, or installment payments paid to the restitution unit; or

(C) payments in kind, if acceptable to the victim.

(2) In the event of a victim's crime-related death, the court may, at the request of the restitution unit, direct the unit to pay up to \$10,000.00 from the restitution fund to the victim's estate to cover future uninsured material losses caused by the death.

(c) In awarding restitution, the court shall make findings with respect to:

(1) The total amount of the material loss incurred by the victim. If sufficient documentation of the material loss is not available at the time of sentencing, the court shall set a hearing on the issue, and notice thereof shall be provided to the offender.

(2) The offender's current ability to pay restitution, based on all financial information available to the court, including information provided by the offender.

(d)(1) An order of restitution shall establish the amount of the material loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection (k) of this section. Notwithstanding chapter 113 of Title 12 or any other provision of law, interest shall not accrue on a restitution judgment.

(2)(A) Every order of restitution shall:

- (i) include the offender's name, address, and Social Security number;
- (ii) include the name, address, and telephone number of the offender's employer; and
- (iii) require the offender, until his or her restitution obligation is satisfied, to notify the restitution unit within 30 days if the offender's address or employment changes, including providing the name, address, and telephone number of each new employer.

(B) [Repealed.]

(e)(1) If not paid at the time of sentencing, restitution may be ordered as a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole if the convicted person is sentenced to preapproved furlough, probation, or supervised community sentence, or is sentenced to imprisonment and later placed on parole. A person shall not be placed on probation solely for purposes of paying restitution. An offender may not be charged with a violation of probation, furlough, or parole for nonpayment of a restitution obligation incurred after July 1, 2004.

(2) The department of corrections shall work collaboratively with the restitution unit to assist with the collection of restitution. The department shall provide the restitution unit with information about the location and employment status of the offender.

(f)(1) When restitution is requested but not ordered, the court shall set forth on the record its reasons for not ordering restitution.

(2)(A) If restitution was not requested at the time of sentencing, or if expenses arose after the entry of a restitution order, the state may file a motion with the sentencing court to reopen the restitution case in order to consider a request for restitution payable from the restitution fund. Restitution ordered under this subdivision shall not be payable by the offender.

(B) A motion under this subdivision shall be filed within one year after the imposition of sentence or the entry of the restitution order.

(g) Restitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.

(h)(1) The court shall transmit a copy of a restitution order to the restitution unit, which shall make payment to the victim in accordance with section 5363 of this title.

(2) To the extent that the victims compensation board has made payment to or on behalf of the victim in accordance with chapter 167 of this title, restitution, if imposed, shall be paid to the restitution unit, which shall make payment to the victims compensation fund.

(i) The restitution unit may bring an action to enforce a restitution order against an offender in the superior or small claims court of the county where the offender resides or in the county where the order was issued. In an action under this subsection, a restitution order issued by the

district court shall be enforceable in superior or small claims court in the same manner as a civil judgment. Superior and small claims court filing fees shall be waived for an action under this subsection, and for an action to renew a restitution judgment.

(j) All restitution payments shall be made to the restitution unit, with the exception of restitution relating to a conviction for welfare fraud ordered under this section and recouped by the economic services division. The economic services division shall provide the restitution unit with a monthly report of all restitution collected through recoupment. This subsection shall have no effect upon the collection or recoupment of restitution ordered under Title 33.

(k) The sentencing court may modify the payment schedule of a restitution order if, upon motion by the restitution unit or the offender, the court finds that modification is warranted by a substantial change in circumstances.

(l) If the offender fails to pay restitution as ordered by the court, the restitution unit may file an action to enforce the restitution order in superior or small claims court. After an enforcement action is filed, any further proceedings related to the action shall be heard in the court where it was filed. The court shall set the matter for hearing and shall provide notice to the restitution unit, the victim, and the offender. If the court determines the offender has failed to comply with the restitution order, the court may take any action the court deems necessary to ensure the offender will make the required restitution payment, including:

(1) amending the payment schedule of the restitution order;

(2) ordering, in compliance with the procedures required in Rule 4.1 of the Vermont Rules of Civil Procedure, the disclosure, attachment, and sale of assets and accounts owned by the offender;

(3) ordering the offender's wages withheld pursuant to subsection (n) of this section; or

(4) ordering the suspension of any recreational licenses owned by the offender.

(m)(1) Any monies owed by the state to an offender who is under a restitution order, including lottery winnings and tax refunds, shall be used to discharge the restitution order to the full extent of the unpaid total financial losses, regardless of the payment schedule established by the courts.

(2) When an offender is entitled to a tax refund, any restitution owed by the offender shall be withheld from the refund pursuant to subchapter 12 of chapter 151 of Title 32.

(3)(A) For all Vermont lottery games, the lottery commission shall, before issuing prize money of \$500.00 or more to a winner, determine whether the winner has an outstanding restitution order. If the winner owes restitution, the lottery commission shall withhold the entire amount of restitution owed and pay it to the restitution unit. The remainder of the winnings, if any, shall be sent to the winner. The winner shall be notified by the restitution unit of the offset prior to payment to the victim and given a period not to exceed 20 days to contest the accuracy of the information.

(B) The restitution unit shall inform the lottery commission of persons with outstanding restitution orders upon request. Each person subject to such an order shall be identified by name, address, and Social Security number.

(C) If a lottery winner has an outstanding restitution order and an outstanding child support order, the lottery winnings shall be offset first pursuant to section 792 of Title 15 by the amount of child support owed, and second pursuant to this subsection by the amount of restitution owed. The remainder of the winnings, if any, shall be sent to the winner.

(4) Unless otherwise provided, monies paid under this subsection shall be paid directly to the restitution unit.

(n)(1) All restitution orders made or modified on or after January 1, 2008 shall include an order for wage withholding unless the court in its discretion finds good cause not to order wage withholding or the parties have entered into an alternative arrangement by written agreement which is affirmatively stated in the order. The wage withholding order shall direct current and subsequent employers of the offender to pay a portion of the offender's wages directly to the restitution unit until the offender's restitution obligation is satisfied. The wages of the offender shall be exempt as follows:

(A) to the extent provided under Section 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)); or

(B) if the court finds the weekly expenses reasonably incurred by the debtor for his or her maintenance and that of dependents exceed the amounts exempted by subdivision (1)(A) of this subsection, such greater amount of earnings as the court shall order.

(2) The court shall transmit all wage withholding orders issued under this section to the restitution unit, which shall forward the orders to the offender's employers. Upon receipt of a wage withholding order from the restitution unit, an employer shall:

(A) withhold from the wages paid to the offender the amount specified in the order for each wage period;

(B) forward the withheld wages to the restitution unit within seven working days after wages are withheld, specifying the date the wages were withheld;

(C) retain a record of all withheld wages;

(D) cease withholding wages upon notice from the restitution unit; and

(E) notify the restitution unit within 10 days of the date the offender's employment is terminated.

(3) In addition to the amounts withheld pursuant to this section, the employer may retain not more than \$5.00 per month from the offender's wages as compensation for administrative costs incurred.

(4) Any employer who fails to withhold wages pursuant to a wage withholding order within 10 working days of receiving actual notice or upon the next payment of wages to the employee, whichever is later, shall be liable to the restitution unit in the amount of the wages required to be withheld.

(5) An employer who makes an error in the amount of wages withheld shall not be held liable if the error was made in good faith.

(6) For purposes of this subsection, "wages" means any compensation paid or payable for personal services, whether designated as wages, salary, commission, bonuses, or otherwise, and shall include periodic payments under pension or retirement programs and workers' compensation or insurance policies of any type.

(o) An obligation to pay restitution is part of a criminal sentence and is:

(1) nondischargeable in the United States Bankruptcy Court to the maximum extent provided under 11 U.S.C. § § 523 and 1328; and

(2) not subject to any statute of limitations.

(p) A transfer of property made with the intent to avoid a restitution obligation shall be deemed a fraudulent conveyance for purposes of chapter 57 of Title 9, and the restitution unit shall be entitled to the remedies of creditors provided under section 2291 of Title 9. (Added 1983, No. 229 (Adj. Sess.), § 3; amended 1989, No. 291 (Adj. Sess.), § 3; 1993, No. 169 (Adj. Sess.), § 2, eff. June 3, 1993; 1997, No. 148 (Adj. Sess.), § 63, eff. April 29, 1998; 2001, No. 134 (Adj. Sess.), § 3; 2003, No. 57, § 6, eff. July 1, 2004; 2003, No. 92 (Adj. Sess.), § 5; 2005, No. 51, § 5; 2005, No. 162 (Adj. Sess.), § 3, eff. Jan. 1, 2007; 2007, No. 40, § 6.)

Form 245

DISTRICT COURT OF VERMONT
SELECT COUNTY CIRCUITSTATE OF VERMONT v. _____ DOCKET NO. _____
(defendant)☐ Proposed ☐ Stipulated **RESTITUTION JUDGMENT ORDER (13 V.S.A. § 7043)**Defendant: Name: _____
Address: _____

Social Security No.: _____Employer: Name: _____
Address: _____

Telephone No.: _____

Victim's Name: _____

The victim incurred an uninsured material loss in the total amount of \$ _____. Judgment is against Defendant individually for the whole amount, and also jointly with the following people:

Name: _____	Docket No.: _____
Name: _____	Docket No.: _____
Name: _____	Docket No.: _____
Name: _____	Docket No.: _____

The court finds Defendant has the current ability or reasonably foreseeable ability to make the payment(s) by cash, certified bank check, traveler's check or money order made payable to the State of Vermont Restitution Unit as ordered below:

- ☐ Defendant shall immediately pay \$ _____ to the court clerk's office.
- ☐ Defendant shall pay the amount of \$ _____ per ☐ week ☐ 2 weeks ☐ 1/2 month ☐ month, beginning _____, to the State of Vermont Restitution Unit, POB 10, Waterbury, VT 05676-0010. (VT: 1-800-584-3485, Outside VT: 802-241-4688)
- ☐ Defendant's earnings shall be subject to wage withholding (see attached order).
- ☐ Defendant's earnings shall not be subject to wage withholding because:
 - ☐ The court finds good cause not to order wage withholding.
 - ☐ The parties have entered into an alternative arrangement by written agreement.
- ☐ Defendant shall return the following property to the victim within _____ days: _____
- ☐ Defendant shall make the following payments in kind to the victim within _____ days: _____
- ☐ Defendant has no ability to pay at this time.

Defendant remains liable for this judgment until paid in full, regardless of whether full payment is ordered above based on defendant's current or reasonably foreseeable ability to pay. Until the total amount is paid in full, Defendant shall notify in writing the VERMONT RESTITUTION UNIT within 30 days if the Defendant's address or employment changes, including providing the name, address, and telephone number of each new employer.

Date_____
Judge

Notice: If Defendant fails to pay restitution as ordered, the Vermont Restitution Unit may file a motion to enforce, which may result in wage withholding, suspension of recreational licenses, or other enforcement remedies against defendant as provided by law.

Acceptance of Service: I accept service of this Restitution Judgment Order and waive all other forms of service._____
Date_____
Defendant

TO: VERMONT RESTITUTION UNIT

RESTITUTION REPORT

STATE vs. _____

DOCKET #: _____

VICTIM:

(Name)

(Mailing Address)

(City, State, Zip)

(Phone number)

Federal Tax Identification Number: _____ *

*Required for victims who are business entities

Amount of restitution to be paid to Victim: \$ _____

Amount of restitution to be paid to the Victims Compensation Program: \$ _____

TOTAL RESTITUTION AMOUNT: \$ _____

CO-DEFENDANTS: _____

ADDITIONAL INFORMATION: _____

Report prepared by: _____ at _____ County State's Attorney's Office

Date: _____

State of Vermont Restitution Fund History

	FY04	FY05	FY06	FY07	FY08	FY09
Beginning Fund balances by fiscal year						
Revenue	0	1,469,497	2,508,701	3,463,420	4,726,874	4,769,854
Fines and fees	1,469,497	2,005,955	2,172,396	2,111,552	1,987,420	1,779,545
Restitution collected		1,036,445	1,159,898	1,106,578	960,517	937,649
Other Units		115,126	77,462	97,176	47,441	16,588
Total Revenue	1,469,497	3,157,526	3,409,756	3,315,306	2,995,378	2,733,781
Expenses						
Operating and Personal Services of the Unit		308,200	396,872	470,218	459,329	502,780
Restitution payments		1,810,121	2,050,223	1,581,634	1,768,581	1,295,725
States Attorneys Victim Advocates					604,488	723,270
Other grants						1,639,229
Total Expenses	0	2,118,321	2,447,095	2,051,852	2,832,398	4,161,004
Other Units of government			7,942		120,000	2,162,973
End of year balance	1,469,497	2,508,702	3,463,420	4,726,874	4,769,854	1,179,658

Vermont Restitution Unit, Restitution Ordered and Collected

	# of Orders Individual victims	Amount Ordered	Collected as of 2/26/10	% Collected
FY05	1,670	\$1,753,183.25	\$833,410.31	47.54%
FY06	898	\$924,795.93	\$396,550.46	42.88%
FY07	907	\$972,872.05	\$277,331.84	28.51%
FY08	1,062	\$1,118,786.23	\$231,999.37	20.74%
FY09	809	\$890,223.38	\$156,812.57	17.61%
FY10 (½ yr)	302	\$378,405.96	\$24,041.66	6.35%
Totals	5,648	\$6,038,266.80	\$1,920,146.21	31.80%

	# of Orders Business/over \$10,000	Amount Ordered	Collected as of 2/26/10	% Collected
FY05	59	\$811,904.27	\$178,743.31	22.02%
FY06	991	\$1,655,918.72	\$345,689.00	20.88%
FY07	888	\$1,314,036.03	\$325,608.84	24.78%
FY08	766	\$1,128,320.56	\$193,098.52	17.11%
FY09	763	\$1,271,668.91	\$120,483.19	9.47%
FY10 (½ yr)	322	\$865,243.97	\$92,735.49	10.72%
Totals	3,789	\$7,047,092.46	\$1,256,358.35	17.83%
Overall totals	9,437	\$13,085,359.26	\$3,176,504.56	24.28%



3 Restitution Enforcement Court Superior Court Maricopa County: A Practical Approach to Assure Restitution to Victims

by The Honorable Roland J. Steinle, III, Superior Court Judge, Maricopa County, Phoenix, Arizona

OVERVIEW

Arizona is a state which has a very strong tradition of victim's rights. Victims in Arizona under the Arizona Constitution, Article II, Section 2.1 A(8) are "entitled to receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury."

In Maricopa County (Phoenix, Arizona), the Superior Court created a dedicated calendar to enforce delinquent restitution payment through civil contempt. The criminal defendant is brought to court through an order to show cause petition. The judge holds a hearing to determine whether, in fact, the court records showing the delinquency are accurate, and whether the defendant willfully refused to pay the amounts ordered. If the court finds the defendant willfully refused to pay, the court finds the defendant in contempt and orders the defendant incarcerated and sets a purge. To date, the Restitution Enforcement Court has collected approximately \$200,000 in delinquent payments.

INTRODUCTION

In May of 2008, Dan Levey, Victim's Advocate for Governor Janet Napolitano, came to a meeting of the Probation and Sentencing Committee of the Superior Court and requested that the Superior Court and Adult Probation Department intercept all federal stimulus checks received by probationers. Considering the timing and logistics involved, any attempt to intercept those checks would have been futile. The checks would literally have been cashed and spent by the time the court could implement court-ordered modifications to the payment plan established at sentencing.

A judge (this author) on the Superior Court committee suggested that a better approach was to use current statutes to enforce the obligations: ARS 13-806, which allows a prosecutor or victim to file a lien to collect restitution; ARS 13-807, which estops a defendant from denying, in a civil case, the allegations of a criminal offense of which he or she was previously convicted; ARS 13-812, which permits a court to issue a writ of criminal garnishment for certain costs including restitution; and, most importantly, ARS 13-810, which permits a court to hold civil contempt proceedings where a defendant has defaulted in the payment of restitution. (*See Attachment 3-A for Constitutional provisions and Arizona statutes related to victim's remedies.*)

The civil contempt approach had proved very effective to collect delinquent restitution payments in several cases in this division. A committee member asked the judge whether he was volunteering to try this civil contempt approach, and a decision was made to start a pilot program. The Superior Court judge agreed to hold a dedicated Restitution Enforcement Calendar one morning a month.

PROJECT DESCRIPTION

When a defendant defaults in the payment of restitution, Arizona law gives courts the authority to require the defendant to show cause why he or she should not be held in contempt. ARS 13-810 provides:

- 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.*** [Emphasis added.] (*See Attachment 3-B for entire statute.*)

Screening Cases

The cases are prescreened for show cause hearings by the Adult Probation/Financial Compliance Unit (FINCOM). The FINCOM supervisor then reviews all referred cases using the following criteria in order to determine which cases are appropriate.

1. Payment history of the probationer. In reviewing cases referred for a show cause hearing, the FINCOM supervisor looks for cases where the probationer is at least six months delinquent in restitution payments. In order for the court to find someone in contempt for nonpayment, the court must find the probationer has established a pattern of willful non-compliance.
2. Defendant's attitude, cooperation and the nature of the offense for which they are on probation. The FINCOM supervisor considers attitude and cooperation by asking such questions as:
 - Is the probationer willing to make lifestyle changes?
 - Is the probationer cooperating in providing the needed financial documentation?
 - Does the probationer understand and realize the need for compliance with the Court's financial orders?
3. The victim. The FINCOM supervisor also considers the victim in the case, giving top priority to individual victims who have "opted in" to exercise their rights in the case.¹

Once a case is found to be appropriate for restitution court, it is placed on the pending list for assignment to one of the two court divisions that conduct the hearings. Cases on the pending list are then prioritized using a scoring sheet developed for this purpose. The scoring sheet assigns a numerical value for each of the following factors:

- Type and number of victims
- Number of months delinquent
- Amount of restitution owed
- Amount delinquent
- Cooperation with FINCOM
- Class of felony

(See Attachment 3-C for details on restitution court criteria.)

After screening by FINCOM, the court receives a prioritized list of criminal defendants delinquent in court ordered restitution. The court directs the assigned courtroom clerk to prepare an Order to Show Cause minute entry.² These are transmitted to the assigned probation officers (PO) through FINCOM. The assigned PO gives the Order to Show Cause to the defendant and directs the defendant in writing to appear in court. (See Attachment 3-D for a copy of such an order.)

Prior to the hearing, the probation department prepares a case summary showing the amount of delinquency, the payment history, and related issues. (See Attachment 3-E for sample case summaries.)

¹ Under Arizona law, victims are given a form by law enforcement that informs them of their legal rights and that allows the victim to request or waive those rights. Ariz. Rev. Stat. § 13-4405 (2010).

² A "minute entry" is a form generated by the clerk of the court. It is an official record of the clerk's office. It can be an "order" or in this case an Order to Show Cause or it can be simply the minutes of a court hearing. Some courts use "judgment rolls" and do separate entries on a single document. We use separate forms for all hearings, rulings and orders entered by the Court. By having the court clerk generate a "minute entry" we save the victims the trouble of having to prepare a form for an Order to Show Cause.

SHOW CAUSE HEARING

It is important to stress that this hearing is a civil contempt hearing and not a probation revocation hearing. In light of the screening process, how the probationer is doing generally on probation is not the issue. The only issues before the court are those outlined in the statute: whether the defendant has willfully failed to pay, or intentionally refused to make a good faith effort to pay. (See *Ariz. Rev. Stat. § 13-810*, included in Attachment A)

Therefore, at the hearing, the court must first determine whether the records of the Clerk of Court/Adult Probation Department are correct. If there are any issues regarding payments made and not credited properly, the matter is continued to the next restitution hearing date and the client is directed to meet with the financial compliance team to resolve the issues. Errors in the records to date have not been a significant issue. Most issues are resolved quickly and generally relate to payments the client made at the Clerk of the Court's office on the way up to court.

For example, in one particular case, the defendant had receipts for claimed payments totaling approximately \$9,000. When the receipts were reviewed and the defendant confronted, she admitted the receipts were forgeries.

WILLINGNESS/ABILITY TO PAY

The court then considers the defendant's willingness to pay and/or ability to pay or whether the defendant has made a good faith effort to obtain money. Here, the court conducts an examination. Defendants are required to bring in records including W-2 forms, tax returns, and/or wage information. The questions center around employment and which bills and/or personal obligations the defendant pays.

The defendant is generally asked:

1. Do you rent or own a residence, and are payments current?
2. Do you own an automobile? Is there a lien? Are payments current?
3. Do you have cable or satellite? Does your service include the NFL, MLB, or Hockey Package?
4. What are your utilities? Are they current?
5. How many cell phones do you have? (Virtually everyone has at least one.)

If the defendant is paying all of the above bills, the ability to pay restitution is apparent and established. It is then the burden of the defendant to show why restitution has not been paid. Upon questioning, the court usually learns restitution is not a priority. (*A sample transcript of a hearing is contained in Attachment 3-F.*) If the issue is unemployment or underemployment, the court orders the probation department to provide the documentation of job search efforts.

If the court finds the defendant willfully refused to pay or failed to make a good faith effort to obtain money to pay restitution as ordered, the court orders the defendant to be incarcerated pursuant to ARS 13-810 D (1), and sets a purge amount, which is the amount of the delinquencies

that must be paid before the defendant is released from jail. Depending on the defendant's ability to pay, the purge amount may be the entire amount of the delinquencies or a portion. Remember, the key to a civil contempt finding is that "the defendant has the keys to the jail cell"—he or she can get out of jail after paying the purge. The case example in Attachment 3-F showed a delinquency of approximately \$10,900; the purge was paid within 24 hours of incarceration.

The best practice in setting the purge is to set it at the full amount of the delinquency and see if the defendant can come up with the funds. And, if setting a lower amount, do not simply set a small purge based on the defendant's representation that he can only pay X. A judge should push the defendant to pay the full amount or at least an amount higher than the defendant wants to pay. After any tour in family court, experience with delinquent child support payments tells a judge to attempt to collect all of the delinquencies and set a review hearing in about seven days.

If the court has a question about the defendant's ability to pay, the court continues the hearing and directs the adult probation department to complete a financial assessment looking at the defendant's standard of living and ability to reduce it as well as any job search issues.

In one illustrative case, the defendant moved into a smaller apartment, sold her car and took the bus to work, cancelled cable TV, and was actively looking for a second job. The victim was so impressed that the defendant reduced her lifestyle that the victim agreed to reduce the monthly payment from \$1,000 per month to \$500 per month.

Many probationers express a desire to enter into an agreement to bring themselves up to date—especially after watching a contempt hearing for another defendant. If the court finds that the defendant is willing to enter into an agreement to pay current "orders"—the amount of the monthly payment originally set by the judge at sentencing—plus additional amounts towards the delinquencies, the court will accept the agreement on the record, and enter it into the clerk's minutes. The court will continue the matter for a review hearing in one to four months to assure compliance with the agreement. If there is compliance with the agreement, the defendant graduates from restitution court and is returned to his probation officer. The court generally congratulates the defendant but gently reminds them if they get behind in payments by three months they will be right back in restitution court. The vast majority of matters are resolved through voluntary agreements by defendants to bring themselves into compliance. In the late winter and spring, these voluntary agreements by defendants often include voluntary tax refund intercepts.

IMPORTANCE OF CASE ORDER

When working through the day's calendar of cases, the court generally begins by calling those matters where the defendants have paid all delinquencies, and those matters where the defendant is in full compliance with a voluntary agreement. After congratulating them on compliance, the defendants are discharged from court monitoring. This shows the entire group the reward for compliance.

The court next calls a case for hearing where it is pretty clear the defendant has willfully refused to pay or failed to make a good faith effort to obtain the money to pay. If the defendant is in contempt, he is taken into custody immediately and a purge set. This demonstrates the consequences for willful failures to pay.

Once the perimeters are set, most of the following cases result in voluntary agreements where the defendant immediately suggests a solution (i.e., “Will \$1,000 keep me out of jail for one month,” or “I can pay \$500 today and I would like one of these agreements.”) Interestingly, the court has found that, for defendants, the major consequence of nonpayment is the inconvenience of having to return to restitution court. The defendants complain, “I have to go to court once a month which means I have to explain to my boss at my job once a month why I am gone again!”

To date, only a few people who have been found in contempt have remained in custody more than 72 hours. For those who stay in custody, the court holds a review hearing seven to 30 days later. Generally, at those hearings, the defendant is released with a promise to pay under a voluntary agreement. Those defendants who are put into custody or remain in custody are given work release privileges, and the court is usually amazed how quickly they find employment, and the number of hours defendants work while in the work release. (Generally, work release is 12 hours per day, six days a week, if the defendant has work available six days a week.)

COSTS

The costs of restitution court to date are minimal. The judges volunteer two hours of calendar time per month. The adult probation department sends the supervisor from financial compliance and usually two staff members to the hearing. Obviously, this would be done on a usual work day, so it is no additional cost to adult probation. Summaries provided to the court are just part of the usual records maintained by financial compliance.

The Superior Court is using current legislation to enforce court order obligations. The procedures used are streamlined since the court is using civil contempt and not probation revocation proceedings. There is no obligation to provide court-appointed counsel to defendants, and since the proceedings are initiated upon the court’s own motion, a prosecutor is not required. As one can see from the example of a hearing, the 15 to 18 hearings can be held within the space of one-and-a-half hours. Rarely does the civil contempt calendar last two hours.

OBSTACLES

The only obstacle was institutional inertia—“not the way we do things.” The Maricopa County Adult Probation Department had a good track record in collecting court-ordered costs. There was an institutional reluctance to commence probation revocation proceedings based solely on financial issues. Such proceedings are time consuming. Lawyers are mandated and expensive. If a defendant is incarcerated pending a hearing revocation proceeding, there are additional costs.

Further, judges are reluctant to take on additional work on their calendar, especially since there is a dedicated Probation Revocation Center in Maricopa County Superior Court processing probation violation matters.

Individual probation officers do not view themselves as collection agents and typically are slow to deal with delinquencies, sending memorandums to the judges only after substantial delinquencies accumulate.

Obstacles were overcome when one judge volunteered to do a dedicated calendar one day per month. After the program began operating, a second judge volunteered a second day. The Adult Probation Department has trained the officers concerning collection and the restitution enforcement court. More importantly, the superior court received full cooperation from adult probation, and especially FINCOM.

PROGRAM IMPACT

The program to date has collected approximately \$200,000 in delinquent restitution payments over 18 months where generally there are five to six new cases each month. (*See Attachment 3-G for Restitution Court data.*)

In some cases, defendants have paid substantial amounts to avoid contempt findings, including payments of \$10,000, \$9,500, \$5,600, \$3,500 and a number of payments between \$1,000 and \$2,500. A number of times, defendants have paid off entire restitution orders just to avoid returning to Arizona and/or Phoenix. Recently, one person paid \$5,600 to avoid returning to Phoenix. Another paid \$3,600 despite the fact the purge was \$900 because he did not want to ever come back to Restitution Enforcement Court. The criminal defendants have expressed a desire never to return because it is inconvenient and the court has a strict tolerance policy.

The victims who have “opted in” appreciate that someone was actually enforcing restitution. In one case, the victim agreed to a reduction in restitution payments. Others are thrilled that someone is finally holding the defendants accountable after years of nonpayment. The two judges continue to volunteer because the program benefits the victims and it holds defendants accountable.

NEXT STEPS

A number of “next steps” are under consideration to expand the restitution court. First, the court would like to add one or two additional judges to increase the number of defendants referred. There are also efforts being made to expand restitution courts statewide. A presentation was recently made to the Supreme Court’s Committee on Superior Courts, which included all the presiding judges, as well as Vice Chief Justice Andrew D. Hurwitz and Chief Justice Rebecca W. Berch. In addition, it was presented to the Arizona Supreme Court’s Commission on Victims in

the Court. Several county representatives have come to see the program and these counties are looking to implement the program in their counties.

The court would like to expand the program to enforce restitution obligations after defendants are released from prison and are off any community supervision (parole). While there is no restriction on who can be referred, the program is currently effective because the Adult Probation Department cooperates with the court, providing notice to defendants and victims who have opted in, and providing the court with payments records and history.

The court is working with victim advocates to create an Order to Show Cause form available at the Self Service Center in the Superior Court, with directions about filling out the form and complying with service of process requirements.

In addition to the restitution court effort, Maricopa County has a dedicated County Collections Unit under the Department of Finance. This unit aggressively pursues criminal restitution orders. Liens are filed with the County Recorder's Office as well as the State and the Department of Motor Vehicles. These liens prevent the transfer of ownership property (real or personal) out of the defendant's name until the criminal restitution order is paid in full. Collections are also referred to private collection agencies to collect the debt and to initiate wage and non-wage garnishments. *(See Attachment 3-H for memo with more detailed description of collection efforts.)*

LESSONS LEARNED

Based on our experience in establishing Arizona's Restitution Court, we offer the following advice to others wishing to do the same:

1. Review all current statutes and see if your state has a similar statute providing for a civil show cause hearing for failure to pay restitution. If it exists, start asking why is not being used.
2. Consider any financial compliance programs that already exist within the community supervision (probation and/or parole), and whether the court can find a way to coordinate a program to develop a similar restitution court.
3. Greater emphasis should be placed on training judges to be more sensitive to "enforcement" of restitution orders, as opposed to just entering the original order. A criminal restitution order is just a piece of paper unless there is enforcement of the obligation. Individual probation officers should receive training in collection of restitution. In many cases, the primary reason to grant probation initially is to enable the defendant to pay restitution for the victim. If the defendant is not going to pay, why are we supervising him/her in the community?

In reviewing the type of cases that have come through Restitution Enforcement Court, we have noticed a number of common factors. First, the underlying crimes are generally theft-related, including forgery, embezzlement, fraud schemes and artifice, and theft. After listening to the

various explanations as to why they are not paying, it becomes clear that the defendants have manipulative personalities and are now manipulating the system. When faced with certain jail for contempt, the money to pay the delinquencies miraculously appears.

Second, the individuals brought to restitution court are not those making an effort, but are falling short each month. There is a major difference in the person who is paying consistently—but less than the court-ordered amount—and the person who has simply not paid anything in 18 months. Restitution court is designed to identify and hold accountable the latter category.

In conclusion, Arizona is a state which has a very strong tradition of victim's rights. Victims in Arizona have a right, under the Arizona Constitution, Article II, Section 2.1 A(8), "to receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury." Restitution Enforcement Court is a valuable tool to assure "prompt restitution."

VICTIM'S RIGHT TO RESTITUTION

CONSTITUTIONAL PROVISIONS

Art 2, § 2.1(A)(8) A victim has a right “to receive prompt restitution.”

Art 2, § 2.1(C) “victim means a person against whom the criminal offense has been committed, [or the family of a victim killed], except if the person is in custody or is the accused.”

STATUTORY PROVISIONS

A.R.S. § 13-106 (14) “Economic loss includes lost interest, lost earnings and other losses which would not have been incurred but for the offense. Economic loss does not include . . . damages for pain and suffering, punitive damages or consequential damages.”

A.R.S. § 13-4401(19) “victim means a person against whom the criminal offense has been committed, [or the family of a victim killed], except if the person is in custody or is the accused.”

A.R.S. § 13-603 (C) Court must order full restitution, paid in a manner as ordered. Payments shall be made through the Clerk for distribution to the victim. Restitution orders are not dischargeable in bankruptcy.

A.R.S. § 13-804 (A) Court may allocate any portion of a fine imposed to be paid to victim in restitution.

A.R.S. § 13-804 (D) Defendant’s restitution obligation is not stayed pending appeal. Clerk may hold payments made pending appeal. *State v. Hansen*, 505 Ariz. Adv. Rep. 44 (05-30-2007)(statute trumps Rule 31.6)

A.R.S. § 13-805 (A) Trial court retains jurisdiction over restitution until restitution is paid in full or the criminal case is over by reason of the defendant’s discharge from prison or termination of probation.

A.R.S. § 13-805 (A) (2) If defendant still owes restitution, the trial court shall issue a Criminal Restitution Order against the defendant and in favor of the victim for the unpaid balance.

A.R.S. § 13-805 (B) A Criminal Restitution Order is like a Civil Judgment, except that it need not be renewed and does not expire until paid in full.

A.R.S. § 13-805 (C) A Criminal Restitution Order is not dischargeable in bankruptcy. *See, State v. West*, 173 Ariz. 602 (App. 1992)

A.R.S. § 13-806 (A) The prosecutor or victim may file a restitution lien without paying a filing fee. *See, State v. O'Connor*, 171 Ariz. 19 (App. 1992)

A.R.S. § 13-806 (B) The restitution lien shall be signed by the state's attorney or court magistrate, and shall contain the following information:

- (B) (1) the defendant's name and date of birth
- (B) (2) the defendant's address or place of business
- (B) (3) the related criminal case's court, title of the action, and file number
- (B) (4) the name and address of the state's attorney, or
the name and address of the victim entitled to restitution
- (B) (5) statement that the lien is being filed per this statute
- (B) (6) the amount of restitution ordered or estimated or
still owed
- (B) (7) statement that the restitution amount owed will change and that the
Clerk will maintain a record of the balance still owed

A.R.S. § 13-806 (C)(1) The restitution lien may be filed by the prosecutor upon the filing of the Complaint, Information, or Indictment where and when restitution is expected.

A.R.S. § 13-806 (C)(2) The restitution lien may be filed by the victim after Sentencing where and when restitution is ordered.

A.R.S. § 13-806 (D) The restitution lien is perfected if filed at the Secretary of State's Office for personal property, at MVD for vehicles, and at the Recorder's Office for real property.

A.R.S. § 13-806 (E) Filing a restitution lien creates a lien in favor of the state or victim against the defendant's interest in real or personal property to the extent of defendant's interest in property the defendant maintains or thereafter acquires.

A.R.S. § 13-806 (I) The restitution lien is not dischargeable in bankruptcy.

A.R.S. § 13-807 A criminal order of restitution does not preclude the victim from seeking or obtaining an overlapping Civil Judgment.

A.R.S. § 13-808 (C) The amount of restitution ordered can exceed the maximum fine possible for the crime.

A.R.S. § 13-809 (A) Restitution payments take priority over a defendant's other obligations to pay fines or fees.

A.R.S. § 13-810 (A) If a defendant defaults on making payments ordered, the Clerk shall notify the prosecutor, the sentencing court, and the victim. The sentencing

court shall set an order to show cause hearing on request of the prosecutor or victim, or on the court's own motion.

A.R.S. § 13-810 (B) At any show cause hearing, the prosecutor, victim, or the court may examine the defendant under oath about his/her financial condition, employment, assets, and ability to pay restitution.

A.R.S. § 13-810 (C) At any show cause hearing, if the court finds that the defendant's default is wilful, or that the defendant did not make a good faith effort to pay, the court shall find the defendant in default and in contempt. The court may then incarcerate the defendant until a purge amount is paid, may revoke the defendant's probation, parole, or community supervision period, or may garnish his/her wages.

A.R.S. § 13-810 (D) At any show cause hearing, if the court finds that the defendant's default is not wilful, or that his/her efforts to pay are in good faith, the court may modify the payment schedule, enter any order necessary to assure payment, or garnish his/her wages.

A.R.S. § 13-901 (A) If a defendant is placed on probation, the court shall impose a condition to pay restitution whenever restitution is found to be owing.

A.R.S. § 13-901 (G) Whenever restitution is found to be owing, the court shall set the amount and impose a schedule of payments.

A.R.S. § 13-902 (C) A defendant's term of probation may be extended an additional three years for any felony, and one year for any misdemeanor, if any amount of restitution is still owed by the time that the defendant's originally imposed probation period is completed. *See, State v. Korzuch*, 186 Ariz. 190 (1996)

A.R.S. § 31-254(D)(4) provides for a 30% deductions of inmate earnings to pay restitution.

A.R.S. 41-1604.12 (B) provides for a 33% deductions of inmate earnings in community correctional centers to pay restitution for offenses committed prior to 1/1/94.

A.R.S. § 41-1613 (B) provides for a 33% deductions of inmate earnings in community correctional centers to pay restitution for offenses committed after 1/1/94.

RULE PROVISIONS

Rule 26.12(a) The sentencing court may set a payment schedule. "Restitution shall be payable as promptly as possible in light of the defendant's ability to pay."

Rule 26.12(b) Restitution payments are made to the Clerk and distributed to the victim "as promptly as practicable." "Monies received from the defendant shall be applied first to satisfy the restitution order and the payment of any restitution in arrears."

Rule 26.12(c) If the defendant fails to make any restitution payment as ordered, the Clerk shall notify the prosecutor and the sentencing court if the defendant is not on probation, or notify the defendant's Probation Officer if the defendant is on probation. Upon notice of a default, the sentencing court shall set a show cause hearing per 13-810.

Rule 27.2 The defendant, prosecutor, Probation Officer, victim, or court may request a hearing to modify any restitution order if there is a change of circumstance.

Rule 31.6 A restitution ordered is stayed pending appeal. TRUMPED BY A.R.S. 13-804(D); *State v. Hansen*, 505 Ariz. Adv. Rep. 44 (05-30-2007)

CASELAW

RESTITUTION IS MANDATORY

State v. Holquin, 177 Ariz. 589 (App. 1993) (Restitution is mandatory.)

State v. Contreras, 180 Ariz. 450, 885 P.2d 138 (App. 1995) (Court may order restitution if court finds economic loss even if victim does not make claim.)

State v. Scroggins, 168 Ariz. 8, 810 P.2d 631 (App. 1991) (Court must order restitution for full economic loss without regard to any cap stated in the plea agreement.)

State v. Contreras, 180 Ariz. 450, 885 P.2d 138 (App. 1995) (Victim does not waive right to restitution by not informing prosecutor of claim prior to Sentencing.)

State v. Barrs, 172 Ariz. 42 (App. 1992) (Prosecutor cannot waive victim's right to restitution.)

State ex rel McDougall v. Superior Court, 186 Ariz. 218 (App. 1996); *State v. Morris*, 173 Ariz. 14, 839 P.2d 434 (App. 1992) (Insurance company is entitled to restitution to same extent as insured victim.)

SCOPE OF "ECONOMIC LOSS"

State v. Williams, 208 Ariz. 48 (App. 2004) (Restitution must be ordered if a loss occurs as a result of defendant's criminal acts; not whether elements of offense require a victim. "Victimless" crime may still require restitution.)

State v. Lindsley, 191 Ariz. 195, 953 P.2d 1248 (App. 1997) (Economic loss includes lost wages and travel expenses stemming from the victim attending court sessions.)

State v. Clinton, 181 Ariz. 299, 890 P.2d 74 (App. 1995) (Victim's economic loss is not precluded or diminished even if victim shared contributory negligence to the injuries suffered as a result of defendant's criminal act.)

State v. Scroggins, 168 Ariz. 8, 810 P.2d 631 (App. 1991) (Economic loss for a theft of means includes rental car expenses, taxi fares, car repairs, and related phone charges.)

State v. Adams, 189 Ariz. 235 (App. 1997) (Court may order as restitution amount of benefit defendant unlawfully obtained)

ARIZONA STATUTE ON RESTITUTION PAYMENT DEFAULTS

A.R.S. § 13-810

Title 13. Criminal Code (Refs & Annos)**◆§ 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.

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.

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 wilfully 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.

2. Revoke the defendant's probation, parole or community supervision and sentence the defendant to prison pursuant to law.

3. Enter an order pursuant to § 13-812. The levy or execution for the collection of a fine, a fee, restitution or incarceration costs does not discharge a defendant who is incarcerated for nonpayment of the fine, fee, restitution or incarceration costs until the amount of the fine, fee,

restitution or incarceration costs is collected.

E. If the court finds that the default is not wilful and that the defendant cannot pay despite sufficient good faith efforts to obtain the monies, the court may take any lawful action including:

1. Modify the manner in which the restitution, fine, fee or incarceration costs are to be paid.
2. Enter any reasonable order that would assure compliance with the order to pay.
3. Enter an order pursuant to § 13-812. The levy or execution for the collection of a fine, a fee, restitution or incarceration costs does not discharge a defendant incarcerated for nonpayment of the fine, fee, restitution or incarceration costs until the amount of the fine, fee, restitution or incarceration costs is collected.

F. If a fine, a fee, restitution or incarceration costs are imposed on an enterprise it is the duty of the person or persons authorized to make disbursement from the assets of the enterprise to pay them from those assets, and their failure to do so shall be held a contempt unless they make the showing required in subsection A or B of this section.

RESTITUTION COURT CRITERIA

The name *restitution court* reflects the purpose of the Court, which is to hold probationers accountable and secure payment of restitution. This is done by an Order to Show Cause hearing to determine if the probationer is in contempt for non payment of restitution. This Court is not a probation violation Court. It is a post sentencing civil procedure to determine contempt and is based on ARS§ 13-810 (C) and (D). It is designed to address the individuals most delinquent in restitution and those that have demonstrated long term "willful noncompliance" towards restitution. It does not address other court ordered financial delinquencies.

Often when individuals are on probation they struggle with meeting the Court ordered financial obligations. In order to assist probationers struggling to meet Court ordered assessments, the Adult Probation Department operates a Financial Compliance (FINCOM) unit. FINCOM acts as the collections unit for the Department. This program receives referrals from within the probation department for any probationer that is at least 3 months behind on any Court ordered payment. For individuals who are significantly delinquent in restitution the Restitution Court is used as a graduated response to address non payment.

Referrals to Restitution Court are received from several sources:

- A probation officer through the FINCOM supervisor
- FINCOM collectors
- The probation department's victim advocate
- The victim advocate of the prosecuting attorney's office

What sort of situations should be referred to Restitution Court?

- The probationer is six months or more delinquent in restitution; however, exceptions can be made for special circumstances.
- The probationer has demonstrated "willful noncompliance."
- The probationer has been referred to FINCOM.

At the time of the hearing the Court has several options that include:

- Ordering the probationer to meet with FINCOM and develop a plan to address the financial delinquency, which generally includes payments to begin pending the creation of the plan.
- The Court holds a contempt hearing and the probationer is found in civil contempt, but is allowed to remain out of custody to address the delinquency
- The Court finds the probationer in contempt and takes them into custody until a purge amount is paid. That purge amount is often equal to the delinquency.

Probationers continue with the Restitution Court until:

- They have demonstrated a pattern of continued compliance
- They have paid the delinquency current
- The Court discharges them and directs a PTR be filed

Restitution Court is held monthly before two Judges. During its first year, over \$112,000 dollars was collected for Victims. Any questions about the program can be directed to FINCOM Supervisor Stephen Hartley at (602) 619-3064 or shartley@apd.maricopa.gov

ORDER TO SHOW CAUSE

You are ordered to appear on ~~~~~, 20__ at 8:30 a.m. in this division, to Show Cause why you should not be held in contempt for failing to pay Restitution pursuant to the previous Court orders. The hearing will be conducted pursuant to A.R.S. § 13-810(C) and (D). If the Court finds that you intentionally refused to make a good faith effort to obtain the monies for payment, the Court may Order the defendant incarcerated in the County Jail until paid or enter other Orders Pursuant to A.R.S. § 13-812. Please review A.R.S. § 13-810 prior to the Court hearing.

You are required to bring with you all State and Federal Income Tax returns for 2005, 2006, 2007, 2008 tax years and wage statements and/or W-2 form for 2009.

Failure to appear as Ordered may result in a warrant issuing for your arrest.

Judge Roland J. Steinle, III
Central Court Building
Courtroom 402
Phoenix, Arizona 85003
602-506-7893

Cc: APO- ~~~~~

RESTITUTION CASE SUMMARIES
RESTITUTION COURT
JUDGE STEINLE
02/05/2010

DEFENDANT [REDACTED]		CR:	2006-006387		
Probation Extended:	12/12/2009	Length:	3 yrs	Offense:	CT II Forgery, a class 4 felony
Victim/s:	business				
Monies	Total ordered	Payment	Balance	Delinquency	Last Payment
PSF	\$NA	\$	\$	\$	
Restitution	\$4,106.00	\$100.00	\$2,753.50	\$1,847.50	09/30/2009
PAYMENT HISTORY					
	Number of payments	Amount paid		PO: Melissa Cozad Collector: Brenda Jones	
2007	2	\$200.00			
2008	9	\$700.00			
2009	10	\$400.00			
2010	0	\$0			
		CR 2005-012418		CT II Taking the Identity of another, a Class 4 felony	
		Extended three years from 12/12/2009			
Monies	Total ordered	Payment	Balance	Delinquency	Last Payment
PSF	\$50	\$	\$	\$1,600.00	
Restitution	\$4,189.35	\$100.00	\$2,636.85	\$1,647.50	09/30/2009
PAYMENT HISTORY					
	Number of payments	Amount paid		PO: Collector:	
2007	2	\$302.00			
2008	11	\$800.00			
2009	11	\$450.00			
2010	0	\$0			

NOTES: In both cause numbers the defendant used his employment as a financial person at car dealers to steal. In CR 2005-012418 he used financial information to secure a credit card. In CR 2006-006387 he had customers write blank checks for extended warrants then made them payable to himself and cashed them. The total restitution ordered is \$8,295.35 with a delinquency of \$3,495

DEFENDANT			CR:	2005-110156	
Probation Extended:	02/24/2009	Length:	3 yrs	Offense:	CT I: Trafficking in stolen property, a class 3 felony
Victim/s:	2 individuals				
Monies	Total ordered	Payment	Balance	Delinquency	Last Payment
PSF	\$	\$50.00	\$	\$2,100.00	
Restitution	\$4,450	\$75.00	\$2,25.00	\$1,275.00	01/06/2010
PAYMENT HISTORY					
	Number of payments	Amount paid		PO: Jacob Delecki (Gila) Jo Ellen McCammond (Maricopa) Collector: Judy Chacon	
2007	3	\$ 375.00			
2008	4	\$ 375.00			
2009	2	\$ 600.00			
2010	1	\$ 100.00			
NOTES: At the November 5 th hearing the defendant agreed to pay \$100 a month for November, December, January and February. If she makes those payments she would be discharged. She has made all payments but February.					

DEFENDANT			CR:	2004-024020	
Probation Granted:	11/08/2002	Length:	7yrs from 1/10/08	Offense :	CT I: Fraudulent schemes and Artifice, a Class 2 Felony
Victim/s:	Business				
Monies	Total ordered	Payment	Balance	Delinquency	Last Payment
PSF	\$	\$ 20.00	\$	\$ 460.00	
Restitution	\$251,734.38	\$300.00	\$247,959.38	\$3,125.00	09/30/2009
PAYMENT HISTORY					
	Number of payments	Amount paid		PO: Gregory Faulhaber Collector: Sonia Cruz	
2007	3 (DOC Earnings)	\$ 70.62			
2008	8	\$ 305.00			
2009	10	\$3,580.00			
2010	0	\$			
NOTES: In November, she was ordered to pay \$600 prior to December's hearing. She also promised to make a significant payment in January when a student loan was disbursed. Neither of those payments have been made. She was excused from December and January's hearing due to health issues. During January's hearing the Court ordered further medical documentation, which has not been provided. She has informed FINCOM that the needed medical documentation will be provided at the hearing. Reviewing recent case notes no mention is made of health issues.					

DEFENDANT [REDACTED]		CR: 2008-169674-001	
Probation Granted:	03/23/2009	Length:	3 yrs
		Offense:	CT I: Criminal possession of a forgery device, a class 6 undesignated offense
Victim/s:	Individual		
Monies	Total ordered	Payment	Balance
PSF	\$	\$ 65.00	
Restitution	\$5,000.00	\$300.00	\$3,500.00
			\$900.00
PAYMENT HISTORY			
	Number of payments	Amount paid	
2007	NA	\$	
2008	NA	\$	
2009	7	\$1,835.00	
2010	1	\$ 100.00	
NOTES: The defendant previously had agreed to pay \$300 payment before January's hearing He paid \$100. No payments have been made since. In addition he failed to make his Court ordered appointment with FINCOM as he did not feel he had to "as everything will be current by Court".			

DEFENDANT [REDACTED]		CR: 2006-176111-001	
Probation Granted:	01/16/2007	Length:	3 yrs
		Offense:	CT I: Solicitation to commit taking the identity of another ,a class 6 felony
Victim/s:	Private		
Monies	Total ordered	Payment	Balance
PSF	\$	\$ 50.00	\$
Restitution	\$4,017.65	\$ 135.00	\$2,982.65
			\$2,982.65
PAYMENT HISTORY			
	Number of payments	Amount paid	
2007	4	\$885.00	
2008	1	\$ 60.00	
2009	3	\$300.00	
2010	0	\$0	
NOTES: The defendant was found in contempt at November hearing. As he did not pay the purge amount of \$2,500 he was taken into custody on December 11. Initially he was not given work release. However during January's hearing WR was ordered and he started being released Monday thru Saturday. To date no payments have been received and he continues in custody.			

DEFENDANT			CR:	2003-036587-001	
Probation Granted:	02/19/2005	Length:	5 yrs	Offense:	CT I: Aggravated DUI: a class 4 felony
Victim/s:	Business/ SRP				
Monies	Total ordered	Payment	Balance	Delinquency	Last Payment
PSF	\$0	\$50.00	\$2,750.00	\$2,750.00	
Restitution	\$11,478.78	\$150.00	\$9,253.78	\$3,775.00	12/01/2009
PAYMENT HISTORY					
	Number of payments	Amount paid		PO: David Leventhal Collector: Samantha Berman	
2007	7	\$ 580.00			
2008	4	\$ 145.00			
2009	12	\$2,100.00			
2010	0	\$ 00			
NOTES: At November's hearing the defendant agreed to pay \$300 a month for November, December, January, and February. Since the November hearing she has paid \$300. Only recently was it learned that she receives \$1300 SSI and \$300 per capital from the Gila Tribe. She has never reported this income to FINCOM or previous probation officers					

DEFENDANT			CR:	2006-166302-001	
Probation Extended:	01/03/2010	Length:	3yrs	Offense:	CT I: Theft a class 6 undesignated offense
Victim/s:	Individual				
Monies	Total ordered	Payment	Balance	Delinquency	Last Payment
PSF	\$	\$ 50.00	\$ 0	\$00	
Restitution	\$5,000.00	\$100.00	\$ 0	\$00	01/26/2009
PAYMENT HISTORY					
	Number of payments	Amount paid		PO: Noelia Monge- Maricopa Frank Lucero- Navejo Collector: Judy Chacon	
2007	8	\$ 390.00			
2008	3	\$ 215.00			
2009	4	\$ 550.00			
2010	3	\$5,620.00			
NOTES: The defendant was scheduled to make her initial appearance on January 8. That was delayed until today because of her work schedule. Since then she has paid \$5,620. Paying everything in full. It is recommended that she be discharged. As this matter was extended for restitution purpose it will also be submitted for an expiration.					

TRANSCRIPT OF COURT HEARING

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

Plaintiff,

vs.

Defendant.

Phoenix, Arizona
February 5, 2010

BEFORE: THE HONORABLE ROLAND STEINLE
Superior Court Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ORDER TO SHOW CAUSE

APPEARANCES:
STEPHEN HARTLEY
Adult Probation Department

HELENE PAUSTIAN, RPR
Certified Court Reporter
No. 50072

COPY

SUPERIOR COURT - MARICOPA COUNTY

Phoenix, Arizona
February 5, 2010

(The following proceedings took place in open
court:)

THE COURT: No. 2. CR 2002-004606 A, State versus
Capp.

Mr. HARTLEY: This is Ms. Capp's first appearance
before the Court.

THE COURT: Please tell me your full name.

THE DEFENDANT: [REDACTED]

THE COURT: Your date of birth?

THE DEFENDANT: November 1, 1966.

THE COURT: We're here on an order to show cause. You
were placed on probation July 25th, 2007, for three years for
class 3 theft. Currently, you stole \$68,919 from your
employer. You were ordered to pay restitution in the amount
of \$250 a month. In 2009 you made zero payments. In 2010 you
made a \$125 payment, and in 2008 you made \$750 in payments.
Are those records correct?

THE DEFENDANT: Yes.

THE COURT: Please swear the witness in.

(Next page, please.)

SUPERIOR COURT - MARICOPA COUNTY

1

2

called as a witness herein, having been first duly sworn, was
examined and testified as follows:

4

5

E X A M I N A T I O N

6

7

BY THE COURT:

8

Q. What type of work do you do?

9

A. I'm dental assistant.

10

Q. Do you have your W-2 for 2009?

11

A. Yes.

12

Q. The W-2 for 2009 shows you made \$31,679.98. Did

13

you earn any other income over and above that?

14

A. No, sir.

15

Q. Okay. From that income -- are you married?

16

A. Yes.

17

Q. Does your husband work?

18

A. Yes.

19

Q. What kind of work does he do?

20

A. He working for [REDACTED]

21

Q. How much money did he make last year?

22

A. I think he make about 30.

23

Q. About \$30,000?

24

A. I don't have that W-2. I don't have his.

25

Q. How many children do you have?

SUPERIOR COURT - MARICOPA COUNTY

1 A. Two.

2 Q. How old are the children?

3 A. Actually, we have one that live with us. The

4 other one we pay child support for \$600 a month.

5 Q. Is that you're paying child support or --

6 A. He's paying child support, \$600 a month.

7 Q. Okay. Do you rent or own your house?

8 A. I live with my parents, but I pay for the house.

9 I pay \$1,000 a month, including taking care of my son for me.

10 Q. So you pay \$1,000 which is rent and child care

11 payments?

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. Yes.

15 Q. And do you have a cell phone?

16 A. No.

17 Q. Do you have a car?

18 A. Yes.

19 Q. What kind of car?

20 A. It's 2003 Honda Civic.

21 Q. Is there a lien on it?

22 A. Yes.

23 Q. Have you paid the lien up to date?

24 A. well, actually the financial institution still

25 own that car.

1 Q. I understand that, but are you making your
2 payments on a monthly basis?

3 A. Yes.

4 Q. Okay.

5 A. I have been late with them, too. And I have --
6 it's called State Financial. It's for people with high risk.
7 So they charge me 18 percent interest on that. And I have no
8 grace period, so if I don't have car I can't go to work.

9 Q. Okay. You were ordered to pay restitution in
10 the amount of \$250 a month. You made no payments in 2009.
11 And you only made a \$125 payment when you were notified about
12 coming to court today. Why aren't you paying your
13 restitution?

14 A. I can't afford it at this time. I mean last
15 year we just -- it's just been through a lot, so. And I know
16 it's no excuse. I have no excuse, except I know I can't pay
17 it at this time right now. The situation is we have to -- I
18 live with my parents. They live on social security. I pay
19 the majority of the payment for the house. And we have to
20 bring modification along. And now we work through the bank.
21 And now -- it used to be -- they used to pay higher on the
22 house. They used to pay \$1,900 a month on the house. Now
23 they only have to pay less than that. So that's why I'm going
24 to be able to start making payment, because I have to pay
25 mine.

1 Q. Well, when people say they can't afford to pay
2 restitution, you usually see a payment history where they're
3 making some effort to pay restitution -- \$100 a month, \$75 a
4 month, \$150 a month. You were ordered to pay \$250 a month.
5 You made the equivalent of three payments in 2008, zero
6 payments in 2009, and \$125 because you knew you had to come to
7 court today. So you earned income in 2009. Your husband
8 earned income in 2009. You're living with your parents. So
9 you're paying bills, but you chose not to pay your probation
10 restitution; is that correct?

11 A. Yes.

12 Q. Okay. The Court finds you in contempt of court.
13 You're ordered to pay a purge of \$10,980, which is the full
14 amount of arrears. You will be taken into custody today.
15 Thank you.

16 We'll set a review for next Friday at 8:30.

17 MR. HARTLEY: Yes, your Honor. I'm assuming at this
18 time you do not wish work release?

19 THE COURT: No. She can have work release. 6:00 a.m.
20 to 6:00 p.m. or 6:00 a.m. to 8:00 p.m. five days a week.

21 MR. HARTLEY: Thank you, your Honor.

22 THE COURT: I want it implemented as soon as possible.

23 MR. HARTLEY: Yes, your Honor. That may take a couple
24 days with the Sheriff's Office. Yes, your Honor.

25 THE COURT: Okay. * * * * *

RESTITUTION COURT DATA COMBINED

2008 month	New Case	return cases	total cases	\$collected	\$YTD	warrants	graduations	contempt	Discharge	custody
sept	5	na	5	\$2,110	\$2,110	0	1	0		0
oct	7	3	10	\$20,742	\$22,852	1	2	1		0
Nov	*	*		*	*	*	*	*		*
Dec	6	15	21	7,030	\$29,882	2	2	2		3
sub total	18	18	36	\$29,882	29,882	2	5	3		2
2009 month	New Case	return cases	total cases	\$collected	\$YTD	warrants	graduations	contempt	Discharge	custody
Jan	6	11	17	\$3,980	\$3,980	2	1	0	1	1
Feb	8	7	15	\$13,450	\$17,430	2	1	0	0	0
March	6	10	16	\$2,990	\$20,420	3	1	0	1	0
April	1	16	17	\$2,880	\$23,300	2	0	0	1	0
May	9	11	20	\$2,853	\$26,153	1	0	2	0	2
June	0	24	24	\$14,812	\$40,965	1	5	0	0	0
July	6	7	13	\$16,700	\$57,665	0	1	5	0	3
August	8	12	20	\$5,788	\$63,453	2	0	3	0	0
Sept	9	22	31	\$18,157	\$81,610	3	4	3	0	2
Oct	9	30	39	\$21,197	\$102,807.61	1	6	5	1	0
Nov	9	20	29	\$5,781	\$108,588.61	2	1	3	3	0
Dec	8	21	29	\$15,300	\$123,888.61	3	2	1	3	2
sub total	79	191	270	\$123,888		22	22	22	11	10
TOTAL	97	209	306	\$153,770		24	27	25	11	12

2010 month	New Case	return cases	total cases	\$collected	\$YTD	warrants	graduations	contempt	Discharge	custody
Jan	8	36	44	15,400	15,400	1	4	5	1	0
Feb	10	24	32	28,495	43,895	1	6	3	3	1
March										
April										
May										
June										
July										
August										
Sept										
Oct										
Nov										
Dec										
Total										



Maricopa County

Department of Finance

County Collections Unit

301 West Jefferson Street
Suite 960
Phoenix, AZ 85003-2278
Phone: 602.506-0073
Fax: 602.506-3439
www.maricopa.gov

TO: Interested Parties

FROM: Kim Knox, Supervisor, County Collections Unit (CCU), Department of Finance

DATE: November 16, 2009

SUBJECT: Post Probation and Parole Collection Process

Once the probationer is no longer on probation or parole, the remaining balance on the financial sanctions are turned into a Criminal Restitution Order (CRO), which is treated as a civil judgment with the exception that they do not expire until paid in full. As of January 1, 2006, interest accrues at 10% per annum. (A.R.S. 13-805)

The following is a brief description of the collection tools that are available to the CCU.

1. The CRO is recorded at the County Recorder's Office and acts as a lien against any current or future property owned (in the debtor's name) by the debtor. Additionally, it is filed with the State and the Department of Motor Vehicle in order to act as a lien against any vehicles owned by or in the debtor's name. These liens prevent the transfer of ownership out of the debtor's name. (i.e. they can't sell the house or car)
2. The case is placed on a collection strategy that sends delinquent letters when an account is 30, 90 and 120 days delinquent. At 60 days delinquent the account is set up for a phone call. After 120 days delinquent, the account is sent to a private collections agency and an 18% fee is added on. If payments are made and received by CCU, the debtor will be sent a billing letter.
3. After 120 days delinquent, the account is entered into the AZ State Tax Intercept Program.
4. After 120 days delinquent, or sooner if we have been unsuccessful at locating the debtor, we will send the account to 1 of 3 private collection agencies. There is an automatic add on fee of 18% to the debtor's principal balance. Through the private agencies, we are able to do court ordered wage and non-wage garnishments. Additionally, the private agencies report the debt to the credit bureaus.



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5. We research foreclosures to attempt to get any available excess proceeds.
6. Recently, we have been working with the Probate and Civil Departments to seek criminal payoffs on awarded money from probate and civil case.

If you have any questions about these tools or require any additional information, please do not hesitate to contact me at 602-506-3473 or kknox@mail.maricopa.gov.

Sincerely,

Kim Knox

Supervisor
Maricopa County Collections Unit



4

Project Payback: A Juvenile Restitution Program

by Gretchen Howard, Director of Victim Services, Witness Management and Project Payback

OVERVIEW

Project Payback is a juvenile restitution program which has operated in a rural judicial circuit in north central Florida since 1999. The purpose of Project Payback is two-fold: to monitor and enforce restitution for victims of juvenile offenders, and to provide job skill training and meaningful work opportunities to juveniles ordered to pay back restitution. Project Payback works to accomplish its mission by offering individualized job skills training and providing youth who are unable to become employed the option of completing “community restitution service” hours. Project Payback serves victims by addressing the restitution responsibilities of juvenile offenders. The amount of victim restitution collected each month from juvenile cases has increased from approximately \$160 prior to implementing Project Payback to over \$3,500 today.

Restitution is significant for both victims and juvenile offenders. The benefits to victims are clear; restitution holds the offender accountable to the victim for their actions, victims receive economic compensation for losses, and victims see the criminal justice system as responsive to their needs. Defendants whose restitution orders are monitored and enforced experience a direct consequence for their actions and receive useful life skills training.

This paper will look at the benefits and outcomes of implementing a juvenile restitution program. It will provide a description of critical program components and a detailed description of program features and successes, as well as obstacles for implementation and replication.

INTRODUCTION

The underlying principle of a juvenile offender accountability approach to restitution is to hold juveniles who have broken the law directly accountable to their victims for their behavior. Restitution is the act of an offender giving a victim monetary compensation for a loss or injury resulting directly or indirectly from a crime. Crime victims see restitution as one of their basic rights. Project Payback was created to address both victim rights and juvenile defendant interests.

For restitution orders to be truly meaningful, offenders must be held strictly accountable for compliance. Similarly, the system must be accountable for the effective and efficient collection of restitution, and must maintain mechanisms for enforcing the collection of restitution when offenders become delinquent in payment. Restitution should be enforced along with other conditions of probation.

The objectives of Project Payback are to:

- Provide job skills training (résumé and application preparation, interviewing techniques, job search strategies) for juveniles to facilitate employment as a means to pay back restitution.
- Require juveniles 16 years of age and older to be employed or actively searching for employment. Juveniles who are unable to become employed (usually because of their age and/or commitment status) are given the opportunity to earn restitution through “community restitution service” hours.
- Monitor monthly compliance of juveniles ordered/referred to Project Payback.
- Report the offender’s restitution compliance status on behalf of the victims in juvenile court.
- Initiate enforcement action by the court for non-compliance.
- Make the victim aware when a case has been set for a compliance hearing.
- Inform victims about the status of the case.

HOW PROJECT PAYBACK WORKS

Project Payback is a juvenile restitution program that works with juvenile offenders to monitor and enforce court-ordered restitution. Project Payback was first implemented in Alachua County, Florida, in 1997. Prior to its creation, an average of \$166 per month in restitution was being paid back to victims of juvenile offenders in Alachua County. Currently, the average is over \$3,500 per month. Since the inception of Project Payback, over 1,300 youth have been referred to Project Payback and more than \$545,000 in restitution has been paid back to victims of juvenile offenders in Alachua County alone. Because of this enormous success, the program expanded in 2000 to include the rural counties of Florida’s Eighth Judicial Circuit: Baker, Bradford, Gilchrist, Levy, and Union—all of which have low populations and few employment opportunities.

In the Eighth Judicial Circuit, juvenile offenders who owe restitution are court-ordered to successfully complete Project Payback as a condition of their probation. Project Payback staff meet

with juveniles immediately after sentencing and arrange a date with the defendant and their parent or guardian to conduct an intake appointment, go over and sign a restitution contract, which includes a minimum monthly payment, generally of \$100. (*See Attachment 4 for sample contract.*) Staff also set up two 2-hour job employability trainings at that time.

For juveniles who are employable, Project Payback requires they either be employed or searching for employment, and they must attend 4-6 hours of mandatory job skills training. For juveniles who are unemployable or who are committed to a residential commitment program, Project Payback offers the opportunity to complete a minimum of 16 “community restitution service” hours each month. The juvenile earns monetary credit at minimum wage for every verified hour of community restitution service, which Project Payback then pays to the victim.

Youth are offered job skills training to assist them with completing a job search, resume preparation, initial interviewing, and completing a job application. Training sessions are experiential rather than lecture style, and include Morita Therapy and Naikan principles as critical life skill training components of this program.¹ A list of entry-level jobs and relevant information (such as business name, location, and minimum age or skill requirements) is updated once a year and available to any Project Payback youth during follow-up. A list of accepted community restitution sites—by location, minimum age requirements, and type of work—is updated twice a year and is distributed to youth who are not aware of community restitution sites within the community. The participant then contacts the employer or community restitution site. Project Payback only contacts employers and community work sites regarding a potential job placement when unusual circumstances apply. For example, when a teenager is under the minimum age requirement but shows considerable maturity and eagerness to work, the staff may contact the employer with a request to waive the age requirement.

To date, the program has never had an incident where a juvenile committed a crime or was injured on the job. Under Florida law, whenever a juvenile is required by the court to participate in any work program or volunteers to work in a community service supervised work program or to work for the victim, either as an alternative to monetary restitution or as a part of the rehabilitative or probation program, the juvenile is considered an employee of the state for the purposes of liability.²

The purpose of Project Payback is to monitor and enforce restitution. In the event that the juvenile does not comply with Project Payback, staff will set the case for a compliance hearing and address the court when the case is placed on the docket for review. Whenever this occurs, the victims are also notified of the hearing date, and are allowed to attend if they choose.

¹ Morita Therapy provides experiences that educate clients about nature and their lives, behaviors, emotions, and mental attitudes. The Naikan method is used to encourage youth to reflect on their relationships with others, including reflecting on what they have received from others, what they have given to others, and the problems and difficulties they have caused others.

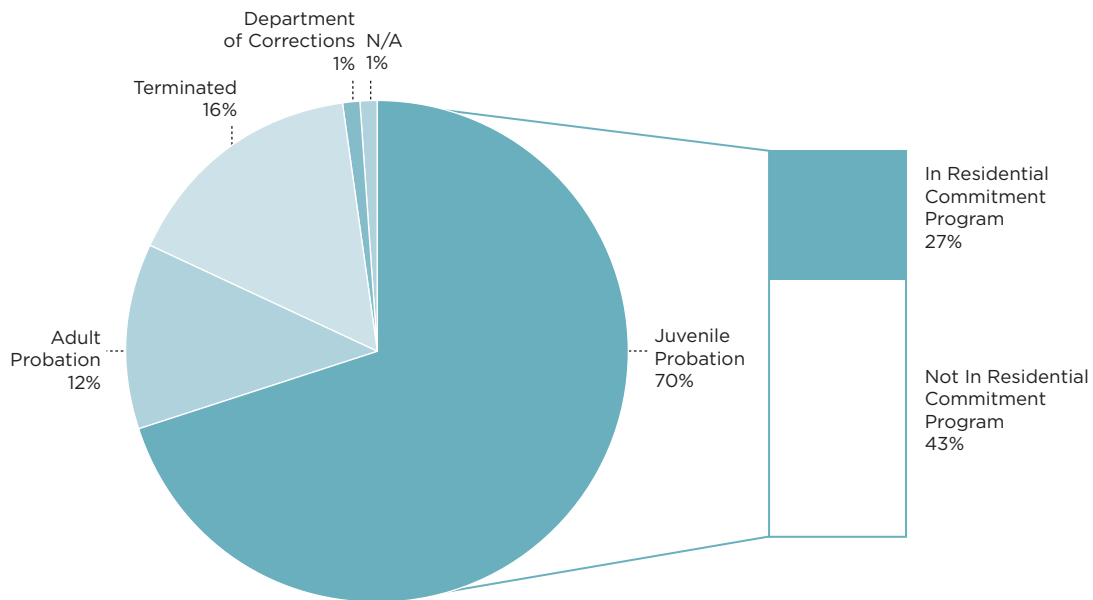
² Fla. Stat. § 985.45 (2009).

Project Payback has developed detailed written policies and procedures regarding each of its objectives, which are reviewed annually by its staff and volunteers.

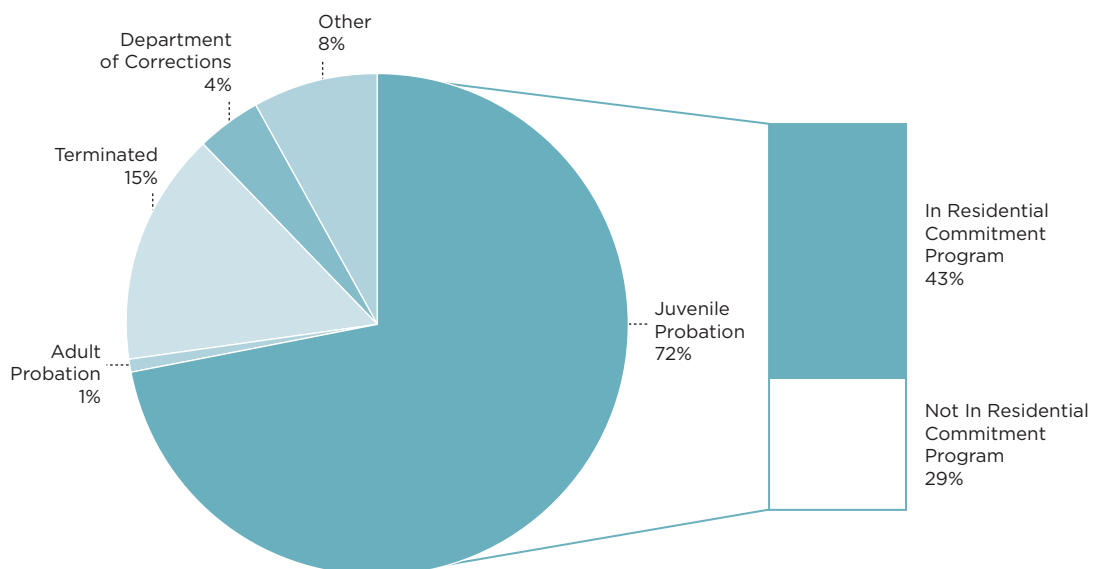
YOUTH SERVED BY PROJECT PAYBACK

Project Payback has created statistical snapshots of the youth who are actively receiving case management services. Below is an indication of the breakdown, by probation status, of youth in Alachua County who were served by Project Payback in 2004 and in 2010.

Breakdown of Cases by Juvenile Status (2004)

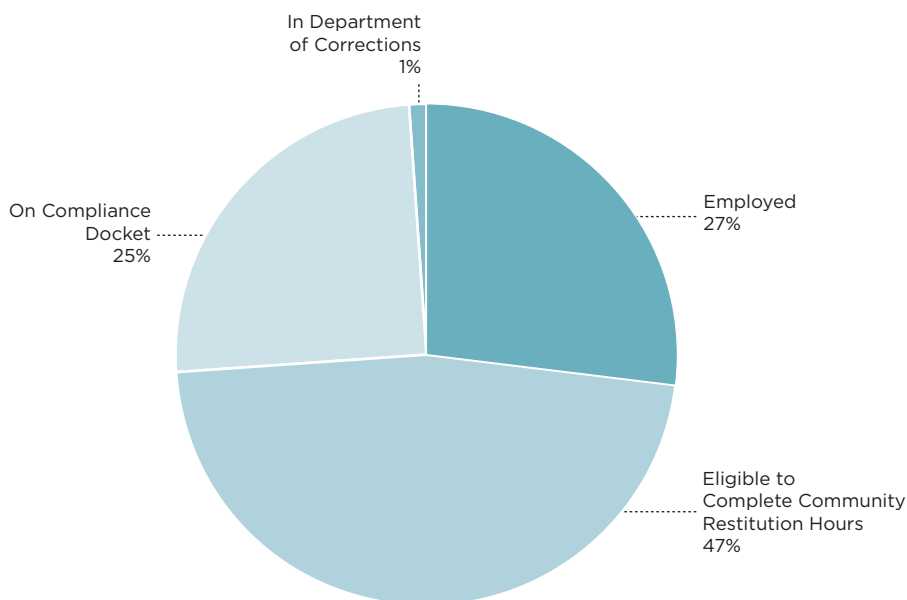


Breakdown of Cases by Juvenile Status (2010)

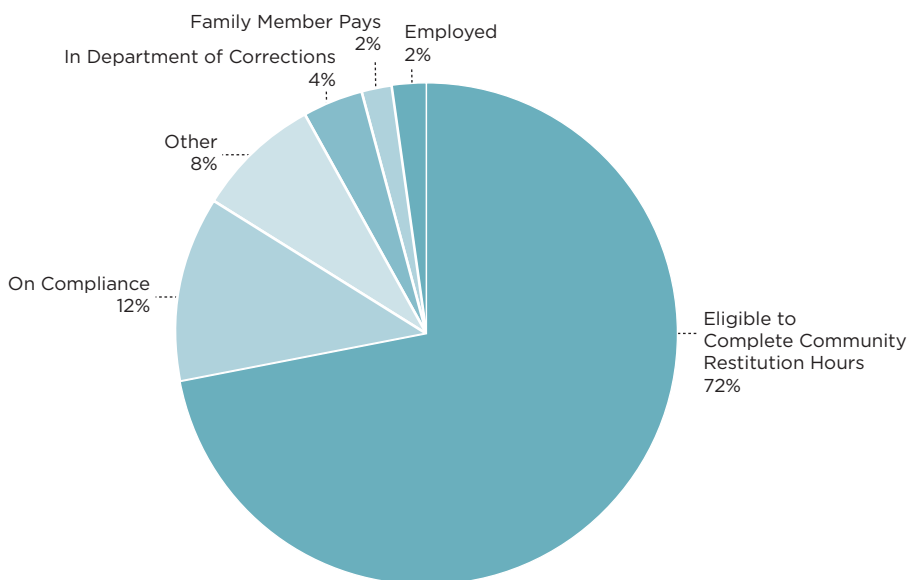


The program status of youth from these two periods (i.e., whether they are employed, performing community service, on the “show cause” docket for failure to comply, etc.) can also be compared (see below.)

Status in Project Payback (2004)



Status in Project Payback (2010)



The biggest changes in the participants between 2004 and 2010 have been an increase in the number of juveniles who are in residential commitment programs and a decrease in the number who are employed. These two changes are related, because those in residential confinement are not able to be employed in the private sector. As a result, more youth are performing community restitution service in order to earn money to pay off restitution.

FUNDING FOR PROJECT PAYBACK

Initial funding for Project Payback came from a three-year Edward Byrne grant, which was used to support two Project Payback staff positions (a case manager and program assistant). At the conclusion of the grant funding, those two positions were funded by general revenue funds through the State Attorney's budget. Prior to budgetary cutbacks to Project Payback in 2008, the division had grown to include a program manager, two full-time case managers, and several part-time unpaid college interns who were supervised and performed daily case management follow up. The current staff salary and benefits budget for Project Payback is \$50,000 annually, and covers one full-time case manager and 10 percent of two other staff positions.

Project Payback is able to use a separate funding source for the community restitution service hours: money received as donations through deferred prosecution cases. A deferred prosecution agreement may be entered with any first time offender charged with a nonviolent misdemeanor, and in certain other cases.³ Deferred prosecution agreements must include, as a special condition, a charitable contribution in lieu of court costs and fines, ranging from \$75 to \$250. In the 8th Judicial Circuit, these charitable contributions are directed to CDS Family & Behavioral Health Services, Inc., a local pass-through charitable organization, which then uses these donations to support the community restitution service program. This steady and available funding stream is vital to the ability to use community restitution service hours as a means for juveniles to earn restitution money.

CHALLENGES IN IMPLEMENTING A JUVENILE RESTITUTION PROGRAM

There are three common and persistent obstacles to implementing a circuit-wide juvenile restitution program. The first has to do with developing a consistent and adequate funding stream for paying out community restitution hours, without which, the community restitution site option is not viable.

The second obstacle has to do with maintaining consistency in case management components across all cases. Consistent weekly follow up and case notes entry are essential to monitoring and collecting restitution. Weekly follow-up should include making telephone calls with the youth or their parents and checking on the action plan established for each youth, for progress regarding the job search, working hours, and so forth. It should also include contact with work sites for verification of work hours and brief performance information.

The final obstacle is ensuring ongoing restitution data collection. This is an important administrative responsibility for tracking program success.

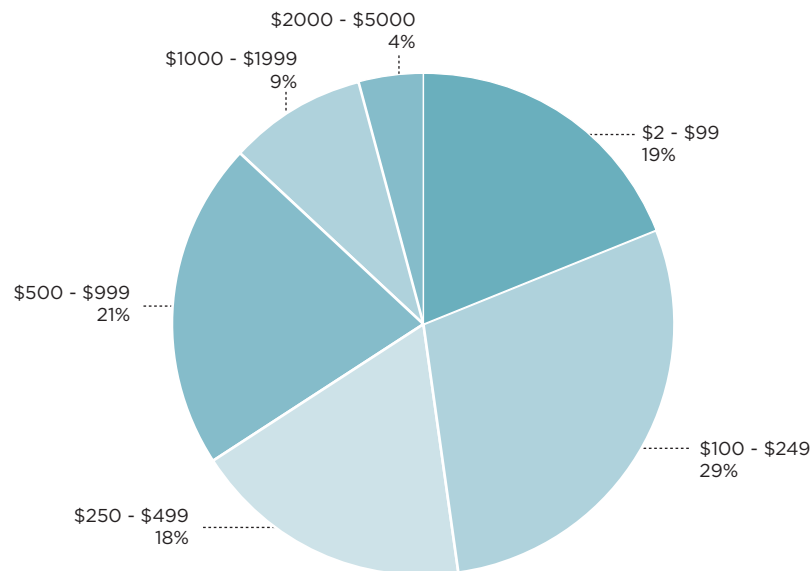
³ It is the policy of the Office of the State's Attorney to resolve cases by way of a deferred prosecution agreement when the circumstances of the defendant and the charge do not indicate a need for court intervention, and substantial interests of justice can be met without an unnecessary expenditure of public resources.

THE IMPACT OF PROJECT PAYBACK

Project Payback has looked at both demographic and other factors that are connected with juveniles who are court ordered to pay restitution. The two charts below, which reflect a review of over 700 successfully completed cases, highlight some interesting findings.

The first chart looks at the amount of restitution collected in successful cases, from October 2001 through December 2007 in Alachua County. It is worth noting that 66 percent of the cases involve amounts that are below \$500, and fifty percent of the cases over a six-year period involve restitution orders under \$250.

Amount of Restitution Ordered Successfully Completed Cases



The amount of time it takes a juvenile to pay back the restitution is reflected in the table below.

Length of Time to Repay Restitution





NEXT STEPS

It is unlikely that Project Payback will expand the number of staff positions in the current economic climate, due to continued general revenue budget constraints. However, we do envision the need to increase the number of employers and community work sites where youth can perform meaningful community service. One way in which we feel we could have a greater impact is to address members of the Chamber of Commerce to consider asking members who are employers to set aside entry level part-time positions for at-risk youth.

LESSONS LEARNED

If we were recreating this program from the start, we would develop a database of every youth referred into the program to track the total restitution ordered and collected, the length of time it took to collect full restitution, any indications of recidivism, and whether various incentives or consequences were used to promote compliance with restitution payment for each participant. Such a database would help us evaluate our program success.

PROJECT PAYBACK CONTRACT/RESTITUTION PLAN

Juvenile's Name: _____ DOB: _____
 Case Number(s) _____
 Home Phone: _____ Alternate Phone: _____
 Address: _____
 School/Grade: _____ Email: _____

The purpose of Project Payback is to monitor and enforce restitution. Project Payback has worked to accomplish its mission by developing juvenile employment skills, by allowing juveniles who are unable to become employed the option of completing community restitution service hours, and by improving the enforcement procedures used by the various juvenile justice agencies.

The following checked items are applicable to my case:

- ☐ I agree to participate in Project Payback and pay restitution in the amount of \$ _____
- ☐ I understand that I am "jointly and severally liable" with my codefendant(s) for the total amount of restitution ordered. I understand that this means that I am responsible for the **total amount of restitution ordered** and so is/are my codefendant(s). I understand that Project Payback will make every effort to work with me and my codefendant(s) so that we each pay an equal amount of the restitution until the total amount is paid to the victim.
- ☐ The outstanding unpaid amount of restitution accumulates interest at a rate of **8** % per year, and is calculated by the Clerk's office after your final payment is received.
- ☐ I understand that I must pay any and all Court costs ordered in my case(s) (such as \$50.00 to the Crime Victim Compensation Trust Fund). I understand that Court costs are separate from, and in addition to, my court-ordered restitution responsibilities. I understand that I am responsible for paying my own Court costs; Project Payback will not monitor my Court costs for me.
- ☐ **Juveniles who are employable:** (16 years of age and older, and physically/mentally/emotionally capable)
- 1) I understand that I must complete a minimum of **3 two-hour sessions of Job Skills training**. If I miss a training class, I understand that it is my responsibility to call Project Payback and reschedule immediately.
 - 2) I am required to either be employed or searching for employment as long as I owe restitution, and I agree to give current employer information to Project Payback staff immediately upon securing or changing employment.
 - 3) My first JS session is scheduled for _____

I, _____, must choose one of the following options:

☐ **MAKE MONETARY PAYMENTS:**

I will submit a *minimum* **\$100.00/month** restitution payment each and every month until my balance(s) is/are paid in full.

- a) Payment should be in the form of cash, money order or cashier's check made payable to _____, Clerk of Court; NO PERSONAL CHECKS.
- b) Include your name and the case number on the money order or cashier's check. You must specify that the payment is to be applied to *restitution only*.
- c) Remember to include a **\$3.50 processing fee** with each payment.

☐ Other Monthly Amount: _____. Approved by _____

☐ **COMPLETE COMMUNITY RESTITUTION SERVICE HOURS:**

I will complete a minimum of **16 hours/month** (equivalent to \$112.50) of "community restitution service," submit a log each and every month, and Project Payback will pay back the restitution on my behalf.

- a) 4 hours/week = 16 hours/month = \$112.50/month restitution payment.
- b) I have reviewed the attached rules, log, and list of sites. (must sign rules for doing hours)
- c) My first monthly log is due by _____.

☐ **COMBINATION:**

I may do a combination of 8 CRS hours/month plus \$50.00/month. Same rules apply.

☐ **OTHER:**

☐ I, _____ (juvenile), have read and understand the requirements of this contract, and I willingly enter into it. I agree to pay the appropriate monthly payment amount, and/or submit the appropriate monthly amount of community restitution service hours, until my restitution is paid in full. I understand that my first payment, and/or my first community restitution service log, is due during the month of _____.

☐ I, _____ (parent/guardian), will support my child's efforts, and I will assist him or her with successfully completing Project Payback.

☐ I understand that if I do not meet the above terms and conditions, an Affidavit for Failure to Comply will be submitted to the State Attorney's Office, and my case(s) will be set for a Compliance Hearing or an Order to Show Cause Hearing.*

Juvenile

Date

Parent/Guardian

Date

Project Payback Staff

Date

*Note to parent/guardian: Per FS 775.089(5), an order of restitution may be enforced by the State, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action. If civil enforcement is necessary, the defendant shall be liable for costs and attorney's fees incurred by the victim in enforcing the order. In addition, the court may use its contempt powers to enforce a court-imposed sanction. For juveniles 18 and younger, Contempt of Court holds a maximum sentence of 5 days in the juvenile detention center. For adults 19 and older, Contempt of Court holds a maximum sentence of 5 months and 29 days in the adult jail.



5 California's Enhanced Collections Unit, Judicial Council of California, Administrative Office of the Courts

*by Jessica Sanora, Senior Manager, Enhanced Collections Unit, Judicial Council of California/
Administrative Office of the Courts*

OVERVIEW

Allowing court-ordered fines and penalties to be ignored diminishes public respect for rule of law. Additionally, budget cuts make courts and local governments increasingly dependent on the collection of court-ordered fees, fines, forfeitures, penalties and assessments. Enhanced collection programs have the potential to significantly increase revenue to the state, the trial courts, and local government entities, as well as strengthen the enforcement of court orders. Comprehensive and effective programs are essential to a well-functioning court system. Such programs generate revenues that are earmarked to both state and local levels. While the focus may be on collection efforts performed in the enforcement of court orders for fines, fees, forfeitures, restitution, penalties, and assessments on delinquent account management, an efficient and effective collection program also must include procedures for nondelinquent and installment payments. California began a statewide collection initiative in 2004. At that time, very few comprehensive programs were established and some programs completely ignored delinquent debt. Judicial officers were not provided training on mandatory and discretionary fines, fees, penalties, and assessments. Since 2004, of the 58 courts/counties, 57 have established a comprehensive collection program.

Performance measures and benchmarks, best practices, and new legislation have been established to ensure the programs continue to progress.

INTRODUCTION

In 2004, the California judicial branch heightened its focus on the collection of delinquent court-ordered fines, fees, penalties, forfeitures, and assessments to enhance respect for the rule of law and ensure enforcement of court orders. This topic first became of national interest in January 2003 when the Conference of Chief Justices adopted a resolution referring to the importance of collections efforts on delinquent court-ordered fines and fees. In March 2003, the Chief Justice of California, Ronald M. George, further declared the collection of court-ordered debt a top priority for the judicial branch and the State of California.

WORKING GROUP AND RECOMMENDATIONS

In response to Chief Justice George's 2003 declaration elevating the collection of court-ordered debt to a top priority, the California State Legislature passed Senate Bill 940 (Stats. 2003, ch. 275), authored by Senator Martha Escutia, which was enacted on January 1, 2004. The legislation required that the California Judicial Council survey collection programs on current collection processes and adopt guidelines and standards for a statewide comprehensive program for the collection of fines, fees, penalties, and assessments imposed by court order.

In 2004, as required by legislation, the Judicial Council established a Collaborative Court-County Working Group on Enhanced Collections and appointed a wide spectrum of members to develop recommendations for consideration by the council. Members appointed to the working group included California trial court judges and executive officers; staff from the Administrative Office of the Courts (AOC); collections experts from the courts and counties; the California State Association of Counties (CSAC); the Franchise Tax Board; the Department of Corrections and Rehabilitation; the Victim Compensation and Government Claims Board; the State Controller's Office; and the California Youth Authority.

In an effort to ensure inclusion of a variety of opinions in undertaking its mission to address issues related to statewide collections and to make recommendations to the Judicial Council, the Collaborative Court-County Working Group on Enhanced Collections formed subcommittees with 132 members from 16 superior courts, 15 counties, and three state agencies. In 2004, the working group, staffed by the AOC, conducted five workshops statewide with a total of 279 court and county participants from some of the state's 58 counties and superior courts. The workshops were conducted to educate court and county collaborative collections teams as well as to facilitate discussion on the requirements and impacts of the new legislation. In addition, presentations were given to the California County Auditor Controllers, County Probation Officers, and the California State Association of Counties (CSAC).

In 2004 and 2006, the working group issued a number of recommendations, several of which were approved by the Judicial Council. Approved recommendations included:

- Establishing collections guidelines and standards as well as a definition of “delinquent accounts/payments” for use by the 58 court/county comprehensive collection programs;
- Establishing standards for discharge of accountability, under California Government Code § 25258;
- Directing the trial courts to collaborate with their counties in establishing countywide “enhanced collection and compliance coordination” committees;
- Directing trial courts to enter into written memoranda of understandings (MOUs) with their counties;
- Directing courts and counties to jointly submit the 2004 and 2006 reporting templates previously approved by the Judicial Council;
- Creating and approving master agreements with qualifying private collection vendors;
- Establishing interim software applications in Microsoft Excel (Phase I) and Microsoft Access (Phase II) to provide judicial officers with computer access to mandatory and discretionary fines, fees, and assessment data for infractions and selected misdemeanor and felony violations. Those program components were to then become part of California’s Case Management System when implemented;
- Establishing Cost Recovery guidelines and standards, as required under California Penal Code § 1463.007. (*Available online at www.2.courtinfo.ca.gov/collections/documents/cr_guidelines.pdf*);
- Establishing Alternatives for Collection of Court-Ordered Sanctions imposed on attorneys in criminal cases; and
- Creating a list of regional subject matter experts to enhance the collection of court-ordered debt by providing technical assistance to trial courts and counties on various collection methods and strategies.

The Judicial Council also instructed AOC staff to submit proposed language for legislation that would allow courts, in addition to counties, to charge a fee for setting up installment payments and increase the existing fee from \$35 or less to \$50 or less.

Based on recommendations by the working group, the Judicial Council sponsored California Senate Bill 246, which was adopted and became effective January 1, 2005, (Stats. 2004, ch. 380). The legislation amended a California statute that permits a “comprehensive collections program” (defined as a program that meets any 10 of 14 listed program components) to recover the operating costs of collecting delinquent court-ordered debts. The legislation added three additional components to the existing list of 14: participating in the Franchise Tax Board’s Court-Ordered debt collections program; contracting with one or more private debt collectors; and using skip tracing or locator resources to services to locate delinquent debtors. The legislation also required the Franchise Tax Board’s Court-Ordered Debt program to accept delinquent cases from all 58 California superior court and county collection programs and changed the minimum referral amount from \$250 to \$100. (*See Attachment 5-A.*) Legislation to increase the fee from \$35 to \$50 for setting up installment payments did not pass.

As required, the Judicial Council submitted a report to the California Legislature in January 2006 on the progress and effectiveness of statewide collection efforts. The report noted some significant accomplishments:

- The creation of a standard reporting template to monitor the progress of collection programs;
- A 27 percent increase in the amount of total revenue collected in infraction, misdemeanor, and felony cases; and
- The creation of the AOC Enhanced Collections Unit to continue the work of the Collaborative Court-County Working Group on Enhanced Collections.

The AOC Enhanced Collections Unit's mission is to provide guidance and assistance to courts and counties in their efforts to establish or enhance a collection program, and other collections assistance. Several tools and workshops were developed in order to ensure collaboration between courts and counties as well as between counties, courts and the AOC Enhanced Collections Unit.¹

In July 2007, California Penal Code § 1463.010 was amended by Assembly Bill 367 (Stats. 2007, ch. 132) to specifically include restitution among the court-ordered debts that are subject to the enforcement provisions. (*See Attachment 5-B.*) The amendments also included recommendations by the Collaborative Court-County Working Group on Enhanced Collections. These amendments required the California Judicial Council to develop performance measures, benchmarks, best practices, and to review and report on the effectiveness of the cooperative trial courts and county collection programs. The legislation requires each California superior court and county to jointly report to the Judicial Council on information requested in a collections reporting template on or before September 1, 2009, and annually thereafter. It also required the Judicial Council to report certain information to the legislature regarding the performance of collection programs, including:

- The extent to which each court and county is following best practices for its collection program;
- The performance of each collection program; and
- Any changes necessary to improve performance of collection programs statewide.

MEASURING COLLECTIONS

To assist the Judicial Council with these legislative mandates and to ensure acceptance from courts and counties, an independent consulting company was hired to assist the AOC Enhanced Collection Unit with the development of performance measures and benchmarks, recommendations for best practices, a new reporting template, and suggested changes necessary to enhance the performance of collection programs statewide. The process began with the selection of 16 pilot court-county collection programs to participate in the initial drafting of a revised collection reporting template design and preliminary benchmarks. The 16 pilot programs

¹ Much of this material is available through the California Courts Enhanced Collections Web site, at <http://www2.courtinfo.ca.gov/collections>.

represented a diverse sampling of collection models found in all California court and county collection programs. The new Collections Reporting Template was implemented in fiscal year 2008–2009. (*Available for download at www2.courtinfo.ca.gov/collections/reporting.htm.)*

In order to gather specific data to evaluate the effectiveness of the various processes, approaches, and tools used throughout the state, court and county collection programs were asked to capture and report on 20 traffic infraction cases per month that were two years old using a specially-designed Supplemental Data Gathering Questionnaire. Due to traffic having a higher percentage of cases, the data collected in the questionnaire will be used to determine which components of each individual program have the most significant impact on collection effectiveness statewide as it pertains to traffic infraction cases. The information will also be analyzed to determine if lessons learned can be applied to other collection areas.

The Administrative Office of the Courts hosted four collections workshops in May 2009 to allow participants from courts and counties the opportunity to review and provide feedback regarding the proposed new reporting template, performance measures and benchmarks; to answer question posed by the participants; and to discuss data requirements.

In order to comply with the legislative mandate to develop best practices, in August 2008 the Judicial Council adopted as the Collections Best Practices a select number of collection guidelines and standards previously adopted by the Judicial Council in 2004 and 2006. These collection guidelines and standards had been developed and recommended to the Judicial Council by the Collaborative Court-County Working Group on Enhanced Collections and the Civil Assessment working groups. The Judicial Council also identified, developed, and approved performance measures for the collection programs.

Because many different collection methods and models are in use, the FY 2008-2009 Collections Reporting Template was revised to accommodate the various workflow processes and accounts receivable and case management systems used by the individual court and county collection programs.

The first annual report to the California Legislature, required under the new legislation, was submitted for FY 2008-2009. That report served as a baseline for evaluating the future performance of the individual court and county collection programs collecting delinquent court-ordered debt. Subsequent reports will provide information on the progress achieved by the individual collection programs and recommendations for additional changes necessary to improve performance statewide.

The AOC Enhanced Collections Unit understood the collection processes are not standardized and antiquated case management and accounts receivable systems used by the collection programs vary in their ability to track delinquent court-ordered debt. However, the reporting indicated that the processes were even less standardized and some were out of compliance with current statutes

and rules. The limitations of accounts receivable and case management systems were identified by several of the collection programs as a reason for the under- or over-reporting of revenue derived from the collection of delinquent court-ordered debt. In FY 2008–2009, of the 57 collection programs that submitted a collections reporting template, 41 programs either met or exceeded the established performance measures and benchmarks. According to the revenue figures reported on the collections reporting template, court and county collection programs collected a total of \$565,656,730 in delinquent court-ordered debt for FY 2008–2009, with outstanding debt estimated at over \$5.5 billion, which includes debt that pre-dates the passage of California Senate Bill 940 in 2003, and is eligible and should be discharged from accountability.

Although the outstanding debt amount may appear to be high, the potential collectability of the debt must be considered since some of the accounts receivable and case management systems being used are antiquated, making the tracking and reporting of debt difficult. The total amount of delinquent debt that may be eligible for discharge under Government Code section 25257 is very high; however, the exact number cannot be confirmed. The collection efforts are also affected by such problems as systems limitations, debtors who reside out of the state and/or country, debtors whose information such as addresses and social security numbers may not be available or reliable, and the economic conditions of the state and counties.

COLLECTIONS BEST PRACTICES

The Judicial Council is required by California Penal Code section 1463.010 to report on the extent to which each court or county is following Collections Best Practices for its collection program. Twenty-seven Collections Best Practices were identified and selected based on their potential to impact statewide collections efforts. (*See Attachment 5-C.*) For the first year, this report regarding the extent to which each court and county collection program followed the Collections Best Practices was limited to the number of practices implemented by the program. Based on information reported in the FY 2008–2009 Collections Reporting Template, the number of Collections Best Practices followed by each court and county collection program ranged from 27 to 7 for 57 out of 58 programs that submitted reports.

Because 29 of the 57 (or 55 percent) programs submitted their collections reporting templates after the September 1, 2009, due date, a thorough analysis of all reported data, which might have linked best practices to collections rates, could not be conducted. Currently, there is no identified correlation between the number of collections best practices used and program performance or between a particular practice and program performance.

In the upcoming FY 2009-2010 annual report to the California Legislature, an analysis and comparison will be conducted, to the extent possible, to determine (1) potential correlations between the Collections Best Practices used and the revenue collected; and (2) the priority each best practice should be given, based on the revenue generated.

Amendments to the list of Collections Best Practices will be made as necessary and as statutes and court-ordered debt industry standards change. In order to maintain or enhance the performance levels of all collection programs, top-performing and innovative collection programs will be analyzed to determine if any practices currently in use by such programs should be recommended for inclusion in the best practices list or if practices should be eliminated from the current list.

PERFORMANCE MEASURES

California Penal Code section 1463.010 requires the Judicial Council to develop performance measures and benchmarks, to review the effectiveness of the cooperative court and county collection programs, and to report on the performance of the programs. Performance is measured by the amount of revenue collected and court-ordered adjustments. The performance of the individual collection program is measured by the ability of the program to collect delinquent court-ordered debt or the court's imposition of an alternative sentence, which leads to the resolution of a case.

Performance measures and benchmarks were developed in FY 2008–2009, establishing a baseline for the measurement of performance in the future. (*See Attachment 5-D.*) These were based on data reported in FY 2004–2005 through FY 2005–2007.

After conducting a pilot program, site visits, workshops, phone conferences, and an interactive webinar with staff from various court and county collection programs, a recommendation was made and the Judicial Council approved the following performance measures:

- The **Success Rate** measures the amount of revenue collected from delinquent court-ordered debt after adjustments.
- The **Gross Recovery Rate** measures the ability to resolve delinquent court-ordered debt, taking into account court-ordered alternative sentences, community services, and suspensions.

The benchmark for the Success Rate was set at 31 percent. The actual Success Rate for programs that submitted a completed FY 2008–2009 Collections Reporting Template ranged from 5 percent to 78 percent. The Judicial Council set the Gross Recovery Rate benchmark at 34 percent. The Gross Recovery Rate of each court and county collection program that submitted the FY 2008–2009 Collections Reporting Template ranged from 2 percent to 92 percent. Collections Reporting Templates were received from 57 of 58 collection programs; however, several programs were unable to provide complete data, which may have affected the individual performance levels.

The collection programs that reported the highest performance levels statewide will be reviewed to determine if best practices should be amended.

The delinquent revenue reported in FY 2008–2009 will be used as the base or benchmark for measuring the performance level of individual court and county collection programs in subsequent reports. It should be noted that, in some instances, collection activities were successful in getting debtors to make fine, fee, penalty, or assessment payments, but the payments were applied directly to victim restitution rather than the debt for which it was collected. Restitution to a victim is the first priority when accepting installment payments under California Penal Code section 1203.1(d). Delinquent revenue, as currently defined, includes fines, fees and assessments. Restitution to a victim is not considered delinquent and costs to recover restitution cannot be deducted.

Penal Code section 1463.010 requires the Judicial Council to recommend to the legislature any changes necessary to improve the performance of collection programs statewide. The proposed recommended changes were:

- Require that a collections program have the basic capability to track and collect delinquent court-ordered debt;
- Amend the Collections Best Practices and enforcement tools as required in Penal Code section 1463.007;
- Develop and establish recommended collections procedures, incorporating Collections Best Practices;
- Develop and establish statewide policies, procedures, and processes for the uniform collection of court-ordered debt;
- Establish an annual collections training program to assist courts and counties in improving individual performance;
- Standardize, as necessary, communication processes, including letters and notices, between debtors and collection programs to enhance collections efforts; and
- Assist collection programs with the selection of private collection vendors.

Several of the recommendations have been proposed in a budget trailer bill for approval upon the adoption of the 2010-2011 California budget.

California's collections efforts receive two types of funding. For local programs, California Penal Code section 1463.007 allows a collection program that meets at least 10 of 17 components to deduct the cost of the program before distributing revenue to any other government entity. (Revenue received toward restitution to a victim cannot be used to offset the cost of collection programs.) In FY 2008–2009, the calculated cost of collections ranged from \$.05 to \$.55 per dollar. Based on the wide range in cost per dollar, it is evident that future costs should be tracked to determine if changes are needed in the area of cost recovery.

The cost of the AOC Enhanced Collections Unit is financed from the "California Trial Court Trust Fund created by Government Code section 77209 and is designated for Trial Courts and AOC

units that support Trial Court operations.” (See Attachment 5-E for funding of the Trust Fund, provided under California Penal Code § 1214.1.) The statewide unit consists of one senior manager, one senior court service analyst, two court service analysts, and one administrative coordinator II.

One of the biggest obstacles in the collection and reporting of court-ordered debt is the lack of a single entity with responsibility and authority over statewide court-ordered debt. This lack of authority results in laws being misinterpreted, late reports, and non-compliance.

PROGRAM IMPACT ON VICTIM RESTITUTION

The court-ordered debt program was not designed to improve the collection of victim restitution orders; however the adoption of the best practices and other efforts has led to increased collection of victim restitution. In addition, California imposes “restitution fines” to fund its Victim Compensation program. California Penal Code § 1202.4(b) (1) requires a fine of \$100 to \$1,000 for misdemeanor cases and \$200 to \$10,000 on felony cases. The court or probation department usually collects revenue on cases that are not delinquent. Cases that have delinquent debt can be collected by a court, county, private vendor, or the Franchise Tax Board-Court Ordered Debt program. The FTB-COD program collected \$1,403,068.53 from FY 1993-1994 to FY 2003-2004. After a statewide initiative began, the FTB-COD program collected \$6,515,215.05 from FY 2004-2005 to 2008-2009. The amounts collected in the FTB-COD program include \$7,622,775.40 collected for the California Victim Compensation Board for fiscal years 2004-2005 to 2008-2009.

NEXT STEPS

In FY 2009-2010, as approved by the California Judicial Council, the AOC Enhanced Collections Unit in collaboration with the California State Association of Counties will introduce new collection legislation based on input by court and county collections professionals in California. The legislative proposals will seek to accomplish the following:

1. Improve collections and enhanced revenue recovery;
2. More accurately profile collectible debt;
3. Expand tools and strategies to maximize courts and county efforts to enhance its collections programs; and
4. Improve compliance with court orders statewide.

LESSONS LEARNED

While developing a collections program, it is critical to designate one entity to be responsible for enforcing policies, procedures, and legislatively-mandated requirements. This would provide the necessary mechanism to:

- Continue to effectively enhance the performance of the statewide court-ordered debt collection programs;
- Keep a continuous focus on collections efforts, and continually train or provide workshops;
- Provide “seed” money to start collection programs and allow cost recovery in more areas as an incentive for collection;
- Have entities that collect court-ordered debt be responsible for reporting; and
- Provide a sanction for all programs that do not follow the required policies and procedures.

California began its statewide initiative in 2003. For the past few years, there has been remarkable progress in the collection of court-ordered debt. While this is a work in progress, we continue to make great strides, including proposing new legislation to ensure the collection efforts continue to improve.

Collection by the Franchise Tax Board

REVENUE AND TAXATION CODE SECTIONS 19280-19283

19280. (a) (1) Fines, state or local penalties, bail, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior court of the State of California upon a person or any other entity that are due and payable in an amount totaling no less than one hundred dollars (\$100), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the superior court, the county, or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board. Unless the victim of the crime notifies the Department of Corrections and Rehabilitation to the contrary, the Department of Corrections and Rehabilitation may refer a restitution order to the Franchise Tax Board, in accordance with subparagraph (B) of paragraph (2), for any person subject to the restitution order who is or has been under the jurisdiction of the Department of Corrections and Rehabilitation.

(2) For purposes of this subdivision:

(A) The amounts referred by the superior court, the county, or state under this section may include an administrative fee and any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) The Franchise Tax Board, in conjunction with the Judicial Council, shall seek whatever additional resources are needed to accept referrals from all 58 counties or superior courts.

(c) Upon written notice to the debtor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the debtor by the Franchise Tax Board in any manner

authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the debtor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

19281. (a) The Legislature finds that it is essential for fiscal purposes that the program authorized by this part be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criteria, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board or Controller in implementing and administering the program required by this article.

(b) Except as provided in subdivision (a), any standard, criteria, procedure, determination, rule, notice, or guideline that otherwise would be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall be approved by a majority vote of the Franchise Tax Board.

19282. (a) Except as otherwise provided in subdivision (e), amounts collected under this article shall be transmitted to the Treasurer and deposited in the State Treasury to the credit of the Court Collection Account in the General Fund, which is hereby created. Amounts deposited in the Court Collection Account shall, less an amount that is equal to the costs incurred by the Franchise Tax Board in administering the program authorized by this article, be transferred by the Controller either to the county or to the state fund to

which the amount due was originally owing or as otherwise directed by contractual agreement. If the amount collected is not sufficient to satisfy the amounts referred for collection pursuant to Section 19280 that are to be paid by an offender, then the amount aid shall be allocated for distribution on a pro rata basis, as defined in subdivision (d), except in counties where the board of supervisors has established a priority of payment for amounts collected under this article pursuant to Section 1203.1d of the Penal Code. The amount that is equal to the costs incurred by the Franchise Tax Board in administering the program authorized by this article shall be transferred by the Controller to the General Fund for the purpose of recovering the amount expended by the Franchise Tax Board from General Fund appropriations for the purpose of implementing and administering the program authorized by this article, and related statutes as added or amended by the act adding this article.

(b) It is the intent of the Legislature that costs to the Franchise Tax Board to administer this article for the 1997-98 fiscal year and each fiscal year thereafter not exceed 15 percent of the amount it collects pursuant to this article.

(c) Notwithstanding Section 13340 of the Government Code, all moneys deposited in the Court Collection Account pursuant to this section are hereby continuously appropriated, without regard to fiscal years, for purposes of making distributions pursuant to subdivision (a).

(d) For purposes of this section, "pro rata basis" means a distribution determined as follows: the sum of the amounts referred for collection pursuant to Section 19280 to be paid by an offender shall be allocated and distributed in the same proportion that each of the elements has to the sum.

(e) For amounts collected pursuant to a restitution fine or restitution order, subdivision (a) is modified to require the deposit and disbursement of funds collected under this article to be in accordance with the laws relating to reimbursement of the State Restitution Fund.

19283. The Department of Justice, in consultation with the Franchise Tax Board, shall examine ways to enhance the use and effectiveness of this article through integration with the Department of Justice's Wanted Persons System and shall report the findings and recommendations to the Legislature on or before January 1, 2002.

California Penal Code section 1463.010

1463.010. The uniform imposition and enforcement of court-ordered debts are recognized as an important element of California's judicial system. Prompt, efficient, and effective imposition and collection of court-ordered fees, fines, forfeitures, penalties, restitution, and assessments ensure the appropriate respect for court orders. The California State Association of Counties and the Administrative Office of the Courts are jointly committed to identifying, improving, and seeking to expand access to mechanisms and tools that will enhance efforts to collect court-ordered debt. To provide for this prompt, efficient, and effective collection:

(a) The Judicial Council shall adopt guidelines for a comprehensive program concerning the collection of moneys owed for fees, fines, forfeitures, penalties, and assessments imposed by court order. As part of its guidelines, the Judicial Council may establish standard agreements for entities to provide collection services. As part of its guidelines, the Judicial Council shall include provisions that promote competition by and between entities in providing collection services to courts and counties. The Judicial Council may delegate to the Administrative Director of the Courts the implementation of the aspects of this program to be carried out at the state level.

(b) The courts and counties shall maintain the collection program that was in place on January 1, 1996, unless otherwise agreed to in writing by the court and county. The program may wholly or partially be staffed and operated within the court itself, may be wholly or partially staffed and operated by the county, or may be wholly or partially contracted with a third party. In carrying out this collection program, each superior court and county shall develop a cooperative plan to implement the Judicial Council guidelines. In the event that a court and a county are unwilling or unable to enter into a cooperative plan pursuant to this section, prior to the arbitration procedures required by subdivision (e) of Section 1214.1, the court or the county may request the continuation of negotiations with mediation assistance as mutually agreed upon and provided by the Administrative Director of the Courts and the California State Association of Counties.

(c) The Judicial Council shall develop performance measures and benchmarks to review the effectiveness of the cooperative superior court and county collection programs operating pursuant to this section. Each superior court and county shall jointly report to the Judicial Council, as provided by the Judicial Council, information requested in a reporting template on or before September 1, 2009, and annually thereafter. The Judicial Council shall report to the Legislature on December 31, 2009, and annually thereafter, on all of the following:

- (1) The extent to which each court or county is following best practices for its collection program.
- (2) The performance of each collection program.
- (3) Any changes necessary to improve performance of collection programs statewide.

(d) The Judicial Council may, when the efficiency and effectiveness of the collection process may be improved, facilitate a joint collection program between superior courts, between counties, or between superior courts and counties.

(e) The Judicial Council may establish, by court rule, a program providing for the suspension and nonrenewal of a business and professional license if the holder of the license has unpaid fees, fines, forfeitures, penalties, and assessments imposed upon them under a court order. The Judicial Council may provide that some or all of the superior courts or counties participate in the program. Any program established by the Judicial Council shall ensure that the licensee receives adequate and appropriate notice of the proposed suspension or nonrenewal of his or her license and has an opportunity to contest the suspension or nonrenewal. The opportunity to contest may not require a court hearing.

(f) Notwithstanding any other provision of law, the Judicial Council, after consultation with the Franchise Tax Board with respect to collections under Section 19280 of the Revenue and Taxation Code, may provide for an amnesty program involving the collection of outstanding fees, fines, forfeitures, penalties, and assessments, applicable either statewide or within one or more counties. The amnesty program shall provide that some or all of the interest or collections costs imposed on outstanding fees, fines, forfeitures, penalties, and assessments may be waived if the remaining amounts due are paid within the amnesty period.

Collections Best Practices

Penal Code section 1463.010 as amended by Assembly Bill 367 (Stats. 2007, ch.132) requires the Judicial Council to report the extent to which each court or county is following best practices for its collection program.

The collection programs are encouraged to use the following best practices. Additional information regarding best practices, including guidelines and standards, can be obtained on Serranus: <http://serranus.courtinfo.ca.gov/programs/collections/cpa.htm>; the external collections Web site: <http://www2.courtinfo.ca.gov/collections>; or by contacting staff of the Enhanced Collections Unit at collections@jud.ca.gov.

1. Develop a plan and put the plan in a written memorandum of understanding (MOU) that implements or enhances a program in which the court and county collaborate to collect court-ordered debt and other monies owed to a court under a court order.
2. Establish and maintain a cooperative superior court and county collection committee responsible for compliance, reporting, and internal enhancements of the joint collection program.
3. Meet at least 10 of the 17 components of a comprehensive collection program in order that the costs of operating the program can be recovered under Penal Code section 1463.007.
4. Complete all data components in the Collections Reporting Template.
5. Reconcile amounts placed in collection to the supporting case management systems.
6. Retain the joint court/county collection reports and supporting documents for at least three years.
7. Participate in both the Franchise Tax Board Court-Ordered Debt collection program and the Franchise Tax Board Interagency Intercept program.
8. Take appropriate steps to collect court-ordered debt locally before referring it to the Franchise Tax Board for collection.
9. Establish a process for handling the discharge of accountability for uncollectible court-ordered debt.
10. Participate in any program that authorizes the Department of Motor Vehicles to suspend or refuse to renew driver's licenses for licensees with unpaid fees, fines, or penalties.
11. Conduct trials by written declaration under Vehicle Code section 40903 and, as appropriate in the context of such trials, impose a civil assessment.

12. Follow the *Criteria for a Successful Civil Assessment Program* if the court has implemented such a program.
13. Develop a process for the collection of unpaid attorney sanctions.
14. Evaluate the effectiveness and efficiency of external collection agencies or companies to which court-ordered debt is referred for collection.
15. Accept payments via credit and debit card.
16. Accept payments via the Internet.
17. Include in a collection program all court-ordered debt and monies owed to the court under a court order.
18. Include financial screening to assess the ability to pay prior to processing installment payment plans and account receivables.
19. Charge fees as authorized by Penal Code section 1205(d).
20. Charge fees as authorized by Penal Code section 1202.4(l).
21. Use restitution rebate, as appropriate, to further efforts for the collection of funds owed to the Restitution Fund as authorized by Government Code section 13963(f).
22. Participate in the statewide master agreement for collection services or renegotiate existing contracts to ensure appropriate levels of services are provided at an economical cost, when feasible.
23. Request mediation services from the AOC and California State Association of Counties if the court and county are unable to agree on a cooperative collection program.
24. Require private vendors to remit the gross amount collected to the court or county, as agreed.
25. Require private vendors to submit invoices for commission fees to court or county on a monthly basis.
26. Use collection terminology (as defined in the glossary, instructions, or other documents approved for use by courts and counties) for the development or enhancement of a collection program.
27. Require private vendors to complete the components of the Collections Reporting Template that corresponds to its collection program.

Collections Performance Measures and Benchmarks

Performance Measure	Definition	Formula	Benchmark
Gross Recovery Rate (GRR)	Measures a collection program's ability to resolve delinquent court-ordered debt, including alternative sentences, community service, and suspended sentences.	Delinquent collections for the fiscal year + Adjustments/Referrals	34%
Success Rate (SR)	Measures the amount of revenue collected on delinquent court-ordered debt based on total delinquent accounts referred after adjustments, including NSF checks.	Delinquent collections for the fiscal year / referrals – adjustments	31%

The performance measures and benchmarks recommended above are based on results from the 2008 Gartner project and data submitted in FY 2004-2005 and FY 2005-2006 by collection programs in their reporting templates.

It is estimated that 80 percent of statewide collection programs are currently meeting or exceeding the percentages identified above. The proposed benchmarks represent a minimum standard of performance that should be achievable by all collection programs in the next fiscal year.

The Gross Recovery Rate and Success Rate use a formula that is standard in the collection industry.

California Penal Code section 1214.1

1214.1. (a) In addition to any other penalty in infraction, misdemeanor, or felony cases, the court may impose a civil assessment of up to three hundred dollars (\$300) against any defendant who fails, after notice and without good cause, to appear in court for any proceeding authorized by law or who fails to pay all or any portion of a fine ordered by the court or to pay an installment of bail as agreed to under Section 40510.5 of the Vehicle Code. This assessment shall be deposited in the Trial Court Trust Fund, as provided in Section 68085.1 of the Government Code.

(b) The assessment shall not become effective until at least 10 calendar days after the court mails a warning notice to the defendant by first-class mail to the address shown on the notice to appear or to the defendant's last known address. If the defendant appears within the time specified in the notice and shows good cause for the failure to appear or for the failure to pay a fine or installment of bail, the court shall vacate the assessment.

(c) If a civil assessment is imposed under this section, no bench warrant or warrant of arrest shall be issued with respect to the failure to appear at the proceeding for which the assessment is imposed or the failure to pay the fine or installment of bail. An outstanding, unserved bench warrant or warrant of arrest for a failure to appear or for a failure to pay a fine or installment of bail shall be recalled prior to the subsequent imposition of a civil assessment.

(d) The assessment imposed under subdivision (a) shall be subject to the due process requirements governing defense and collection of civil money judgments generally.

(e) Each court and county shall maintain the collection program that was in effect on July 1, 2005, unless otherwise agreed to by the court and county. If a court and a county do not agree on a plan for the collection of civil assessments imposed pursuant to this section, or any other collections under Section 1463.010, after the implementation of Sections 68085.6 and 68085.7 of the Government Code, the court or the county may request arbitration by a third party mutually agreed upon by the Administrative Director of the Courts and the California State Association of Counties.

RESTITUTION ROUNDTABLE
IMPROVING COLLECTION FOR CRIME VICTIMS
APRIL 6, 2010

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