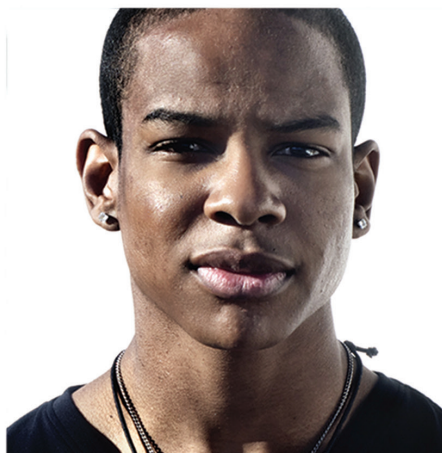


FACT SHEET 4

PROMISING VICTIM RELATED PRACTICES IN PROBATION AND PAROLE



RESTITUTION AND OTHER LEGAL FINANCIAL OBLIGATIONS



According to the U.S. Department of Justice, Bureau of Justice Statistics, U.S. residents ages 12 and older in 2010 experienced an estimated 3.8 million violent crimes, 14.8 million property crimes, and 138,000 personal thefts (Truman, 2011). These crimes have a lasting effect on their victims, which can include both physical injuries and emotional scars. Experiencing a crime also can leave victims with significant financial losses resulting from stolen or damaged property, medical and rehabilitation expenses, funeral expenses, lost wages, legal fees, and other expenses directly related to their victimization. According to one study, the cost of personal crimes in the U.S. was estimated to be \$105 billion annually, including medical costs, lost earnings, and public costs for victim assistance programs. When factoring in pain, suffering, and reduced quality of life, this estimate rose to \$450 billion (Miller, Cohen, and Wiersema, 1996).

More recent data indicate that the economic consequences of crime remain significant to crime victims and society alike:

- In 2007, the total economic loss to victims of violent crime was estimated to be \$2 billion, while victims of property crime experienced an estimated loss of \$16 billion (National Center for

This publication was produced by the Council of State Government/American Probation and Parole Association under Cooperative Agreement Number 2009-SZ-B9-K001, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this document are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Victims of Crime, 2011a).

- Crime victim compensation programs paid \$461 million to crime victims in 2008 (National Center for Victims of Crime, 2011a).
- Of the total crime victim compensation payments in 2008, the majority (52%) were for medical costs, followed by economic support due to lost wages or lost support (16%), funeral costs (11%), and mental health counseling (8%) (National Center for Victims of Crime, 2011a).
- Victims of intimate partner abuse paid out-of-pocket for approximately one-third of the mental health care bills related to their sexual and physical assault and stalking victimizations (U.S. Centers for Disease Control and Prevention, 2003).

When these statistics are considered, the importance of criminal restitution takes on significant meaning. Restitution is a court-ordered requirement for a convicted offender to compensate his/her victim for the financial losses resulting from the crime. The benefits to victims are clear—they receive economic compensation for their losses, they witness the offender being held accountable for his/her criminal actions, and they see the criminal justice system responding to their needs. For offenders, restitution offers the opportunity to comprehend the injury of the offense and the very real and often financially devastating consequences to the victim. Restitution also provides offenders with the opportunity to take responsibility for the injury and losses they have caused and to accept

FIGURE I

THE IMPORTANCE OF RESTITUTION TO CRIME VICTIMS

The importance of criminal restitution to crime victims cannot be overstated. Unfortunately, however, many offenders who owe their victims restitution are able to complete their community supervision without complying with their restitution orders. This jeopardizes not only their victims' ability to overcome the economic implications of the crime, but also the victims' trust in the criminal justice system to hold offenders accountable for their criminal actions.

On August 18, 2010, the American Probation and Parole Association (APPA) sponsored a Public Hearing on Victim Issues in Probation and Parole, through support from the U.S. Department of Justice, Office for Victims of Crime (OVC). The hearing featured a witness panel comprising six survivors of crime and a victim advocate who testified about their experiences with the criminal justice system, including community corrections. Their testimony highlighted a number of strategies through which community corrections agencies and staff can play an integral role in the provision of support and services to crime victims. Prominent was the diligent monitoring, collection, and dissemination of financial obligations of convicted offenders, including victim restitution and child support. According to Tennessee First Lady Andrea Conte, who provided testimony at the hearing, "In the eyes of victims, restitution is accountability in action, and restitution can't just be referenced in the margins." She added, "It is a mainstream, high-priority concern." (APPA, 2010)

FIGURE 2

APPA TRAINING OPPORTUNITIES FOR IMPROVING RESTITUTION MANAGEMENT

Community corrections agencies are increasingly aware that their collection rates for victim restitution and other offender financial obligations are low. Many agencies across the nation are looking for innovative ways to enhance their collection rates of victim restitution and other monetary assessments. The American Probation and Parole Association (APPA) recognized the growing need for training around restitution collection and enforcement in probation and parole settings. With funding support from the U. S. Department of Justice, Office for Victims of Crime, APPA has developed a 1-day training program, “Improving Restitution Management in Community Corrections.” The program is provided as part of APPA’s specialized training offerings. The program’s goals are: 1) to provide community corrections and court services agencies and personnel with information on strategies they can implement to improve enforcement and collection of restitution, and 2) to improve agencies’ ability to communicate with victims of crime about restitution issues. Through this training program, participants will learn:

- To recognize the value of their role in monitoring, enforcing, and/or collecting restitution for crime victims;
- To demonstrate effective communication skills when talking with crime victims about restitution issues;
- To identify new strategies and graduated responses (both sanctions and incentives) for increasing offenders’ likelihood of paying restitution;
- To understand other agencies’ roles in the management of restitution; and
- To develop a plan for implementing new strategies and graduated responses for enforcement and collection of restitution.

More information about this and other training programs offered by APPA is available on the APPA website at www.appa-net.org.



accountability to the victim and society for the resulting damage.

Moreover, research suggests that successful compliance with restitution orders reduces an offender's likelihood of recidivism. A 2002 study among probationers in Pennsylvania found that those who paid a larger share of their court-ordered restitution were less likely to be arrested for a new crime (Kempinen, 2002).

Despite these clear benefits to both victims and offenders, collecting restitution remains a challenge for the justice system. According to a report by the National Center for Victims of Crime (NCVC), uncollected criminal debt at the federal level totals \$50 billion, most of which is restitution owed to crime victims (2011b). The report goes on to suggest that restitution collection at the state and local levels has proven to be equally challenging. For instance, as of December 2008 one state had collected only 12% of the restitution ordered by courts in fiscal year 2007, while in another state more than 90% of offenders released from parole supervision between 2003 and 2008 still owed restitution (NCVC, 2011b).

For restitution to be truly meaningful, there must be strict accountability on the part of the offender to pay. Similarly, the justice system also must be accountable for the effective and efficient collection and processing of restitution, and its agencies must have mechanisms for enforcing the collection of restitution when offenders' repayment becomes delinquent.

KEY ELEMENTS FOR RESTITUTION MANAGEMENT IN COMMUNITY CORRECTIONS

Jurisdictions nationwide are giving greater levels of attention and concern to the widespread problem of uncollected victim restitution. Many have begun developing a range of restitution reforms and new programs to enhance the collection, management, and distribution of restitution in an effort to more fully restore those victimized by crime.

The following discussion outlines key components for restitution collection, enforcement, and management in probation or parole settings. It also identifies a number of promising programs and practices that have been developed by community corrections agencies at the state and local levels to increase restitution collections.

MAKING RESTITUTION AN AGENCY-WIDE PRIORITY

Many supervising agents do not feel that it is their responsibility to be a "bill collector," and they continue to view the collection of restitution in that context. Compounding this issue is the fact that the collection of restitution often competes directly with the collection of other court-ordered fines and fees, some of which may be used to supplement the budgets of probation and parole departments and pay officers' salaries. Probation and parole agencies can place the collection of restitution in proper perspective by developing new policies and procedures that clarify the importance of restitution collection as a responsibility of supervising officers, and by offering training to officers on restitution collection practices. If restitution collection is articulated as an agency value, stipulated as the first priority in the order of collection of court-ordered fines and fees, and reinforced by the implementation of performance-based measures on restitution management and collection,

FIGURE 3

A SUCCESS STORY FOR VICTIMS: THE MARICOPA COUNTY ADULT PROBATION DEPARTMENT FINANCIAL COMPLIANCE UNIT

In an effort to better meet the needs of crime victims, the Maricopa County Adult Probation Department (MCAPD) in Phoenix, Arizona, established a specialized unit for the collection of court-ordered payments. The Financial Compliance Unit (FINCOM) uses elements of a business model for collections. It is staffed by probation officers, who are trained on enforcing financial conditions, and collections officers, who are tasked with collecting delinquent restitution payments. Through the program, MCADP provides a range of incentives and services to support offenders in complying with court-mandated restitution and other financial orders, including a system of graduated sanctions for noncompliance. Personal finance courses and employment readiness and placement services are available to offenders who need assistance in meeting their financial obligations. Offenders who are current on their payments may be eligible for incentives such as travel permits, less frequent reporting requirements, and early termination of probation (McLean and Thompson, 2007). Failure to meet court-ordered financial obligations may result in mandatory participation in personal finance classes, referral to a collector, interception of tax refunds, and, ultimately, revocation of probation (Arizona Quality Alliance, 2006).

As part of FINCOM's efforts to improve collections among the probationers it supervises, the unit played an integral role in the establishment of a specialized court in Maricopa County devoted exclusively to restitution collection. Developed in September 2008, the Restitution Enforcement Court offers a dedicated court docket for the Superior Court to enforce delinquent restitution payment through findings of civil contempt. Probationers who are delinquent in their restitution payments are screened and referred by FINCOM staff to the court, then brought to the court through a petition for order to show cause. During hearings, the presiding judge considers the case to ensure the accuracy of the restitution delinquency and to determine if the defendant has willfully failed to pay restitution or to make a good faith effort to pay the court-ordered restitution. Upon a finding of willful noncompliance with restitution orders, the court finds the defendant in contempt, provisionally revokes community supervision, and sets a purge amount that must be paid to clear the arrearage and avoid incarceration, which is often the full amount of the delinquency. The court has found that of those who are found in contempt, the vast majority are able to pay the full purge amount within 72 hours (National Center for Victims of Crime, 2011b). According to The Honorable Roland J. Steinle, Maricopa County Superior Court Judge, "When faced with certain jail for contempt, the money to pay the delinquencies miraculously appears," (National Center for Victims of Crime, 2011b, p. 71).

The efforts of FINCOM and the Restitution Enforcement Court of Maricopa County have had a tremendous positive impact on the payment of restitution and other financial obligations. From 1995 to 2005, FINCOM's collections of restitution increased annually at an average rate of 15%, and the unit has achieved a restitution compliance rate of more than 80%. In 2010, the unit collected more than \$1.3 million in restitution payments for victims. The Restitution Enforcement Court also has been successful in enforcing delinquent restitution orders. The court has facilitated the collection of more than \$500,000 in delinquent restitution payments since its inception in September 2008 (Cimino, 2011).

probation and parole agencies are more likely to see favorable results.

ASSESSING AND DOCUMENTING VICTIM LOSSES

An accurate and detailed assessment of the extent of the victim's injuries and losses is critical to a fair order of restitution. Victims will in many cases provide the prosecutor's office with initial information about the financial impact of the crime via a victim impact statement. However, the financial impacts of crime can be long lasting, and more losses can accumulate following the criminal trial and conviction. By gathering or updating victim impact information regarding financial loss at the time of the presentence investigation and prior to parole hearings, probation and parole agencies can ensure that the most accurate information is available when the restitution amount is determined and ordered.

Probation and parole agencies can provide victims with guidance on documenting the following types of losses that are typically eligible for compensation through restitution orders:

- Medical care;
- Mental health services;
- Funeral expenses;



FIGURE 4

ENHANCING RESTITUTION COLLECTION WITHOUT ADDITIONAL RESOURCES

In its 2006 handbook, *Enhancing Restitution Collection: Tips and Techniques You Can Implement without Additional Resources*, the American Probation and Parole Association (APPA) shares several suggestions.

- Treat payment of restitution the same as other court-ordered conditions of supervision, and establish restitution as a priority payment (along with child support obligations).
- Address restitution during every contact with the offender.
- Look for and question the offender about assets and lifestyle choices that relate to disposable income that can be tapped for payment of restitution.
- Outline and utilize a system of graduated responses for addressing nonpayment.
- Leverage support from others.
- Document steps taken to elicit payment as a means to show willful noncompliance.

FIGURE 5

STATE EFFORTS TO ENHANCE RESTITUTION: INNOVATIONS IN LAW AND PRACTICE

In response to greater awareness of the poor collection rates of criminal restitution orders, state and local jurisdictions have become increasingly engaged in developing and implementing innovative laws, policies, and programs to enhance the collection and management of restitution.

Following are examples of some recent state initiatives to strengthen the enforcement of criminal restitution orders.

In states such as California, Arizona, Alabama, and Oregon, state income tax and lottery interception programs have brought in millions of dollars in unpaid criminal fines and restitution.

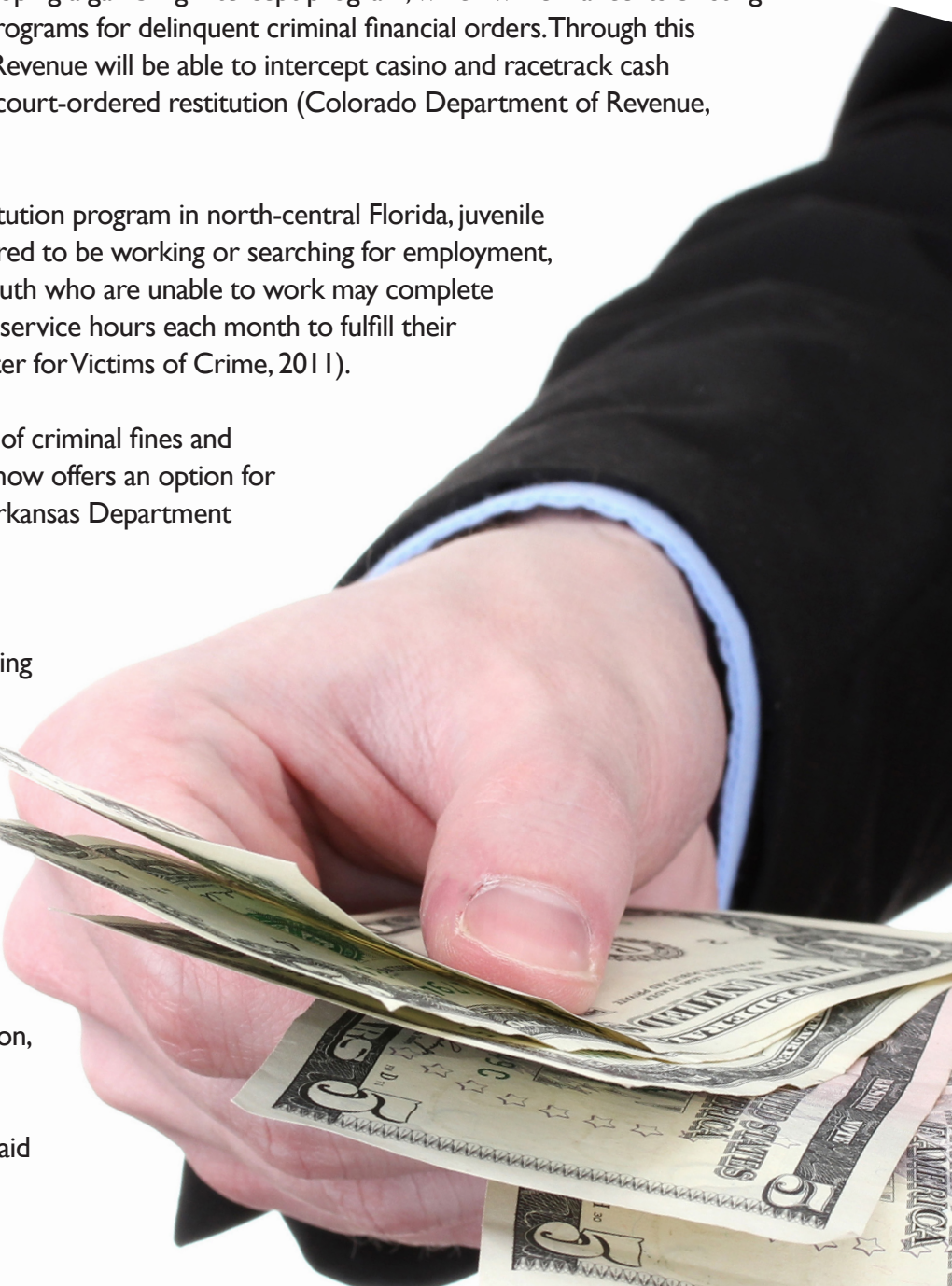
The State of Colorado is currently developing a gambling intercept program, which will enhance its existing state income tax and lottery intercept programs for delinquent criminal financial orders. Through this program, the Colorado Department of Revenue will be able to intercept casino and racetrack cash winnings in excess of \$1,200 for unpaid court-ordered restitution (Colorado Department of Revenue, 2011).

Through Project Payback, a juvenile restitution program in north-central Florida, juvenile offenders who owe restitution are required to be working or searching for employment, and they are offered job skills training. Youth who are unable to work may complete a minimum of 16 community restitution service hours each month to fulfill their restitution commitments (National Center for Victims of Crime, 2011).

In addition to providing for the payment of criminal fines and restitution online, the State of Arkansas now offers an option for mobile payments using smart phones (Arkansas Department of Community Correction, 2009).

States including Utah and Georgia have instituted automated restitution accounting systems to centrally track the collection of restitution (McLean and Thompson, 2007; Judicial Alternatives of Georgia, n.d.).

Texas law requires that restitution be included as a condition of probation or parole and authorizes the revocation of probation or parole if restitution is not paid within a set period of time. In addition, Texas law provides crime victims with a restitution lien, giving victims legal access to offenders' assets if restitution is not paid (Kercher et al., n.d.).



- Time off from work; and
- Loss of or damage to physical property.

Additionally, victims should be encouraged to provide documentation on projected future losses or expenses resulting from the crime for consideration in the determination of a restitution order. Examples could include long-term medical treatment, physical or occupational rehabilitation therapy, and mental health care or counseling. Guidelines to help victims consider and document their losses for restitution have been developed by Justice Solutions, a national non-profit organization dedicated to enhancing rights, resources, and respect for victims and communities hurt by crime. The guidelines are available online at www.justicesolutions.org/art_pub_documenting_restitution_losses.htm.

MANAGING AND ENFORCING RESTITUTION ORDERS

Even when the payment of restitution has been stipulated as a condition of probation and parole supervision, many offenders manage to complete their supervision period without paying the amount they owe. This disturbing reality places at stake the credibility of the restitution process as well as threatening the integrity of the entire criminal justice system.

To help prevent this from happening, probation and parole officers must:

1. Take seriously their responsibility for ensuring the collection of court-ordered restitution payments;
2. Make an effort to instill in the offender an understanding of the critical importance of restitution for the victim and help offenders to improve their ability to pay; and
3. Take all steps necessary to ensure that the restitution orders are enforced and monies are collected.

Probation and parole agencies should consider a range of programs and incentives to assist offenders in their efforts to pay restitution. Examples could include such services as personal finance classes and job readiness/placement programs. Incentives for compliance with restitution orders could include reduced requirements for supervision or waivers of accrued interest on restitution orders. Accompanying these programs and incentives, however, should be a range of sanctions that can be swiftly implemented for offender noncompliance with restitution orders. Increased supervision requirements, mandatory classes or community service, revocation of licenses (recreational, driving, etc.), extensions of supervision sentences, and revocation of community supervision are all sanctions that can be imposed by community corrections agencies for failure to comply with restitution orders. To assist in the management and enforcement of restitution, many jurisdictions are turning to automation of their restitution programs for the automatic generation of bills to offenders, informational letters to victims, and centralized collection of data on the status of accounts.

USING ALTERNATIVE METHODS TO COLLECT RESTITUTION

Even a host of incentives and sanctions to promote offender compliance with restitution orders is insufficient in some cases, and agencies need alternative methods to increase collections. Recognizing this reality, a number of states have authorized the use of a range of alternative strategies to improve the collection of restitution and other financial obligations among offenders. Such strategies include civil remedies, attachment of assets, garnishment of wages, establishment of restitution centers, use of electronic payment forms, forfeiture of bond money for restitution obligations, extension of probation/parole supervision until restitution is paid, and collection of

restitution during incarceration.

CONCLUSION

For many victims of crime, restitution is a sign of hope for their restoration from the crime committed against them. It provides much-needed financial support in the face of sometimes significant economic impacts of the crime, including medical bills, absence from work, and property losses. Of equal importance, restitution provides a very real, tangible way to hold offenders accountable for their crimes.

In many jurisdictions, community corrections agencies hold the key to the effective collection, enforcement, and management of restitution orders. It is therefore incumbent on probation and parole professionals to ensure that individuals comply with their financial obligations to victims. Fortunately, jurisdictions at the federal, state, and local levels have identified and developed a growing number of strategies to facilitate the collection and management of restitution for crime victims.

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FIGURE 6

APPA RESOLUTION ON OFFENDER ACCOUNTABILITY FOR VICTIM RESTITUTION, APRIL 2010

WHEREAS, the American Probation and Parole Association is committed to promoting services and programs that identify and meet the needs and interests of crime victims;

WHEREAS, many victims endure significant pecuniary losses as a direct result of crimes committed against them;

WHEREAS, many juveniles and adults placed on community supervision are ordered to pay restitution as a condition of their supervision as a way to hold them accountable for their actions and provide recompense to their victims;

WHEREAS, restitution and/or other compensatory sanctions are still, in many jurisdictions, the primary service performed for the victim by probation and parole agencies;

WHEREAS, community corrections agencies play a vital role in the restitution process including monitoring, enforcing, collecting, and disbursing restitution to crime victims;

WHEREAS, not all community corrections agencies have identified and placed restitution as a high priority within their departments;

WHEREAS, victims have a right to financial restitution and compensation.

THEREFORE BE IT RESOLVED THAT, the American Probation and Parole Association encourages community corrections agencies to place a high priority on restitution enforcement and collection; to take a proactive stance toward providing training on restitution management and victims' rights and issues at the time of new employee orientation and as a component of ongoing professional development for staff; and to develop strategies and implement policies and practices that will result in increased restitution collection and disbursement to victims of crime.