

Strengthening the Criminal Justice in Pennsylvania

Prepared by the PCCD, Office of Victims' Services

Summary

Restitution holds offenders accountable for the financial losses suffered by the victims of their crimes. Restitution is typically ordered in both juvenile and criminal courts to compensate victims for out-of-pocket expenses that are the direct result of a crime. However, restitution remains one of the most under enforced victim rights within the criminal and juvenile justice systems.

Restitution is widely supported because it addresses victim's needs for compensation and because it meets the criminal justice system's goals of punishment and rehabilitation. Prior to July 2, 1995, judges had discretion in deciding when and to whom restitution would be ordered. Since July 2, 1995, restitution is mandated by statute (Act 12 of 1995) and judges cannot take into account the offender's ability to pay.

Statistics show that in restitution eligible cases (cases where there is an offender that has been found guilty or pleads guilty and where substantiated restitution is not at issue), judges are ordering restitution in only 58% of cases.

Although this figure is significantly higher than the pre-1995 figure of 35%, it is still lower than what might be expected. Moreover, according to research and studies completed by the Pennsylvania Commission on Sentencing, data indicates that when restitution is ordered, the actual amount collected is 30% of the original amount ordered. Ordering restitution, yet not enforcing full and complete payment, can set up false hope for victims and leave them feeling that the system has failed them.

While restitution received by the Victims Compensation Assistance Program (VCAP) has increased by more than 282% since 1999, this amounts to only 4.5% of VCAP's annual funding streams. A recent query performed by the Administrative Office of the Pennsylvania Courts (AOPC), showed that VCAP is owed close to \$20 million in unpaid restitution from offenders whose orders are over \$2,000.

The AOPC has been instrumental in spearheading automation efforts and the use of advanced technology for helping to improve collections and the processing of payments. In 2003 the Pennsylvania Supreme Court established a Uniform Disbursement Schedule directing the disbursement of all fines, costs, and restitution. The Common Pleas Case Management System (CPCMS), automatically disburses all payments in accordance with this schedule, which places a high priority on payments to victims and the Victims Compensation Assistance Program. In

2010 Pennsylvania's criminal courts processed a record \$480 million in fees, fines, costs and restitution collected from defendants. Of that, \$37 million, or approximately eight percent, was paid to crime victims for restitution. PCCD's, Office of Victims' Services, in an attempt to build on the success of CPCMS, conducted research over the past year on current restitution practices in Pennsylvania. As a result, several areas of the restitution process were identified as key components that could be strengthened to continue to increase the amount of restitution ordered and collected statewide and ensure that crime victims are being afforded their full right to restitution.

Information Collection Process:

The restitution process was divided into five focus areas: Assessment (the ordering of restitution), Information Systems (data entry into CPCMS and the disbursement of restitution using CPCMS), Case Management (the actual monitoring of payments and delinquent accounts), Enforcement/Compliance techniques and potential amendments to the restitution statutes.

Three regional focus groups were conducted that included approximately 30 victim advocates across the state. Advocates discussed their experience with restitution and the feedback they get from working directly with crime victims.

Next, six site visits were completed in various counties to document their restitution process from the assessment phase to the enforcement phase. Meetings were held with victim witness staff, clerk of courts, probation, and any other offices that were involved with the ordering and collection of restitution in that particular county. During these site visits best practices and enforcement techniques were captured as well as their suggestions on what improvements or changes are needed at both the state and local level.

In addition to the focus groups and site visits, other state agencies and their enforcement techniques were reviewed (such as the PA Department of Revenue and the Bureau of Child Support Enforcement), victim's options for enforcing restitution in the civil process were explored, as well as best practices and legislation at a national level.

The intent of this project is to describe areas of the assessment and collection of restitution which were identified as key components that could be enhanced, as well as present some initial discussion points on how to begin this process. Our next steps include engaging the various stakeholders and affected parties in vetting ideas, identifying the pros and cons of these concepts, as well as determining the potential impact that these suggested approaches may have on various agencies. The overall goal of this project is to increase revenue not only to the Victim's Compensation Assistance Program but also to the counties and the courts.

In phase 1, OVS has begun to facilitate meetings on data sharing which cuts across all outlined focus areas. The goal is to explore the creation of interfaces between existing systems thereby creating an effective automated tool to enhance process and collections.

We are currently working with different agencies and hope to announce data sharing successes in the near future.

Future phases will focus on:

Technology Training

The CPCMS uses the case participant role (i.e. victim, witness, etc.) to distribute money according to the Uniform Disbursement Schedule. If the case participant role is not assigned correctly, that individual will not be put in the correct place in line to receive restitution. For example, there were instances where victims were assigned the role of “witness” which led to the victim’s money being held in escrow because the CPCMS does not issue a check to a witness. In other circumstances, the Victims Compensation Assistance Program was assigned the role of an actual crime victim, putting the Program further ahead in the disbursement schedule and potentially receiving money that should be going to the crime victim. Quarterly or annual trainings/bulletins that highlight processes, best practices and the capabilities of CPCMS as it relates to restitution collection and distribution has potential to strengthen the process.

Training on Restitution Statutes and Applicable Case Laws

Each county operates differently in regards to what expenses are considered for restitution and when it can be ordered. For example, in some counties victims can submit loss of earnings as a restitution expense while in another county this is not considered an expense that is eligible to be submitted for restitution. One county may amend a restitution order at any time as long as the reason for the delay is stated on the record, while in another county restitution orders can only be amended for 30 days after sentencing. Trainings on the current restitution statutes and applicable case laws may be beneficial for VW staff, District Attorneys, and Judges to clarify what expenses are allowable by law, promote consistency, and ensure victims are being afforded their full right to restitution.

Case Management

There is often no single bureau or entity within County government specifically tasked with the responsibility of case management of restitution payments. There also appears to be debate

surrounding what they are legally permitted to do in regards to enforcement. Specifically, many county courts believe that once the offender maxes out, they don't have any authority to enforce restitution anymore. Many also do not know that they are allowed to execute wage attachments on the offender, both while under supervision as well as after they complete their sentence. A coordinated approach to developing a model for collection strategies may prove to be an effective means to improve the case management of restitution.

Enforcement

There is often confusion over who has jurisdiction to enforce restitution payments while an offender is on state parole; the county courts or the state parole agent? Currently many counties feel that they are not allowed to enforce restitution while an offender is on state parole. However, state parole agents are already tasked with collecting their own supervision fees and enforcing other conditions of parole. This results in offenders completing their sentence with a restitution balance still due. Compounding the situation is the fact that many counties are not aware that they can continue to pursue restitution collection after the offender completes their entire prison sentence and parole supervision period; therefore the offender is essentially "off the hook". Discussion between the county courts and PBPP to determine who should be enforcing restitution payments while an offender is on state parole should be explored.

While conducting the focus groups and site visits, enforcement techniques and tips were collected. The end result was a list that could be developed into an enforcement toolkit. The toolbox could include ideas such as:

- Sending dunning notices
- Sending cases to a third party collections agency
- Notifying PennDOT of failure to pay on applicable crimes
- Initiating wage attachments
- As previously mentioned, enhancing communication with the Department of Welfare is another highly effective tool
- Offering a reduced probation period if all court costs, fines and restitution are paid off. (Berks County offers this incentive to offenders in nonviolent crimes, including drunken driving and retail theft. Collections have increased 25 percent since the program began in fall 2008 and it pays the salaries of 11 probation officers and offsets other costs.)
- Some states have also developed a brochure for offenders about restitution. It explains what restitution is, what happens if it isn't paid, as well as tips on coming up with money to pay their restitution. Case managers tasked with

monitoring payment plans would benefit from having some sort of similar brochure for offenders here in Pennsylvania.

Legislative

In addition to providing case managers with all of the tools that are currently available to them, the other area of enforcement to be considered is the restitution statutes themselves.

Legislative efforts will focus on strengthening existing statutes to ensure victim's financial needs are addressed, offenders are being held accountable and data sharing/automation is occurring between agencies to ensure communication/efficiency.

Over the next year, the Pennsylvania Commission on Crime and Delinquency is planning to be fully engaged and oversee a coordinated interagency approach to focus on strengthening restitution in PA. All agencies responsible for restitution are committed to collaborating to strengthen existing statutes, develop and implement new procedures and innovative strategies, including the seamless sharing of data and open lines of communication between agencies to advance and promote the ordering, collection and enforcement of restitution.