



# VICTIM RESTITUTION

## A Report to the Alaska State Legislature

December 1, 2016

A primer on the law and practices surrounding restitution in Alaska,  
and proposals to improve restitution outcomes.

The Alaska Criminal Justice Commission  
<http://www.ajc.state.ak.us/alaska-criminal-justice-commission>

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## Executive Summary

The Alaska Legislature has asked the Alaska Criminal Justice Commission to provide a report on ways to improve the payment and collection of victim restitution. In preparing this report, the Commission found that Alaska's restitution recovery rates seem to be comparable to those in other states, though there is certainly room for improvement.

The Commission also notes the collection of restitution in Alaska will change significantly over the next year as the Department of Law's Restitution Collection Unit winds down operations and the Alaska Court System assumes that unit's responsibilities. Because of this change, there is some uncertainty in how effectively restitution collection will operate in the future, and the Commission has limited information on which to base recommendations for improvement. However, the Commission did identify several specific areas for improvement which may be addressed now. The following is a summary of the Commission's recommendations; the rest of the report explains the Commission's findings and recommendations in full. Two appendices provide the reader with additional research.

**Proposal 1:** Increase opportunities for victims to request restitution.

- 1.a. Modify the judgment form used by the court system to automatically include a provision that states that the matter of victim restitution will be left open for 90 days, with an "opt-out" box that the judge can check in cases where restitution does not apply.
- 1.b. Require prosecutors to contact victims and inform them of this 90-day deadline.
- 1.c. Ensure that the DAs send clear restitution instructions to all victims.

**Proposal 2:** Establish payment plans and a tracking and reminder system.

- 2.a. Encourage DOC and the court system to work with victims' advocates to find ways to monitor the restitution obligations of those not on felony parole.

**Proposal 3:** Amend AS 12.55.045 to remove the requirement that a defendant provide a financial statement.

**Proposal 4:** Amend the civil compromise statute for misdemeanors to allow the compromise of larceny offenses.

**Proposal 5:** Streamline Civil Execution.

**Proposal 6:** Expand opportunities for victims to receive “bridging” restitution funds.

**6.a.** Create an entity that will enable more victims to obtain bridging funds.

**6.b.** Increase funding or create a funding mechanism to provide more victims with bridging funds.

**Proposal 7:** Use technology to encourage defendants to make immediate in-person payments and online payments of restitution.

**Proposal 8:** Increase Defendants’ Assets Available for Execution

**8.a.** Change the law to allow defendants who serve only short prison sentences to retain their PFD eligibility.

**8.b.** Require defendants to apply for the PFD each year they are eligible until restitution is paid in full.

## Introduction

When the Alaska State Legislature initially created the Alaska Criminal Justice Commission, the legislature required the Commission to, among other things, “evaluate the effect of sentencing laws and criminal justice practices on the criminal justice system to evaluate whether those sentencing laws and criminal justice practices provide for ... restitution from the offender.”

In 2016, the legislature further required the Commission to report on:

... the implementation of a financial recovery and victim's restitution program and [to] make recommendations for statutory changes to improve the payment and collection of victim's restitution. The report must include recommendations regarding restitution for crimes against a person and for property crimes against businesses and members of the public.<sup>1</sup>

This report contains background information about the current operation and effectiveness of the restitution process, identifies problems with the current process, and proposes potential cost-effective and evidence-based solutions to increase restitution recovery.

<sup>1</sup> 2016 SLA Ch. 36 (“SB 91”), sec. 183. This report is due on December 1, 2016.

## The Alaska Criminal Justice Commission

The Alaska State Legislature created the Alaska Criminal Justice Commission in 2014.

The Commission consists of 13 members:

- Gregory P. Razo, Chair, representing the Alaska Native Community
- Alexander O. Bryner, designee of the Chief Justice
- John B. Coghill, Senate, Non-Voting
- Wes Keller, House, Non-Voting (until Jan. 2017)
- Jahna Lindemuth, Attorney General
- Jeff L. Jessee, Alaska Mental Health Trust Authority
- Walt Monegan, Department of Public Safety Commissioner
- Stephanie Rhoades, District Court Judge
- Kristie L. Sell, Municipal Law Enforcement
- Brenda Stanfill, Victims' Rights Advocate
- Quinlan G. Steiner, Public Defender
- Trevor N. Stephens, Superior Court Judge
- Dean Williams, Department of Corrections Commissioner

## Methodology

For this report, the Alaska Criminal Justice Commission created a Restitution Work Group composed of experts from the courts, victims' advocates, executive branch agencies, and the Municipality of Anchorage. The Restitution Work Group met four times, each time discussing relevant research, legal and operational information from key stakeholders, and historical data on restitution payment patterns in Alaska and elsewhere. The Restitution Work Group developed recommendations and forwarded them to the Criminal Justice Commission; the Commission considered the Restitution Work Group's information and adopted the recommendations in this report at its meeting on November 29, 2016.

In formulating the recommendations, the Restitution Work Group relied on prior legislative research, studies and research from other states, legal and operational information from key stakeholders in Alaska, and data about restitution payments (primarily provided by the Department of Law's collections unit). Each of these sources is described in more detail below.

**Research Review.** A 2013 research brief authored by Susan Haymes, a legislative analyst, outlines victim restitution laws and policies in Alaska.<sup>2</sup> That report, available at

<http://www.ajc.state.ak.us/sites/default/files/imported/acjc/restitution/statvctak.pdf>,

provides important baseline information for understanding restitution in Alaska. Haymes concluded that there are "inherent challenges in collecting restitution from offenders who have limited or no financial resources because they may be incarcerated or have limited employment opportunities." She also noted that regardless of offenders' lack of financial resources, multiple individuals "cited the lack of communication and coordination among agencies that deal with victim restitution as the main problem in the [restitution recovery] process."

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<sup>2</sup> The relevant state statutes and rules which may pertain to restitution are:  
 AS 12.45.120: Authority to compromise misdemeanors for which victim has civil action  
 AS 12.55.045: Restitution and Compensation  
 AS 12.55.015: Authorized sentences; forfeiture  
 AS 43.23.005: PFD Eligibility  
 Cr. Rule 32: Sentence and Judgment  
 Cr. Rule 32.6: Judgment for Restitution

**Interviews with Stakeholders.** For her 2013 report, Susan Haymes interviewed multiple key stakeholders, including representatives of the Department of Corrections (DOC), the Office of Victims' Rights (OVR), the Violent Crime Compensation Board (VCCB), and Department of Law (DOL) Collections Unit.

The Commission followed up with the same people, or those who have replaced them in their positions, to determine if the situation had changed over the last three years. Staff spoke with Stacey Steinberg, Assistant Attorney General, DOL; Taylor Winston, OVR Executive Director; Trina Sears and Katherine Hansen, OVR Victims' Advocate Attorneys; Carrie Belden, DOC Director of Parole and Probation; April Wilkerson, DOC Director of Administrative Services; Kate Hudson, VCCB Executive Director; Robyn Langlie, Victims for Justice Executive Director; Seneca Theno, Municipality of Anchorage (MOA) Municipal Prosecutor; Lori Brumfiel, MOA Collections Unit Senior Administrative Officer; Dorne Hawxhurst, Alaska Court System (ACS) Administrative Attorney; and Charlene Dolphin, ACS Special Project Coordinator.

**Data Collection.** Commission staff collected information from DOL about how much restitution it collected on behalf of victims, and from the VCCB about how much restitution it was awarded and collected annually for the past several years, and from the court system.

## What is Restitution?

Alaska's governing statute on restitution, AS 12.22.045, directs judges to order defendants convicted of a crime to make restitution to the victim "when presented with credible evidence."<sup>3</sup> In determining the amount of restitution, judges are directed to consider the financial burden placed on the victim and others as a result of the defendant's criminal conduct.<sup>4</sup>

Historically, Alaska's courts have interpreted the restitution statute quite broadly.<sup>5</sup> The legislature's stated intent in enacting the restitution statute was "to make full restitution available to all persons who have been injured as a result of criminal behavior, to the greatest extent possible, by ... allowing courts to order that restitution be made to all persons who have

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<sup>3</sup> AS 12.55.045(a).

<sup>4</sup> AS 12.55.045(a)(2).

<sup>5</sup> See, e.g. *Yanello v. State*, 2014 WL 1691542 (Alaska App. April 23, 2014).

suffered a loss as a result of a defendant's conduct.”<sup>6</sup> Judges award restitution to victims without regard to the defendant’s ability to pay.<sup>7</sup> Restitution, then, is a mechanism intended to fully compensate victims for the harm a crime has caused.

### **Restitution is a restorative justice principle**

In January 2016, the Alaska Criminal Justice Commission identified restorative justice and restitution as two of its top priorities. Commission members felt that restitution can be a powerful mechanism for achieving the goals of restorative justice.

Restorative justice views crime as a violation of people and interpersonal relationships. These violations are viewed as creating obligations and liabilities – for the offender to make things right, and for the community to support victims and help rehabilitate offenders. The main goal of restorative justice is to repair the harm a crime has caused to the victim and to fabric of the community. Victim restitution serves as an important tool to accomplish these goals with respect to both victims and offenders (Ruback & Bergstrom, 2006). According to McGillis (1986) restitution serves three different purposes: 1) compensation for victims, 2) punishment for the offender, 3) rehabilitation.

**For Victims:** Restitution is intended to compensate victims for their loss and the harm caused by a crime. In addition, restitution also serves as a public acknowledgement of the harm and the loss the victim experienced. This is important because the conventional criminal justice system’s primary focus is on punishing the offender. In this process victims are often neglected and excluded from the process. This can lead to dissatisfaction and reduce trust in the justice system. Therefore, ensuring victims’ involvement in the criminal justice process is important to ensure victims feel treated fairly. Studies on victimization have shown that restitution serves an important role in reducing the long-term harm caused to victims (Haynes, Cares, & Ruback, 2015). In fact, research findings also indicate that restitution payments help foster victims’ trust in the justice system and increase victims’ willingness to report crimes in the future (Ruback, Cares, & Hoskins, 2008).

**For Offenders:** While restitution is intended to compensate victims for the harms and losses they experienced as a result of the crime committed by the offender, restitution may also have a rehabilitative influence on offenders. Making restitution payments holds offenders accountable for their actions and gives them a chance to make things right. However,

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<sup>6</sup> *Lonis v. State*, 998 P.2d 441, 447 n. 18 (Alaska App. 2000) (quoting ch. 71, § 1, SLA 1992).

<sup>7</sup> AS 12.55.045(g).



research has shown that offenders often do not understand payment systems, what their payments are for, or how much they owe (Ruback, Hoskins, Cares, and Feldmeyer, 2006). To ensure the rehabilitative effect of restitution for offenders, it should be ensured that offenders make their restitution payments regularly.

### **Victims are entitled to restitution**

In 1994, voters adopted an amendment to the state constitution to provide crime victims in Alaska with the right to restitution from an offender.<sup>8</sup> State law requires the court to order a defendant to make restitution, as long as credible evidence is presented.<sup>9</sup> The court makes the restitution award without regard to the defendant's ability to pay.<sup>10</sup>

## **Awarding and Enforcing Restitution Orders for Crime Victims**

### **Procedures for establishing restitution awards**

Under Criminal Rule 32.6, when a sentence includes a requirement for restitution, the sentencing judge either enters the order on a separate restitution judgment form (form CR-465), or directly on the criminal judgment form. Either method creates an enforceable judgment for restitution. The court may set a due date or set a schedule for installment payments; if no due date is set, the total amount becomes due immediately.

If the amount of restitution is known by the time of the sentencing hearing, the court enters the restitution order at sentencing.<sup>11</sup> If the amount is unknown at sentencing, the prosecutor can delay a request for restitution up to 90 days after sentencing; an additional 30 days is then allowed for the defendant to file an objection.<sup>12</sup> If the defendant does not object, the restitution decision will be issued in writing. If the defendant objects, the court will hold a hearing.<sup>13</sup>

Stakeholders identified two main sources of difficulty for victims in requesting restitution. First, victims are often unaware of the full extent of their losses for some time after the crime has

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<sup>8</sup> Alaska Const., Art I, sec. 24.

<sup>9</sup> AS 12.55.045.

<sup>10</sup> AS 12.55.045(g).

<sup>11</sup> Cr. R. 32.6(c)(1).

<sup>12</sup> A judge may use Criminal Rule 53 to relax the 90-day deadline in cases of manifest injustice. See *O'Dell v. State*, 366 P.3d 555, 556 (Alaska App. 2016).

<sup>13</sup> Cr. R. 32.6(c)(2).

been committed. They may, for example, still be in treatment or not have been billed by their medical providers. Second, defendants charged with misdemeanor offenses may resolve their cases at the first appearance (defendants charged with felonies may not resolve their case until after the first appearance). Although the victim has the right to notice of any hearing at which the defendant has the right to be present, as a practical matter victims often do not attend these hearings. If the victim is not present, she or he cannot inform the court about the desire for restitution.

Where a defendant's sentence includes suspended time, the requirement to pay restitution is included as a condition of probation.<sup>14</sup> Probation conditions for convicted felons are actively monitored by a probation officer; convicted misdemeanants are not actively monitored.

Another means by which restitution can be addressed is through civil compromise. AS 12.45.120 allows a judge to dismiss a misdemeanor case (unless the crime was committed "larcenously") if the victim of a crime has been paid for his or her losses. Note that spouses, former spouses, relatives, and household members of the defendant are not allowed to use the civil compromise statute.<sup>15</sup>

A final means of addressing restitution is through pretrial diversion. For example, victims of property crimes might agree to have the prosecutor drop the charges if they can recover their property. The Municipality of Anchorage has had such a program for many years, and reports that it is a very useful tool that allows the Municipality to use its resources more effectively. Although no state pretrial diversion programs have existed in Alaska for a number of years, the Department of Law announced in 2015 that it was beginning an initiative to authorize local district attorneys to begin experimental pretrial diversion programs.

### **Procedures for enforcing a restitution award**

Restitution ordered in a criminal case is enforceable as a civil judgment, as a condition of probation, and as a part of the defendant's sentence.

**Civil Judgment** A restitution judgment becomes due in full immediately upon disposition unless the judge orders installment payments. A restitution judgement that is due in full is

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<sup>14</sup> AS 12.55.045(i).

<sup>15</sup> AS 12. 45.120(5).

thereafter collectable through any procedure authorized by law for the enforcement of a civil judgment.<sup>16</sup>

The simplest way to collect a restitution judgment through the civil judgment collection process is to levy against a defendant's right to receive a Permanent Fund Dividend. While the PFD often provides a ready source of recovery, several problems exist. Civil enforcement against the PFD is not always productive because the defendant may not be eligible to receive a PFD,<sup>17</sup> the defendant may owe child support which always takes priority over victim restitution,<sup>18</sup> and the amount available for recovery from the PFD may fall short of the amount owed.

A restitution judgment can also be collected through wage garnishments; however, the process is complicated. Seizure of assets also is possible, although again the procedure is complex. The court system has published booklets for judgment creditors on how to garnish both PFDs and non-PFD assets for civil execution, and these booklets also apply to victims who are owed restitution.<sup>19</sup>

Victims may also seek restitution in civil court proceedings.<sup>20</sup>

**Condition of Probation** The restitution judgment also is enforceable as a condition of probation. A failure to make restitution payments while on probation may be punished by the imposition of suspended jail time, though anecdotally this is rare.

Two goals of SB91's reduction of lengthy prison terms and offer of incentives for probation compliance were to emphasize the importance of fines and restitution as an alternative means of holding defendants accountable, and to improve the rate of voluntary and other restitution payments to crime victims.

**Direct Sentence** Because the order to pay restitution is a part of the defendant's sentence, it could be enforced by the court with its contempt powers. Under this procedure, the court

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<sup>16</sup> AS 12.55.045(l).

<sup>17</sup> According to AS 43.23.005, people who have been sentenced or incarcerated as a result of either a felony conviction or a misdemeanor conviction with one prior felony conviction or two prior misdemeanor convictions during the qualifying year are not eligible for the PFD.

<sup>18</sup> PFD garnishments for restitution payment are second in line to garnishment for child support payments. See 43.23.065 and Criminal Rule 32.6(g)(2).

<sup>19</sup> See *Execution Procedure: Judgment Creditor Booklet* available at <http://www.courtrecords.alaska.gov/webdocs/forms/civ-550.pdf> and *Executing on the Permanent Fund Dividend: Creditor Instructions* available at <http://www.courtrecords.alaska.gov/webdocs/forms/civ-503.pdf>.

<sup>20</sup> AS 12.55.045(b).

would issue an order to show cause why the defendant should not be sentenced to imprisonment for nonpayment.<sup>21</sup> Under Alaska case law on contempt, however, this option would be available only if the court finds the failure to pay was intentional or the result of bad faith.<sup>22</sup> Because this is difficult to prove, this option is not often used.

## Collection entities

Restitution judgments are collected on behalf of victims by the Department of Law's Collections Unit, by the Violent Crimes Compensation Board, indirectly through the probation monitoring process by the Department of Corrections' probation officers, or by the victim him/herself.

**Department of Law** The Department of Law is authorized to collect restitution on behalf of a victim in state cases.<sup>23</sup> Victims are automatically enrolled in the Department of Law's recovery services, and they can opt out within the first 30 days of the date the judgment was issued. However, budget cuts to the Department of Law enacted in 2016 have necessitated the closing of the DOL's victim restitution collection unit by the end of the fiscal year in 2017. The court system will take on this responsibility once the unit closes down.

**Violent Crimes Compensation Board** The Violent Crimes Compensation Board (VCCB) reimburses victims of violent crime for costs associated with the crime (medical bills, for example). A victim can claim compensation from the VCCB just after the crime is committed, and the VCCB will typically compensate victims within 90 days of their claim. Therefore the VCCB provides victims with funds earlier than if the victim had waited for the court to order the defendant to pay the victim restitution. (These funds are sometimes known as "bridging funds.") Eligibility restrictions apply to VCCB's services. For example, victims of property crimes are not eligible, and the maximum award is capped at \$40K.

In cases where the VCCB has paid monies on behalf of victims, courts order the defendant to make restitution to the VCCB. The VCCB then seeks reimbursement from defendants.

**Collection by Victim** Victims in municipal cases collect restitution on their own. A victim in a state case may decline to use the Department of Law's collections services and execute on the civil judgment him or herself. Victims collecting on their own could use a private collection

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<sup>21</sup> See AS 12.55.051(a).

<sup>22</sup> See *Lominac v. Municipality of Anchorage*, 658 P.2d 792 (Alaska App. 1983).

<sup>23</sup> AS 12.55.051(e). The DOL has not collected restitution in municipal cases.

agency, or could attempt on their own to complete the paperwork to levy on PFDs or garnish wages.

**Court procedures** AS 12.30.075(c) requires the court to apply any forfeited bail money to restitution. In other words, in cases where the defendant has forfeited bail money used to secure pre-trial release, that forfeited bail will be applied to the defendant's restitution obligation. (In cases where there is no restitution obligation, forfeited bail money is transferred to the state's general fund.)

It is also possible for a defendant to assign their PFD to a victim ahead of time. There is a court form that the defendant can fill out at sentencing to assign their PFD rights as a restitution payment. This form is only accepted by the PFD Division between April 1<sup>st</sup> and August 31<sup>st</sup> of the current PFD year.

## Effectiveness of Alaska's Restitution Collection Efforts

### Collection by Department of Law

For many years, the State of Alaska provided funds to the Department of Law to run a Collections Unit to recover restitution from defendants in state cases. The Unit was funded to garnish PFDs rather than to pursue active recovery; therefore, it did not have resources for an active recovery program.<sup>24</sup> Although it is not possible to know exactly how many victims used the Department of Law's restitution recovery services, information from DOL suggests that most victims in state cases (around 95%) relied on DOL rather than attempting to collect restitution themselves.

Because the processes for wage garnishment is time consuming, the Department of Law generally did not pursue wage garnishments unless the defendant was known to have a steady and sizeable income. It did not pursue asset seizure due to the complicated and resource-intensive process to seize and sell the asset. The Department of Law's standard procedure is to record liens for any restitution judgments over \$10,000.

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<sup>24</sup> In certain cases, the DOL did pursue active recovery, for example when it learned of a readily available liquid asset subject to execution.

**Recovery Rates** The Department of Law's records show that it has collected millions of dollars of restitution annually on behalf of victims.<sup>25</sup> Since 2002, the Department of Law's overall recovery rate for both adult and juvenile restitution awards is 24%; this includes an overall adult restitution recovery rate of 19% and an overall juvenile restitution recovery rate of 80%. Please note the adult restitution recovery rate is skewed by a \$17.3 million restitution amount owed to Alyeska Pipeline (the defendant shot a hole in the pipeline). If \$17.3 million outlier is removed, the adult restitution recovery amount is approximately 23%.<sup>26</sup> A review of literature shows Alaska's recovery rate is comparable to rates reported by other states, with the majority of other states reporting recovery rates ranging from 20-30%, and a few reporting rates upwards of 40-50%.<sup>27</sup>

**Average Award Amounts** For all current and pending DOL accounts, the average amount of restitution awarded was \$7,085.71. However, this amount is skewed by several large awards. The median (midpoint) amount was \$782.20, and the mode (most common) amount was \$500. Over half (56.9%) of the restitution ordered was small - \$1000 and below. For defendants ordered to pay restitution who had a balance of \$0.00 as of September 2016, 82.9% had an initial restitution amount owed of \$1,000 and below, 13.6% had an initial amount of \$1,001 to \$9,999 and 3.4% had an initial amount owed of \$10,000 and over.

In 2017, the Department of Law's restitution recovery unit will be closed due to lack of funding. The court system has agreed to take over restitution collection from DOL. The court system and DOL are conferring to work out the details of how new and existing restitution accounts will be serviced going forward.<sup>28</sup>

## Collection by Violent Crime Compensation Board

The VCCB is funded through state appropriations (an RSA from the Permanent Fund Criminal Fund), and a federal grant. VCCB historically has used the services of the Department of Law's Collections Unit to pursue defendants. VCCB reports that it recovers significantly less from defendants than it awards to victims. VCCB has been exploring the idea of creating its

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<sup>25</sup> For example, the Department of Law collected over \$2 million in victim restitution payments in FY2015. See Appendix A, table 5. These figures do not include amounts that individual victims collected on their own without the assistance of the DOL.

<sup>26</sup> See Appendix A for recovery rates and PFD garnishment amounts. Interestingly, only about half of the total collected by DOL in FY15 was garnished from PFDs.

<sup>27</sup> For example, Vermont reported a 24% recovery rate and Minnesota reported 25%, while Colorado reported 43% between 2009-2013. See Appendix B for more detailed information on restitution recovery processes in other states.

<sup>28</sup> Note that fines and fees from state criminal cases will continue to be collected by DOL.

own active recovery program; however, that will require a significant increase in capabilities and staffing to be successful.

### **Role of Office of Victims' Rights**

OVR was created in 2001 as an independent agency within the legislative branch to help crime victims enforce their constitutional and statutory rights. OVR does not collect restitution for victims, but it does advise crime victims of their right to restitution and can provide technical assistance in obtaining restitution.

### **Enforcement by DOC**

Currently, probation officers rely on the Department of Law's Collections Unit to inform them about fines, fees, and restitution owed by their supervisees. Anecdotally, petitions to revoke probation for failure to pay restitution have been relatively infrequent.

Starting in 2017, DOC probation officers will be required to "create a restitution payment schedule based on the probationer's income and ability to pay if the court has not already set a restitution payment schedule."<sup>29</sup> This requirement will apply to felony probationers, who are actively supervised by officers at the Department of Corrections.

Also beginning in 2017, felony probationers who are in compliance with their probation requirements for a month at a time will be able to earn a month off their total probationary term.<sup>30</sup> Although the details are still being worked out, it seems likely that this provision will incentivize probationers to keep up with restitution payments. Further, probation officers will have available to them a series of administrative sanctions and incentives short of petitioning the court, to help ensure compliance.<sup>31</sup> Giving probation officers these additional tools may increase their ability to promote compliance with restitution payments.

On the other hand, starting in July of 2016, maximum probation terms will be shorter for many offenses.<sup>32</sup> Shorter probation terms will mean less time during which restitution requirements can be enforced as conditions of probation.

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<sup>29</sup> SB 91, Section 115, effective January of 2017.

<sup>30</sup> SB 91, Section 114, effective January of 2017.

<sup>31</sup> SB 91, Section 114, effective January of 2017.

<sup>32</sup> SB 91, Section 79, effective July of 2016. Probation is limited to one year for a misdemeanor offense, except the limit is 2 years for a second DUI/Refusal, and 3 years for assault, domestic violence, or sex offenses.

Misdemeanant probationers, who are not actively supervised, do not receive assistance from DOC in setting up a restitution payment schedule. Judges have the authority to set up a schedule at sentencing; it is not known how often this occurs.

### **The court system will assume restitution collection responsibilities in 2017**

The Department of Law's restitution recovery unit was de-funded in 2016. Starting in 2017, the court system has agreed to take on restitution collection from the DOL, and has been working with the DOL and the DOC to plan for this transition. The court system also plans to assume responsibility for collecting restitution payments from misdemeanor offenders (who will not be actively monitored by the DOC) and from municipal offenders.

## **What Works to Increase Payment of Restitution Awards**

A study conducted by Ruback, Gladfelter, and Lantz (2014), showed that merely sending monthly reminder letters to probationers over a period of six months stating how much they were ordered to pay, how much they had payed, and how much they still owed significantly increased the number of voluntary payments and the restitution amounts collected.

Another action that can increase victim recovery is to establish a payment plan. Alaska Criminal Rule 32.6 authorizes a judge to establish a schedule for installment payments of restitution, but it is unknown how often judges do so. As a practical matter, judges with busy dockets may not have time to craft individual payment plans at each sentencing hearing. Beginning in 2017, felony probationers who owe restitution will be required to have a restitution payment schedule based on the probationer's income and ability to pay; however, no such assistance will be given to misdemeanor probationers.

## **Proposals for Improving the Effectiveness of Alaska's Victim Restitution Process**

Based on the research, data, and analysis set forth above, the Criminal Justice Commission formulated eight proposals to improve victim restitution in Alaska.

### **Proposal 1: Increase opportunities for victims to request restitution.**

Under current law and procedure, a victim must alert the judge or prosecutor that restitution is requested either before or at the defendant's sentencing hearing. Victims sometimes miss



this window of opportunity because they are not aware that they can request restitution, or because the defendant is sentenced before they are ready or able to pursue their claim.

- 1.a. Modify the judgment form used by the court system to automatically include a provision that states that the matter of victim restitution will be left open for 90 days. Underneath this language, include a check box, which the judge can check in cases where restitution does not apply. Next to the check box, include a line so that the judge can explain the reason restitution does not apply.
- 1.b. Require prosecutors to contact victims and inform them of this 90-day deadline by which to seek restitution.
- 1.c. Ensure that the prosecutors send clear restitution instructions to victims, so victims know that they can request restitution for any expenses caused by the crime, and ensure that all victims receive these instructions. The following language is proposed to modify the Department of Law's existing forms:

Restitution will be ordered only for expenses caused by the crime. These may include medical expenses, counseling, lost wages, temporary housing, replacement of clothing or bedding taken for evidence, stolen or damaged property, relocation costs, and any other type of expense incurred as a result of the crime. It is important to make your claim and supporting documents/explanation as easy to understand as possible, and to remember that the court may not necessarily order restitution for all expenses if they do not appear to be sufficiently related to the crime.

## **Proposal 2: Establish payment plans and a tracking and reminder system for misdemeanants.**

Research suggests that payment plans and reminder letters can increase defendants' restitution payments. Currently, judges may set payment schedules at sentencing, but is not known how often judges do this. In the past, the DOL Collections Unit has been able to negotiate installment agreements on behalf of victims in state cases, but this service will end when the Collections Unit stops administering restitution in 2017.

Probation officers will soon be required to set up installment payments;<sup>33</sup> however, that tool is not available to misdemeanants and flat-timed (i.e. non-probation) felony offenders. District

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<sup>33</sup> See SB91 Section 114.

courts may soon see a higher proportion of misdemeanor property offenders caused by the increase in the felony property threshold, and misdemeanor probation terms are relatively short. While these shorter jail terms should improve offenders' abilities to make restitution payments (because they will be able to return to work sooner), the shorter probation terms could limit the time within which missed restitution payments would be enforced by a petition to revoke probation and imposition of suspended time.

Starting in 2017, the court system will take over payment schedules for offenders not supervised by the probation system. The court system is currently in the planning process for this and has consulted with the DOC and the DOL regarding this transition.

- 2.a.** Encourage DOC and the court system to work with victims' advocates to find ways to monitor the restitution obligations of misdemeanants and non-probation felony offenders and explore whether using an electronic tracking and reminder system might be feasible.

**Proposal 3:** Amend AS 12.55.045 to remove the requirement that a defendant provide a financial statement.

The restitution statute, AS 12.55.045, currently requires defendants to submit financial statements to the court in cases where restitution may be ordered. The statute requires those convicted of a felony to submit the statement 30 days after conviction (in advance of the preparation of the presentence report) and requires those convicted of a misdemeanor to submit the form when opposing a prosecutor's motion for a restitution order.

In practice, stakeholders report that the financial statements are rarely required by judges. Requiring defendants to submit financial statements directly after conviction and before the restitution order has little real purpose, because AS 12.55.045 prohibits the court from considering the defendant's ability to pay in ordering the amount of restitution, and the defendant's financial situation will likely be in flux after incarceration.

- 3.a** Amend AS 12.55.045 to omit the bracketed text:

*AS 12.55.045. Restitution and compensation.*

\*\*\*\*

(j) A defendant who is convicted of an offense for which restitution may be ordered shall submit financial information as ordered by the court. The Alaska Court System shall prepare a form, in consultation with the Department of Law, for the submission of the information; the form must include a warning that submission of incomplete or inaccurate information

is punishable as unsworn falsification in the second degree under AS 11.56.210. [A DEFENDANT WHO IS CONVICTED OF (1) A FELONY SHALL SUBMIT THE FORM TO THE PROBATION OFFICE WITHIN 30 DAYS AFTER CONVICTION, AND THE PROBATION OFFICER SHALL ATTACH THE FORM TO THE PRESENTENCE REPORT, OR (2) A MISDEMEANOR SHALL FILE THE FORM WITH THE DEFENDANT'S RESPONSE OR OPPOSITION TO THE RESTITUTION AMOUNT. THE DEFENDANT SHALL PROVIDE A COPY OF THE COMPLETED FORM TO THE PROSECUTING ATTORNEY.]

(k) The court, on its own motion or at the request of the prosecuting authority or probation officer, may order a defendant on probation who has been ordered to pay restitution to submit financial information to the court using the form specified in (j) of this section. The defendant shall file the completed form with the court within five days after the court's order. The defendant shall provide a copy of the completed form to the prosecuting authority and the person's probation officer, if any.

**Proposal 4: Amend the civil compromise statute for misdemeanors to allow the compromise of larceny offenses.**

AS 12.45.120 allows a judge to dismiss a misdemeanor case if the victim of a crime has gotten paid for his losses. The victim must submit a signed statement to the court saying that "satisfaction has been received for the injury."<sup>34</sup> The current version of Alaska's civil compromise statute excludes the compromise of larceny offenses.

**4.a.** Recommend that the legislature amend AS 12.45.120 to allow civil compromise in misdemeanor larceny cases.

**Proposal 5: Streamline Civil Execution.**

Research whether the civil execution statutes could be simplified to be easier for victims to use.

**Proposal 6: Expand opportunities for victims to receive "bridging" restitution funds**

*In 1964, the Alaska Constitution was amended to require restitution to Alaska victims. The enabling statutes made the restitution of victims the highest priority of the use of available funds second only to child support. The "Criminal Fund" monies should go annually to the restitution of victims before any monies flow to State agencies. The use of this fund as "bridging funds"*

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<sup>34</sup> AS 12.45.130. Note that spouses, former spouses, relatives, and household members of the defendant are not allowed to use the civil compromise statute. AS 12. 45.120(5).

*should not relieve the perpetrator of any obligation to pay restitution to the victim or reimburse the Criminal fund.*

-Sen. Fred Dyson

Typically, victims must wait months or years to be paid restitution in full, because restitution is ordered at sentencing (which for serious offenses takes place many months after the crime occurs), and because offenders often need to pay restitution in installments. The Violent Crimes Compensation Board provides certain victims with an opportunity to recover costs sooner. Victims become eligible for compensation as soon as they report the crime to the police, and will typically receive compensation within 90 days of making a claim to the VCCB (with limited funds available sooner on an emergency basis). The VCCB then claims restitution from the offender directly at sentencing.

However, the VCCB provides compensation only to victims of violent crimes, and will compensate only certain costs and expenses. Victims of property crimes are not covered by VCCB's statute. The VCCB has a small staff and currently operates at capacity. The VCCB is also limited by its meeting schedule; the all-volunteer Board meets only 5-6 times per year to approve claims.

**6.a.** Create an entity that will enable more victims to obtain bridging funds. Either:

- Change the mandate of the VCCB also to compensate victims of property crimes, including small business owners. This will also require changing the composition of the Board and increasing the VCCB's staff and capacity, or
- Create a Property Crime Compensation Board [*or other name/entity*] to compensate victims of property crime who are not covered by the VCCB.

If the legislature chooses to expand the VCCB/ create a PCCB, additional funding would be required. One option would be to increase the capacity of the VCCB to collect restitution it is owed. Currently the VCCB does not pursue restitution from defendants on its own, although has been looking into creating an active recovery program. This would likely require a change to VCCB's enabling statute.

The VCCB is funded through an RSA from the Permanent Fund Criminal Fund (which is funded by tabulating the PFDs that would have gone to incarcerated individuals had they not been incarcerated), in combination with a federal grant. Most of the Permanent Fund Criminal Fund money goes toward the Department of Corrections.

The court system accepts prepayment of restitution from defendants (restitution paid in advance of judgment) but this money is not always claimed, because the victims to be paid have not come forward and/or have not been identified. The court system pays for search services to find victims, but despite this, there is around \$280,000 in unclaimed prepaid restitution sitting in the court system. Eventually these unclaimed funds escheat to the state. A victim can still recover his or her restitution even after it's escheated.

**6.b.** Increase funding or create a funding mechanism to provide more victims with bridging funds. Either:

- Increase funding and capacity for the VCCB (or PCCB) to create its own active recovery program, or
- End the current practice appropriating money from the Permanent Fund Criminal Fund to the Department of Corrections, and instead authorize that funding to go to the VCCB (or PCCB), or
- Transfer unclaimed restitution to the violent crimes compensation fund instead of letting it escheat to the state.

**Proposal 7:** Use technology to encourage defendants to make immediate in-person payments and online payments of restitution.

**7.a.** Equip in-court clerks with Foursquare or similar technology to take credit and debit card payments immediately after the sentencing hearing (this could help with fines and surcharges as well).

**7.b.** Use Courtview to generate a form to hand to the defendant at the close of the sentencing hearing showing the restitution amount, installment payments, and how and where to pay.

**7.c.** Review the court system website to make it clear that restitution payments are among those that can be paid online with credit and debit cards. [Compare, e.g., Florida DOC page about Court Ordered Payments.](#)

**Proposal 8:** Increase Defendants' Assets Available for Execution

The Department of Law's records show that half or more of restitution awards are satisfied by execution on the defendant's permanent fund dividend. Satisfaction of restitution judgments could thus be improved by decreasing the number of defendants who become ineligible for a PFD based on incarceration.

- 8.a.** Change the law to allow defendants who serve only short prison sentences to retain their PFD eligibility.
- 8.b.** Require defendants to apply for the PFD each year they are eligible until restitution is paid in full.

## Conclusion

This report examines the restitution process in Alaska and identifies statutory, procedural, and recovery problems. The report identifies possible solutions and evidence-based ways to improve restitution recovery. In addition, Appendix A provides a current picture of Alaska's restitution recovery rates, and programs which have shown to be successful in other states are highlighted in Appendix B. We hope this report is helpful to policy makers and will enable an informed discussion about restitution related issues in Alaska and facilitate the Commission's task to improve restitution recovery.

## Appendix A

### Restitution Recovery Rates

#### **Restitution Recovery Rates and Amounts for the Department of Law Collections Unit**

The following information and data were provided by Stacey Steinberg at the Department of Law Collections Unit. This data applies only to state cases; restitution recovery rates for municipal cases are not tracked and unknown.

Since 2002, the overall recovery rate to date for both adult and juvenile restitution recovery is 24%; this includes an overall adult restitution recovery rate of 19% and an overall juvenile restitution recovery rate of 80%. Please note the adult restitution recovery rate is skewed by a \$17.4 million restitution amount owed to Alyeska Pipeline (defendant shot a hole in the pipeline). If this outlier is removed, the adult restitution recovery amount is approximately 23%.

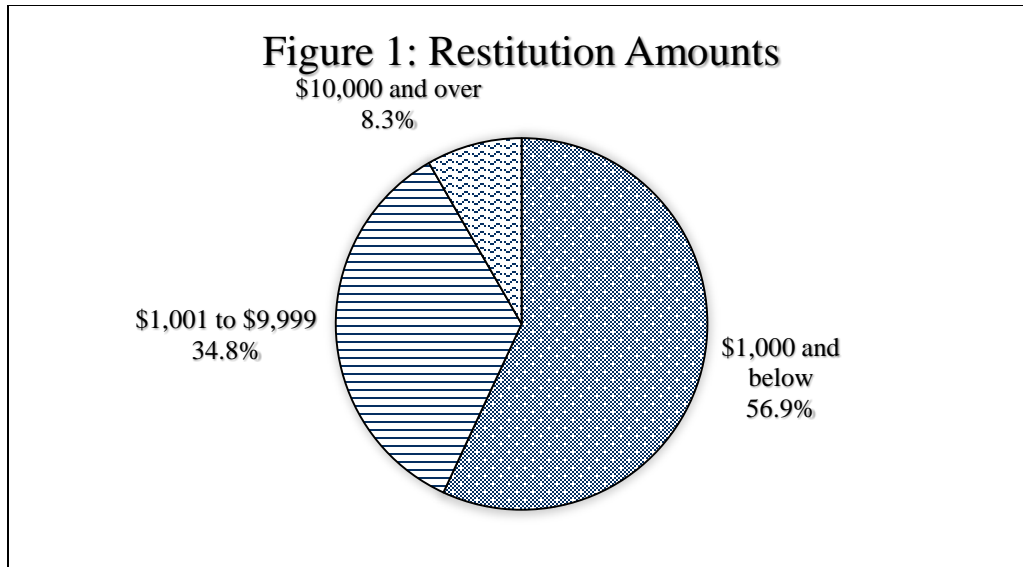
See Table 1 for restitution recovery rates and amounts to date for both adult and juvenile cases since 2002.

**Table 1: Restitution Recovery Rates and Amounts Since 2002**

Account Type	Total to Date (Since 2002)			
	# of accounts	Amount owed	Amount paid	%
Restitution - Adult	17443	\$106,115,288.29 <sup>1</sup>	\$20,422,815.47	19%
Restitution - Juvenile	2417	\$8,268,891.54	\$6,614,259.08	80%
<b>Total</b>	19860	\$114,384,179.83	\$27,037,074.55	24%

The juvenile recovery rate is higher because juvenile cases are generally joint cases with other juveniles and the parents can also be held liable. Therefore, this increases the amount of PFDs that can be garnished and incomes available from parents. Juveniles typically also have no other garnishments, whereas adult PFDs may have other garnishments, such as money owed to the IRS or child support. (See Figure 4 and Tables 4 and 5, below.)

For all current and pending accounts, the average amount of restitution awarded to victims was \$7,085.71. However, this amount is skewed by several large amounts of restitution ordered to victims. The median (midpoint) amount was \$782.20 and the mode (most common) amount was \$500. Over half (56.9%) of the restitution ordered was \$1,000 and below, 34.8% was between \$1,001 to \$9,999, and 8.3% of the restitution orders were over \$10,000 (see Figure 1).

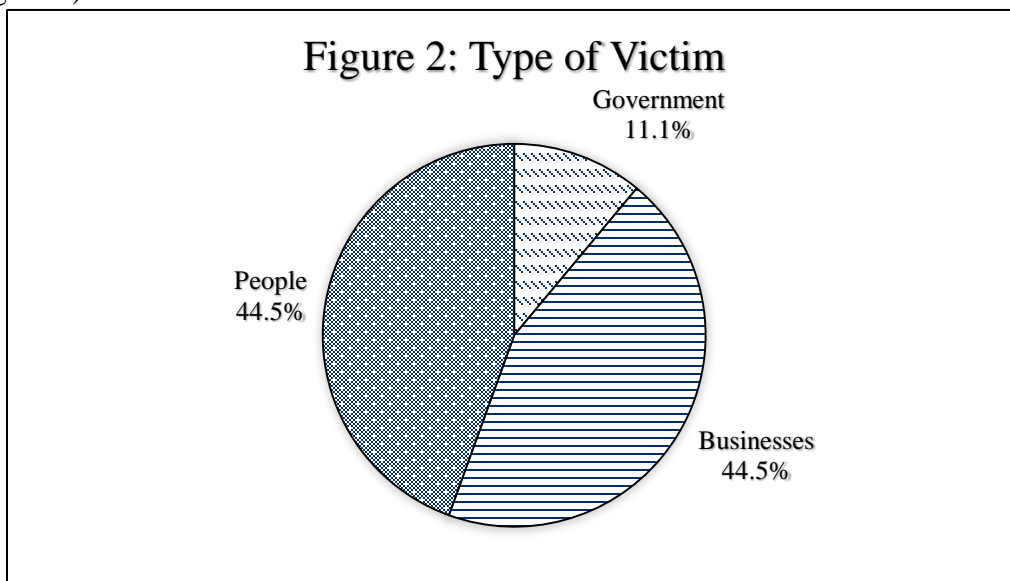


Source: Data from Alaska Department of Law, August 9, 2016

For individuals who, at the time the report was generated, had a balance of \$0.00: 82.9% had an initial restitution amount owed of \$1,000 and below, 13.6% had an initial amount of \$1,001 to \$9,999 and 3.4% had an initial amount owed of \$10,000 and over.

### **Victim Types**

The victim types were coded into three categories: government, business, and people. The government category included city, state, and federal agencies. The business category included large and small businesses, corporations, and insurance companies. The people category included one or more individuals. Government agencies accounted for 11.1% of the victims, businesses accounted for 44.5% of the victims, and people accounted for 44.5% of the victims (see Figure 2).



Source: Data from Alaska Department of Law, August 9, 2016



Government agencies were owed an average restitution amount of \$11,488.78 (with a maximum amount of \$1,628,023.33); 46.7% of the government agencies were owed \$1,000 or less, 38.2% were owed \$1,001 to \$9,999, and 15.2% were owed \$10,000 or more. The median (midpoint) amount was \$1,200.00 and the most common (mode) amount was \$1,000.00. Businesses were owed an average restitution amount of \$9,078.83 (with a maximum amount of \$17,371,386.63); 59.6% were owed \$1,000 or less, 31.6% were owed \$1,001 to \$9,999, and 8.8% were owed \$10,000 or more. The median (midpoint) amount was \$639.82 and the most common (mode) amount was \$100.00. People were owed an average restitution amount of \$3,996.82 (with a maximum amount of \$1,000,000); 56.8% were owed \$1,000 or less, 37.1% were owed \$1,001 to \$9,999, and 6.1% were owed \$10,000 or more. The median (midpoint) amount was \$800.00 and the most common (mode) amount was \$500.00. See Table 3 for this information in tabular form.

**Table 3: Restitution by Victim Type** (rounded to the nearest dollar)

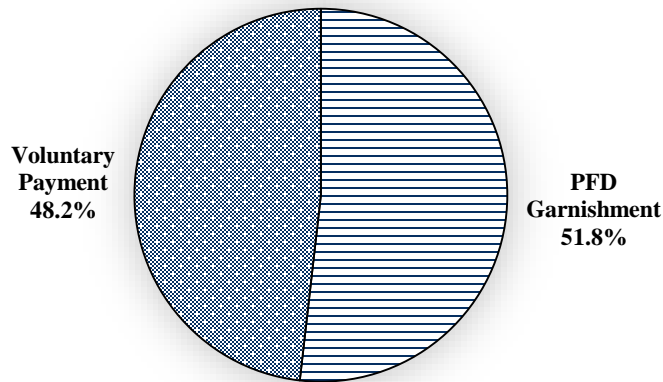
Victim Type	<i>M</i>	Median	Mode	Maximum	\$1,000 or less	\$1,001-\$9,999	\$10,000 or more
Government	\$11,489	\$1,200	\$1,000	\$1,628,023	46.7%	38.2%	15.2%
Businesses	\$9,079	\$640	\$100	\$17,371,387	59.6%	31.6%	8.8%
People	\$3,997	\$800	\$500	\$1,000,000	56.8%	37.1%	6.1%

Source: Data from Alaska Department of Law, August 9, 2016

### **PFD Garnishments and Voluntary Payments for Restitution**

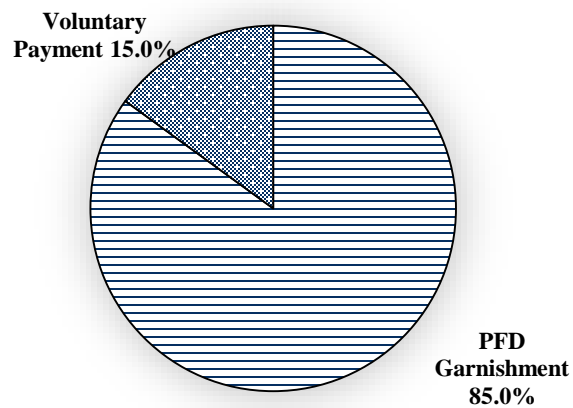
For FY 2016, \$1.31 million was garnished from PFDs for adult restitution and \$25,839 was the estimated amount refunded due to overages, which resulted in a net estimate of \$1.29 million in PFD garnishments (51.8%). The total amount of estimated voluntary payments was \$1.2 million (48.2%). The total amount of PFDs garnished from juveniles was \$387,770 and \$76,126 was the estimated amount refunded, which resulted in a net PFD estimate of \$311,644 (85.0%). The total amount of estimated voluntary payments was \$55,005 (15.0%). See Figures 3 and 4 below. See Table 4 and Table 5 for detailed information on FY15 and FY16 PFD garnishment and voluntary payment amounts.

**Figure 3: FY16 PFD Garnishments and Voluntary Payments - Adult Restitution**



Source: Based on estimated amounts, Alaska Department of Law, September 7, 2016

**Figure 4: FY16 PFD Garnishments and Voluntary Payments - Juvenile Restitution**



Source: Based on estimated amounts, Alaska Department of Law, September 7, 2016

Please note the amount garnished from PFDs is considered a “gross” amount; this applies more to juvenile cases where multiple juveniles’ and parents’ PFDs will be garnished and then refunds are issued for the overages, as the DOL does not know when they initially garnish the PFDs whose they will eventually get.

The juvenile PFD garnishment percentage is higher because juvenile cases are generally joint cases with other juveniles and the parents can also be held liable. Therefore, this increases the amount of PFDs that can be garnished. Juveniles typically also have no other garnishments, whereas adult PFDs may have other garnishments, such as money owed to the IRS or child support.

**Table 4: PFD Garnishments for Restitution FY16 and FY15**

	<b>Total Garnishment Counts</b>	<b>Gross PFD Garnishments</b>	<b>Refunds Estimate</b>	<b>Net PFD Estimates</b>
<b>FY16</b>				
Adult	1,036	\$1,311,434	\$25,839	\$1,285,595
Juvenile	283	\$387,770	\$76,126	\$311,644
<b>FY15</b>				
Adult	1,096	\$1,258,858	\$31,639	\$1,227,219
Juvenile	299	\$405,016	\$79,279	\$325,737

Source: Alaska Department of Law, August 9, 2016 & September 7, 2016

**Table 5: Total Restitution Collected, Voluntary Payments, and PFDs Garnished FY16 and FY15**

	<b>Total Payments</b>	<b>Net PFD Estimate</b>	<b>Voluntary Payment Estimate</b>	<b>PFD Garnishment % Estimate</b>	<b>Voluntary Payment % Estimate</b>
<b>FY16</b>					
Adult	\$2,481,623	\$1,285,595	\$1,196,028	51.8%	48.2%
Juvenile	\$366,649	\$311,644	\$55,005	85.0%	15.0%
<b>FY15</b>					
Adult	\$2,373,475	\$1,227,219	\$1,146,256	51.7%	48.3%
Juvenile	\$413,359	\$325,737	\$87,622	78.8%	21.2%

Source: Alaska Department of Law, September 7, 2016

### **Violent Crimes Compensation Board Recovery Rates**

The VCCB tracks how much restitution was awarded to the VCCB in restitution judgments and how much restitution it has collected from defendants per fiscal year (see Table 6). Note: 1) The VCCB provides assistance only to certain crimes, some of which are federal crimes (e.g., trafficking); 2) the VCCB is not able to determine how much of the amount awarded in a certain fiscal year was collected in the following fiscal years. For example, in FY12 the VCCB was awarded \$637,154; it is unclear how much of this sum was collected in FY12, FY13, FY14, etc.

<b>Table 6: VCCB Restitution Amounts Awarded and Amounts Received</b>			
<b>Year</b>	<b>Total Compensation Paid</b>	<b>Awarded</b>	<b>Received</b>
FY12	\$2,246,603	\$637,154	\$47,652
FY13	\$2,239,442	\$316,600	\$71,707
FY14	\$2,072,247	\$279,378	\$125,606
FY15	\$1,805,926	\$322,858	\$96,381
FY16	\$1,698,576 (estimated)	\$319,028	\$71,510

*Note: Not everything of the total amount paid is recoverable through restitution via statute.*

## Appendix B

### **Evidence-Based Ways to Improve Restitution Recovery**

Research has shown that offenders often do not understand how the criminal justice system works, know how much they owe, or know what their payments are for (Ruback, Hoskins, Cares, and Feldmeyer, 2006). It is thus important to ensure that offenders are informed and encouraged to make payments, preferably before they fall behind in their payments. A study conducted by Ruback, Gladfelter, and Lantz (2014), showed that merely sending monthly reminder letters to probationers over a period of six months stating how much they were ordered to pay, how much they had paid, and how much they still owed significantly increased the number of voluntary payments and the restitution amounts collected. In fact, a cost-benefit analysis concluded that for every dollar spent, around \$6.44 in restitution was received (Ruback et al., 2014). The authors concluded that presenting offenders merely with information about the status of their payments increased their internal motivation. Offenders were more likely to take accountability and make voluntary payments. It is important to note that the letters did not threaten offenders with any form of punishment.

The American Probation and Parole Association (2013) lists strategies to increase the payment of restitution that can be implemented without additional resources: (1) treat court-ordered debts the same as any other condition of supervision, (2) discuss restitution at every contact with the offender, (3) problem solve with the offender about assets and disposable income that can be tapped for payment of restitution, (4) use a system a graduated sanctions for nonpayment, (5) provide incentives and support for payment, and (6) document all steps taken to increase compliance of payment.

### **Restitution Collection in Other States**

A review of literature shows a broad range of restitution recovery rates, with the majority ranging from 20-30%, and some states reporting upwards of over 40% recovery rates. One county in Arizona reports a restitution collection rate of 80%.

**Vermont.** The overall collection rate of the Restitution Unit in Vermont is 24% (National Victims of Crime, 2011). The restitution collection rate increases with time; the FY 09 collection rate is 14% and the FY 05 collection rate is 35%. Restitution is collected in two main ways; through the use of a Restitution Fund and a Restitution Unit. The Restitution Fund is funded by a 15% surcharge on all criminal and traffic fines. Crime victims can be paid from the Restitution Fund up to a \$10,000 cap. The Fund allows victims to be paid at the time restitution is ordered and not have to wait until the offender is no longer incarcerated. In FY 09, only 3% of restitution orders were

over \$10,000, so the majority of individual crime victims receive all of the restitution owed to them. Business victims and victims who are owed more than \$10,000 get paid as the Unit collects restitution from the offender. Collection analysts in the Unit maintain a caseload of offenders and make regular contact with them to encourage restitution payments. In Vermont, the restitution order can also become a civil judgment and be sent to Superior or Small Claims Court. If the court finds the offender has not complied with the restitution order, the court can change the payment schedule, place liens on property, order the sale of assets, or order the withholding of wages. The Unit's two most useful collection tools from offenders are intercepting lottery winnings and state tax returns. A strategy that had worked in the past, but was removed, was coupling restitution collection with probation.

**Oregon.** The overall collection rate of restitution and fines is 24% in Oregon (Oregon Judicial Department, 2014). The District Attorney's office works with the victim to determine the nature and amount of the damages. The defendant can pay in full or establish a payment plan. A payment plan can be set up with the court clerk at sentencing or it can also be set up during the probation period. Most restitution balances are referred to the Department of Revenue's Tax Offset Program which intercepts any tax refunds a defendant may receive to apply that refund to the restitution owed. After 30 days, a letter is mailed to the defendant and/or a court hearing is held. After 45 days, a referral is made to collections, a warrant can be issued, their license can be suspended, their wages can be garnished, or a more aggressive payment plan can be set up. The driver's license can be reinstated once the defendant makes consistent payments.

Clackamas County, Oregon set up an active recovery program, referred to as a restitution court, in 2004. The program's overall collection rate of restitution and fines is 32%. The court clerk investigates the defendant's ability to pay and works closely with probation to set up a payment plan. If the defendant becomes delinquent, the court is notified, and the court clerk notifies the defendant to discuss payment options (e.g., liquidate assets, pay on a credit card, take out a second mortgage, etc.) and what will happen if a payment is not made. The court may also order the defendant to appear at restitution court if the clerk determines the defendant continues to be delinquent in making payments. The judge reviews the defendant's assets and debts and recommends ways the defendant can cut expenses and make payments. The judge can also order certain conditions the defendant must fulfill, such as getting a job. The clerk continues to monitor the defendant's payments and probation; the judge can extend probation to require the defendant to pay restitution. The DA's office continues to advocate on behalf of the victim.

**Minnesota.** In Minnesota, the restitution payment collection rate is 25% (Minnesota Office of Justice Programs, 2015). If an offender fails to pay the restitution amount in full, at the time it is ordered, or misses a payment, the case is sent to the Minnesota Department of Revenue for collections. If the restitution is a condition of probation, a prosecutor, probation officer, or victim

can request a hearing to review the restitution payment. Probation can be changed or revoked if a payment is missed and the court determines the failure is purposeful. The Minnesota Department of Corrections has procedures for inmates to make payments towards restitution, including deductions from prison wages and surcharges on commissary purchases.

**Texas.** Texas' active recovery restitution program has achieved an estimated restitution collection rate of 41%, according to Matthew Chambers, Program Supervisor III in the Restitution Program within the Texas Department of Criminal Justice (TDCJ). He noted that if unemployed offenders were removed, the collection rate is 80-95%. The TDCJ recently focused its restitution collection efforts on evidenced-based practices. One of the main successful practices has been a flat 10% rate that is garnished from the offender's income. If the offender has a higher income, a larger percentage can be garnished. A crime victim can also place a lien on the offender's property until the restitution is paid. Another successful practice the TDCJ has implemented is a stronger focus on restitution as part of probation/parole visits. If an offender does not make restitution payments, then the officer will increase the amount contacts made with the offender through office or home visits. The officers will also speak with family members to encourage the offender to make payments. Mr. Chambers noted TDCJ does not revoke probation/parole for non-payment. He stated the goal is not to threaten the offender, but to make the process more inconvenient for them.

**Colorado.** Between 2009 and 2013, the State of Colorado collected the full amount of restitution in 43% of the cases using an active recovery program (State of Colorado Office of State Auditor, 2014). The Colorado Judicial Branch is responsible for collecting restitution from offenders who are on supervised or unsupervised probation. The Judicial Branch works with the offender to set up a payment plan and monitor payments. If the offender is unable to pay the full amount on the day it is ordered, the case is sent to a collections investigator who investigates the offender's finances and obligations. State tax refunds, gaming winnings, and lottery winnings are also intercepted. If the offender does not pay according to the payment plan, the Judicial Branch charges late fees or garnishes the offenders wages or bank deposits. If the offender is delinquent in making payments, the collections investigators can place a lien on the offender's property, send the balance to a private debt collector, or request the court to revoke or extend probation. The Judicial Branch and the probation officers coordinate and monitor payments together. For example, if an offender becomes employed the probation officer would communicate with the collections investigator to revise the payment plan.

The Colorado Department of Corrections is responsible for collecting restitution from offenders who are incarcerated or on parole. The Department of Corrections automatically garnishes 20% of all income for incarcerated offenders, which includes any earnings and bank deposits from outside sources, such as family members. Parole officers investigate the offenders' finances and obligations and set up a payment schedule. Parole officers require offenders to pay 20% of all

deposits. Restitution is monitored as a condition of parole and if the parolee is not in compliance with the payments, parole may be revoked and the offender returned to the correctional facility.

**Maricopa County, Arizona.** A specialized unit in Maricopa County, Arizona called the Financial Compliance Unit (FINCOM) is responsible for the collection of court-ordered payments (American Probation and Parole Association, 2012). A representative from FICOM reported their average recovery rate for restitution is currently 63%. The unit uses a business model for collections and is staffed by specially trained probation officers and collections officers. The FICOM representative reported there is a staff of 14 collectors on the unit who focus strictly on collections. He reported some specific collection efforts that are particularly effective in restitution collection are frequent contacts through emails, phone calls, letters, and face-to-face meetings in conjunction with the probation officer. He reported these types of frequent communications keep the payment of restitution a priority and at the forefront of the probationers' mind. There is a range of incentives and services to support offenders in court-ordered payments, along with a system of graduated sanctions for those who are delinquent with their payments. Personal finance courses, employment readiness and placement services are available to help offenders meet their financial obligations. Incentives to offenders who are current on their payments are travel permits, less frequent reporting to probation, and early termination of probation. Sanctions placed on offenders are mandatory personal finance courses, referral to a collection agency, interception of tax refunds, and revocation of probation. The FICOM representative reported helping probationers with a budget or payment plan is also effective. A specialized restitution court was also developed to focus on restitution collection. Probationers who are delinquent in their payments are referred to the court by FINCOM staff. If judge determines if the defendant has willfully failed to pay restitution, the defendant can be incarcerated if the full amount is not paid. The FINCOM representative reported that probationers are infrequently taken into custody for non-payment, but the "threat" is effective in payment compliance.

**Idaho.** In Idaho, the Crime Victims Compensation (ICVC) program was established in 1998 and collects restitution through its website. In 2012, the program implemented a monthly billing system which notifies offenders when they have an outstanding restitution payment and directs them to make payments to their district's Clerk of Court. Through this system Idaho was able to collect large amounts of money from offenders who sometimes were unaware of their outstanding payments. In addition, the probation/parole officers receive notice of any missed payments, so they can assist the offender in establishing a payment plan. Idaho reports that as a result of its program the overall restitution recovery rate has increased. The program now regularly assists and mentors other states that want to build their internal capacity to collect restitution.

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