

**HB**

**216**

<TARGET><BILL>HB 216</BILL><SUBJECT>HB  
216</SUBJECT><COMM>HJUD30</COMM></TARGET>

# ALASKA STATE LEGISLATURE

Education Committee  
Judiciary Committee  
Transportation Committee



State Capitol Building, Rm 13  
Juneau, Alaska 99801-1182  
Phone: (907) 465-4993

**REPRESENTATIVE CHUCK KOPP**  
**DISTRICT 24**  
**Klatt Road – Oceanview – Southport – Bayshore**

## MEMORANDUM

TO: Rep. Matt Claman  
Chair, House Judiciary Committee

FROM: Rep. Chuck Kopp

RE: House Bill 216

DATE: January 15, 2018

Dear Chair Claman:

I respectfully request a hearing before the House Judiciary Committee for House Bill 216, an act establishing the Restorative Justice Account. My staff will require equipment to show a Power Point presentation. The individuals listed below will be available at the meeting via phone or in person to answer questions.

Mr. Doug Wooliver, Alaska Court System, 907-264-8265  
Ms. Taylor Winston, Office of Victims' Rights, 907-754-3460  
Ms. Cori Mills or a representative from the Alaska Department of Law, 907-465-2132  
Ms. Sarah Race, Department of Administration, 907-465-4785  
Ms. Juliana Melin, Department of Corrections, 907-465-4645  
A representative from the Violent Crimes Compensation Board and Council on Domestic Violence and Sexual Assault

My staff member assisting with this piece of legislation is Erick Cordero-Giorgana and he can be reached at 465-6871 or by email at [Erick.CorderoGiorgana@akleg.gov](mailto:Erick.CorderoGiorgana@akleg.gov).

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Kopp".

E-Mail: [Representative.Chuck.Kopp@akleg.gov](mailto:Representative.Chuck.Kopp@akleg.gov)

**Education Committee  
Judiciary Committee  
Transportation Committee**



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**REPRESENTATIVE CHUCK KOPP  
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**Sponsor Statement  
House Bill 216  
Establishing the Restorative Justice Account**

The Alaska State Constitution recognizes the rights of crime victims through Article I, Section 24. Restitution is one of those rights. Unfortunately, the outstanding balance of court-ordered restitution payments to victims has remained very high and victims find themselves waiting for several years to receive payments. The current balance of outstanding court-ordered restitution is over \$80 million.

There is a mechanism in place to assist victims of crime through the criminal fund established by the Legislature in 1988 (HB245), but over time, most of the funds have been used to pay for inmate healthcare costs and the amount to assist victims has fallen off sharply. HB 216 seeks to restore a balance, clear ambiguities, and prioritize restoring victims to a pre-offense condition.

In 1988, HB 245 made certain criminal offenders ineligible to receive a Permanent Fund Dividend and stated intent language that the money that would have gone to the offenders would go to support victims of crimes by funding the Violent Crimes Compensation Board. Since establishment of the criminal fund, there have been statutory changes to eligible recipients and victims of crimes are no longer a priority.

House Bill 216 establishes an account titled the Restorative Justice Account. It prioritizes the use of the funds for compensation through the Violent Crimes Compensation Board and enables the Office of Victims' Rights to qualify for appropriations from this fund and authorizes them to pay court-ordered restitution to victims of crimes when a victim has exhausted all other avenues available. This bill does not eliminate an offender's liability to pay restitution, fines, and other fees imposed to them through the criminal justice system.

Additionally, HB 216 extends the opt-out period of victims from 30 to 90 days from receiving help from the State of Alaska to collect restitution and adds language authorizing use of the funds for substance abuse and mental health services for offenders.

HB 216 will reestablish victim restitution as our highest priority.

# LEGISLATIVE RESEARCH SERVICES

30<sup>th</sup> Alaska Legislature  
LRS Report 17.187  
April 3, 2017



(907) 465-3991 phone  
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## Victim Restitution Reform in Other States

Timothy Lash, Legislative Analyst

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### *You asked for examples of legislation enacted in other states to streamline or centralize restitution.*

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Victim restitution is a vexing topic in most states. Nationwide, state agencies and offices are typically understaffed and underequipped to collect, track, and distribute court-ordered restitution from defendants to victims. Moreover, in Alaska, as in many other states, the judicial and executive branches of state government make competing demands on the financial resources of a defendant. These demands often include restitution, in addition to numerous other fees and fines imposed by the state, e.g. court costs, incarceration-related costs, or other funds required of defendants. In general, regardless of the type, amount, or number of payments owed by a defendant, collection is often a difficult and overwhelming challenge for states. As a practical matter, it is difficult to collect from a defendant with limited to no income or potential income, as is often the case. Accordingly, many victims do not receive the restitution they are owed.

Below, we present brief information on a handful of states that have enacted legislation to reform restitution by streamlining or centralizing restitution to victims. The selected examples range from laws giving priority to restitution over other forms of collection, to laws reorganizing collection processes and procedures by government entities.<sup>1</sup>

### Utah

Notably, the Utah State Legislature enacted comprehensive restitution reform in 2001.<sup>2</sup> The state's new policy addressed enforcement and collection of restitution, set out more effective processes and procedures, and established a statutory mechanism by which a restitution order may be enforced through a civil action. Furthermore, Utah's new policy prioritized restitution—above other financial demands made on defendants by the state—as follows:

#### Priority.

(1) If restitution to more than one person, agency, or entity is set at the same time, the department [of corrections] shall establish the following priorities of payment:

- (a) the crime victim;
- (b) the Office of Crime Victim Reparations;
- (c) any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct; and
- (d) any insurance company which has provided reimbursement to the victim as a result of the offender's criminal conduct.

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<sup>1</sup>For Alaska in particular, the Alaska Criminal Justice Commission (ACJC) recently published a statewide report on restitution in the state. Among other recommendations, the ACJC advised Alaska to prioritize and streamline its restitution collections and processes. ACJC, "Victim Restitution: A Report to the Alaska State Legislature," December 1, 2016, <http://www.ajc.state.ak.us/sites/default/files/commission-recommendations/acjcrestitutionreport12-1-2016.pdf>.

<sup>2</sup>Utah's efforts to examine and improve restitution processes are the subject of a case study published by the Victims' Assistance Legal Organization (VALOR). "Restitution Policies and Procedures: the Case for Collaboration," Ch. 10, *A Compendium of Promising Practices for Restitution*, VALOR, <http://www.valor-national.org/restitution.html>.

(2) All money collected for court-ordered obligations from offenders by the department will be applied first to victim restitution, absent the \$30 per month required to be collected by the department ...<sup>3</sup>

Despite the state's prioritization of restitution, however, it is noteworthy that restitution remains out of reach for many victims. State officials cite the lack of defendant resources, as well as the lack of administrative resources, as recurring problems.<sup>4</sup> In March 2017, Utah enacted legislation to provide new procedures and penalties for the willful failure of a defendant to pay "criminal judgment accounts receivable," defined as "any amounts owed by a criminal defendant arising from a criminal judgment that has not been paid," such as "fines, surcharges, costs, interest, and restitution."<sup>5</sup> It remains to be seen what, if any, positive effects the new law may produce for victims who await restitution in the state.

### Rhode Island

In 2013, in a manner somewhat similar to Utah's policy of prioritization, Rhode Island established restitution as the first priority among a variety of payments owed by defendants. The law, in part, says the following:

- (i) Upon determination of restitution, court ordered restitution payments shall be paid first to persons injured until such time as the court's restitution is fully satisfied;
- (ii) Followed by the payment of court costs, fines, fees, and assessments related to prosecution.<sup>6</sup>

Representative Robert E. Craven, who sponsored the above language in 2013, explained the policy's intent, saying, "The basic purpose of restitution is to attempt to achieve fairness for the victim of the crime, not to cover court costs or enrich the judicial system." While restitution was already a statutory priority in Rhode Island before that provision went into effect, it was not the *first* priority until the state legislature amended the law to "absolutely, explicitly guarantee that it is the victim, the injured party, first and foremost, who receives compensation. Then, and only then, should any restitution payments accrue to the court."<sup>7</sup>

The administrative office of the Rhode Island court system is the entity responsible for managing, collecting, and distributing restitution in the state. Among other statewide responsibilities, the office receives and processes case information, collects and tracks payments from defendants, and distributes restitution to victims through the Superior Court Restitution Unit.<sup>8</sup> In a given case, advocates in the Victim Services Unit of the Attorney General's Office take the leading role in supporting victims in every stage of the criminal justice process. Toward the end of the case, these advocates coordinate with the

<sup>3</sup> Utah H.B. 26, 2001, <https://le.utah.gov/~2001/bills/hbillenr/HB0026.htm>. For additional provisions, see Rule R671-403, Utah Administrative Code, <https://rules.utah.gov/publicat/code/r671/r671-403.htm>.

<sup>4</sup> "Are you a crime victim? Good luck collecting restitution in Utah," *Standard Examiner*, March 2, 2017, <http://www.standard.net/Courts/2017/03/02/Are-you-a-crime-victim-Good-luck-collecting-monetary-restitution-in-Utah>.

<sup>5</sup> Utah S.B. 71, 2017, <https://le.utah.gov/~2017/bills/static/SB0071.html>.

<sup>6</sup> Rhode Island General Laws, Section 12-19-34, <http://webserver.rilin.state.ri.us/Statutes/TITLE12/12-19/12-19-34.HTM>. Also, Section 12-28-5.1, <http://webserver.rilin.state.ri.us/Statutes/TITLE12/12-28/12-28-5.1.HTM>.

<sup>7</sup> Representative Robert E. Craven, press release, State of Rhode Island General Assembly News, July 11, 2013, [http://www.rilin.state.ri.us/pressrelease/\\_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=9072](http://www.rilin.state.ri.us/pressrelease/_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=9072).

<sup>8</sup> Rhode Island General Laws, Section 12-19-34, <http://webserver.rilin.state.ri.us/Statutes/TITLE12/12-19/12-19-34.HTM>. Also, "Compensation/Restitution," State of Rhode Island Attorney General's Office, <http://www.riag.ri.gov/CriminalUnit/VictimServicesUnit.php>.

Superior Court Restitution Unit—along with the Parole Board, Department of Probation and Parole, and Department of Corrections Office of Victim Services—to provide a “seamless transition for victims at the end of the Superior Court process.”<sup>9</sup>

### Other States

The National Center for Victims of Crime released a study of restitution reform in five states—Michigan, Vermont, Arizona, Florida, and California—in 2011. The report, titled “Making Restitution Real: Five Case Studies on Improving Restitution Collection,” is available at <https://victimsofcrime.org/library/publications/restitution-and-compensation>. Along with other information, the study highlights and explains, in detail, the following examples of restitution reform:

- The Michigan Supreme Court led a statewide initiative in 2004 to improve collection and enforcement of restitution, such as adding administrative staff in the court system and reassigning staffing hours to focus solely on collecting payments;
- Vermont reorganized restitution processes in 2002; it established a centralized Restitution Unit attached to an independent agency, the Vermont Center for Crime Victim Services, which, quite remarkably, pays restitution upfront to victims and assumes the responsibility of collecting payments from defendants later in time; agency funding is generated by a 15% state surcharge on criminal and traffic fines; accordingly, as a result of this innovative and evidently successful structure, “The vast majority of individual crime victims in Vermont receive, through the Restitution Fund, all of the restitution that is owed to them”; and
- California launched a statewide collection initiative in 2004; in a collaboration between the California State Legislature and the California Judicial Council, the state provided new standards for courts throughout the state and established, in statute, a “comprehensive collections program” by a court or county (defined as a program that meets at least 10 out of 14 stated program components) to collect restitution and other payments from defendants in their jurisdictions; as a result of these and other comprehensive statewide efforts, California has collected more restitution for victims since instituting these reforms.

Furthermore, California subsequently enacted additional reforms in 2016 to require, among other things, that any entity in the state that collects restitution “shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.”<sup>10</sup>

In general, in support of streamlining and improving collections on behalf of victims, the National Center for Victims of Crime observes that, “While developing a collections program, it is critical to designate one entity to be responsible for enforcing policies, procedures, and legislatively-mandated requirements.”<sup>11</sup>

We hope this is helpful. If you have questions or need additional information, please let us know.

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<sup>9</sup> “Victim Services Unit,” Rhode Island Attorney General’s Office, <http://www.riag.ri.gov/CriminalUnit/VictimServicesUnit.php>.

<sup>10</sup> California S.B. 1054, 2016, [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1054](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1054).

<sup>11</sup> “Making Restitution Real: Five Case Studies on Improving Restitution Collection,” p. 118.

SOURCE: CSHB245(JUD)

Action Date: May 25, 1988

Year: 88

Effective Date: May 26, 1988

AN ACT

An Act relating to permanent fund dividends for individuals incarcerated after conviction for a felony; and providing for an effective date.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 43.23.005 is amended by adding a new subsection to read:

(d) Notwithstanding the provisions of (a) - (c) of this section, an individual who has been convicted of a felony is not eligible for a permanent fund dividend for a year when, during all or part of the fiscal year ending June 30 of the current year, as a result of the conviction the individual is incarcerated. This subsection applies whether or not the individual has applied for the dividend.

\* Sec. 2. AS 43.23.025 is amended by adding a new subsection to read:

(b) For the purpose of calculating the amount of a permanent fund dividend under (a) of this section, an individual who is ineligible to receive a dividend under AS 43.23.005(d) is counted as an eligible individual whether or not the individual has applied for the dividend.

\* Sec. 3. AS 43.23.055 is amended to read:

Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

(1) annually pay permanent fund dividends from the dividend fund;

(2) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for claiming a permanent fund dividend; the department shall set the time limit for applications for permanent fund dividends so that the number of eligible applicants is determined by October 1 of the year for which the dividend is declared and permanent fund dividends for a year are paid before April 30 of the year following that year;

(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to

apply for permanent fund dividends not received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual; ]AND!

(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends;

(5) annually determine, in cooperation with the Department of Corrections, the number and identity of individuals ineligible for a permanent fund dividend under AS 43.23.005(d); and

(6) adopt regulations that are necessary to implement AS 43.23.005(d).

\* Sec. 4. This Act applies only to eligibility for permanent fund dividends for years after 1988.

\* Sec. 5. It is the intent of the legislature that an amount approximately equal to the money that would otherwise be paid as permanent fund dividends to individuals determined to be ineligible under AS 43.23.005(d), as enacted by sec. 1 of this Act, be appropriated annually from the dividend fund to the crime victim compensation fund (AS 18.67.162) to carry out the purposes of AS 18.67.

\* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).



**REPRESENTATIVE CHUCK KOPP**  
**DISTRICT 24**  
**Klatt Road – Oceanview – Southport – Bayshore**

**House Bill 216**  
**Sectional Analysis**

**Section 1 - AS 12.55.045(m)**

Section 1 establishes that the Alaska Court System can accept restitution payments or prepayments at any time. Language that is explicitly stated in Section 2 regarding the Alaska Department of Law is removed.

**Section 2 - AS 12.55.051(f)**

Section 2 includes the process that the Alaska Court System will use to share information about restitution orders with other state agencies. It amends the current statute to allow the Office of Victims' Rights to receive and share information with the Alaska Court System consistent with all the rules of privacy as required by law.

This section also amends the notification requirement for victims by the Alaska Department of Law to include information on receiving assistance from the Office of Victims' Rights and information on how to apply for that assistance.

**Section 3 - AS 12.55.051(g)**

Section 3 requires a notification from the Department of Law to victims about their right to assistance with collecting restitution payments and it amends the period from 30 to 90 days, from the time of notification, for a victim to opt-out from receiving automatic assistance. This section allows victims to stop receiving assistance at any time in the future.

**Section 4 – AS 24.65**

Section 4 enables the Office of Victims' Rights to assist victims with restitution payments, subject to appropriation, from the Restorative Justice Account based on priority: a natural person, private businesses, and state and local governments.

It authorizes the Office of Victims' Rights to establish a process to assist victims through the Restorative Justice Account and caps the amount of funds that a victim can receive.

**Section 5 – AS 43.23.028**

Section 5 delineates the duties of the Department of Revenue to administrate the permanent fund dividend payments, regulations, timelines, and deadlines and allows cooperation with other state agencies and law enforcement. It requires the department to pay annual dividends from the dividend fund to eligible recipients. The Department of Corrections and the Department of Public Safety will provide the Department of

Revenue with a list of individuals ineligible for a dividend to transfer these funds into the Restorative Justice Account.

This section clarifies the legislative intent and lists which entities can receive appropriations from the Restorative Justice Account. It also clarifies language about public disclosures.

**Section 6 – AS 43.23.048**

Section 6 establishes the Restorative Justice Account as a separate account in the dividend fund. It tasks the Commissioner of Revenue to transfer an amount equal to the yearly calculation of individuals ineligible to receive a permanent fund dividend made by the Commissioner of the Department of Corrections and the Commissioner of Public Safety.

This section allows the legislature to prioritize use of the funds through appropriations with services to victims as the highest priority.

The section further clarifies that a defendant ordered to pay restitution is still liable for payments regardless of whether a victim receives help from the Restorative Justice Account. The Legislature may appropriate restitution payments back into the Restorative Justice Account.

The section clarifies the bill does not create a dedicated fund.

**Section 7 – AS 43.23.055**

Section 7 defines the process and duties of the Department of Revenue regarding the calculation, eligibility, and distribution of permanent fund dividends. The bill adds language for the department to establish regulations pertaining to the Restorative Justice Account created in Section 6.

**Section 8 – AS 47.12.160(f)**

Section 8 authorizes the Court System to receive payments and pre-payments from a minor or a minor's parent at any time. This section removes redundant language.

**Section 9 – AS 47.12.170(c)**

Section 9 authorizes the Alaska Court System to forward copies of restitution orders to the Office of Victims' Rights and the Department of Health of Social Services. It instructs the DHSS to inform crime victims that they may qualify for services through the Office of Victims' Rights.

Section 9 also requires that information considered confidential by law, remains confidential.

**Section 10 47.12.170(d)**

Section 10 clarifies that the opt-out period for a victim is extended from 30 to 90 days from the day of notification and instructs the Department of Health and Social Services to notify victims of their rights to assistance.

**Section 11**

Section 11 establishes an effective date.

# Restitution

- Introduction
- The difference between restitution and compensation
- The difference between restitution and civil damages
- Increasing the likelihood that restitution will be ordered
- Courts may order full or partial restitution
- Collecting restitution

## Introduction

The term "restitution" in the criminal justice system means payment by an offender to the victim for the harm caused by the offender's wrongful acts. Courts have the authority to order convicted offenders to pay restitution to victims as part of their sentences. In approximately one-third of states, courts are required to order restitution to victims in cases involving certain types of crimes, typically violent felony offenses, but sometimes other serious offenses as well. Restitution can cover any out-of-pocket losses directly relating to the crime, including:

- medical expenses
- therapy costs
- prescription charges
- counseling costs
- lost wages
- expenses related to participating in the criminal justice process (such as travel costs, child care expenses, etc.)
- lost or damaged property
- insurance deductibles
- crime-scene clean up, or any other expense that resulted directly from the crime

Restitution will not cover such things as pain and suffering or emotional distress, only damages that are easy to prove—things for which a victim might have a bill or a receipt.

## The difference between restitution and compensation

While restitution is court-ordered payment from a convicted offender, crime victim compensation is a state government program that pays many of the out-of-pocket expenses of victims of violent crime even when there is no arrest or prosecution. Ordinarily, to be eligible for compensation the victim is required to report the offense within a certain amount of time, cooperate in the investigation and prosecution, and file an application within a set time. The expenses covered by compensation vary and are usually set by state law. All compensation programs cover medical expenses, most cover counseling, and very few cover any property loss.

In comparison, restitution can only be ordered in cases where someone has been convicted. However, restitution can be ordered in almost any case (although courts may be required to order it only for certain offenses), and can be ordered for a wider variety of losses, including property loss.

A victim cannot collect both compensation and restitution for the same losses. Where compensation has already paid for some of the victim's losses, a court may order the offender to reimburse the state compensation program and order the offender to pay the victim for losses that weren't covered by compensation.

## The difference between restitution and civil damages

Restitution, as noted above, is ordered by a criminal court after the offender has been found guilty. Civil damages are ordered when someone has won a lawsuit in civil court. Victims of crime can obtain both restitution and civil damages. A victim can sue an offender even when the offender has been ordered to pay restitution. Civil damages can include losses not covered by restitution, such as payment for pain and suffering, payment for intentional infliction of emotional distress, and even punitive damages—damages imposed just to punish the defendant. However, as in cases where the victim receives crime victim compensation and court-ordered restitution, victims cannot collect twice for the same loss. Usually a civil judgment is decreased by the amount of restitution that the victim has already received for a loss.

## Increasing the likelihood that restitution will be ordered

Victims can do two things to increase the likelihood that restitution will be ordered in their case: gather information about their financial loss, and request that restitution be ordered.

To increase the chances that restitution will be ordered, victims should make sure their victim impact statement includes a summary of the out-of-pocket expenses resulting from the crime. The prosecutor's office may have financial impact forms that can help victims think about the possible losses that could be covered by restitution. Victims should also tell prosecutors early in the process that restitution is important to them, so that prosecutors can be prepared to request restitution as part of any plea agreement, sentence, or condition of probation. If victims have the opportunity to address the court at the time a plea agreement is presented or at sentencing, they should specifically describe the financial impact of the crime and, if permitted in that state, request restitution. (In some states, a victim's in-court statement must be limited to describing the impact of the offense and cannot include any opinion about the sentence that should be given, including restitution. In those states, the prosecutor can still seek restitution.)

## Courts may order full or partial restitution

When courts order restitution, they look not only at the victim's losses but also at the offender's ability to pay. In some states, the court may reduce the total amount of restitution ordered if the offender is unlikely to be able to pay that amount. In other states, courts will order the offender to pay for the full amount of the loss, but then set a payment schedule based on the offender's finances, which may only be a minimal amount per month.

## Collecting restitution

Collection of restitution is often limited by the offender's ability to pay. As a result, many victims wait years before they receive any restitution, and they may never receive the full amount of restitution ordered.

Collection also depends on enforcement of the court's order of restitution, either by the criminal justice system or the victim. There are many laws and procedures used to make sure the offender pays as ordered.

For example, where payment of restitution is made a condition of probation or parole, the probation or parole officer must monitor whether payments are being made on time. The victim may help provide this information to the probation or parole officer. If the offender is about to be released from probation or parole, but has not paid restitution as ordered, this information must be conveyed to the court or parole board. Victims who have not received restitution as ordered should ask the probation or parole officer how this information will be provided to the court or parole board. In some states, probation or parole can be extended when the offender has willfully failed to pay restitution.

In those states with prison work programs, restitution payments are typically collected out of the wages of those programs. Some states collect restitution from state income tax refunds, prisoner accounts, lottery winnings, or damage awards from lawsuits against the prison.

Where the offender has not paid restitution as ordered-has "defaulted" in payment-restitution often can be collected by the same methods used to enforce other court judgments, such as attachments of assets or garnishment of wages. In some states, the victim is authorized to take these actions; in other states, enforcement is up to the prosecutor, the court, or another official.

Many states provide that restitution orders become civil judgments. This expands the ability of victims to collect restitution and also means the orders can stay in effect for many years, typically ten to twenty years. In many jurisdictions, civil judgments can be renewed, so they can stay in effect even longer. During that time, the offender's financial circumstances may change: he or she may have inherited property, won a legal judgment, or become employed. Depending on the state, the civil judgment may be enforceable immediately, or enforceable when the offender defaults on payment, or enforceable only after the criminal justice process is completed and the offender has been released from probation, prison, or parole. A victim may need to hire an attorney to help enforce the civil judgment.

To find out more about your state's restitution law, contact your state Attorney General, county/city prosecutor, county probation/parole office or your local law library: Check in the Blue Pages of your local phone book under the appropriate section heading of either "Local Governments," "County Governments," or "State Government."

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# MEMORANDUM

**State of Alaska**  
**Department of Revenue**  
Permanent Fund Dividend Division

TO: Karen Rehfeld  
Director  
Office of Management and Budget

DATE: October 25, 2012

TELEPHONE: 465-2324

THRU: Rebecca Monagle  
Budget Manager  
Department of Revenue - ASD

FAX: 465-2096

FROM: Dan DeBartolo  10/25/12  
Director  
Permanent Fund Dividend Division

SUBJECT: FY 14 PFD Fund Appropriation  
for Departments of Public Safety  
and Corrections

As required under AS 43.23.028(a)(6), the amount of dividends that would have been paid this year to individuals who were sentenced or incarcerated under AS 43.23.005(d) and would have otherwise been eligible is **\$11,163,770.00**.

Attached is our calculation for the basis of the FY 14 amount. The amount is based on the total amount of 2012 Permanent Fund Dividends that would have been paid to individuals had they not been determined ineligible because of criminal activities in calendar year 2011 (the qualifying year for the 2012 dividend).

Under AS 43.23.005(d), individuals are not eligible for a dividend if during the qualifying year, the individual was:

- Sentenced as a result of a conviction of a felony;
- Incarcerated as a result of a conviction of a
  - felony; or
  - misdemeanor if the individual was convicted of a prior felony or two or more prior misdemeanors.

The Departments of Corrections and Public Safety provided the Permanent Fund Dividend Division with a file of **12,824** and **2,123**, respectively incarcerated and/or sentenced during qualifying year 2011. We estimated that **12,715** individuals would have otherwise been eligible had they not been denied a dividend solely because they were sentenced or incarcerated under AS 43.23.005(d). Accordingly, the total amount that would have been otherwise paid to these individuals is \$11,163,770.00 (12,715 individuals multiplied by \$878.00).

cc: Jerry Burnett, Revenue ASD Director  
Diane Anderson, Revenue ASD Fiscal Officer



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of Revenue**

PERMANENT FUND DIVIDEND DIVISION  
DIRECTOR'S OFFICE

State Office Building  
PO Box 110460  
Juneau, Alaska 99811-0460  
Main: 907.465.4785  
Fax: 907.500.300

www.pfd.alaska.gov

TO: Karen Rehfeld  
Director  
Office of Management and Budget

DATE: October 28, 2013

THRU: Michelle Vuille  
Budget Manager   
Department of Revenue - ASD

TELEPHONE: 465-4785  
FAX: 500-0300

FROM: Dan DeBartolo  10/24/13  
Director  
Permanent Fund Dividend Division

SUBJECT: FY 15 PFD Fund Appropriation for  
Departments of Public Safety and  
Corrections

As required under AS 43.23.028(a)(6), the amount of dividends that would have been paid this year to individuals who were sentenced or incarcerated under AS 43.23.005(d) and would have otherwise been eligible is **\$9,948,600**.

Attached is our calculation for the basis of the FY 15 amount. The amount is based on the total amount of 2013 Permanent Fund Dividends that would have been paid to individuals had they not been determined ineligible because of criminal activities in calendar year 2012 (the qualifying year for the 2013 dividend).

Under AS 43.23.005(d), individuals are not eligible for a dividend if during the qualifying year, the individual was:

- Sentenced as a result of a conviction of a felony;
- Incarcerated as a result of a conviction of a
  - felony; or
  - misdemeanor if the individual was convicted of a prior felony or two or more prior misdemeanors.

The Departments of Corrections and Public Safety provided the Permanent Fund Dividend Division with a file of **11,016** and **1,983**, respectively incarcerated and/or sentenced during qualifying year 2012. We estimated that **11,054** individuals would have otherwise been eligible had they not been denied a dividend solely because they were sentenced or incarcerated under AS 43.23.005(d). Accordingly, the total amount that would have been otherwise paid to these individuals is \$9,948,600 (11,054 individuals multiplied by \$900).

cc: Jerry Burnett, Revenue ASD Director  
Clara Meek, Revenue ASD Fiscal Officer

**Alaska Department of Revenue  
Permanent Fund Dividend Division  
FY 15 PFD Fund Appropriation Calculation  
for Departments of Corrections and Public Safety**

	Department of Corrections (Incarcerated Felons and Misdemeanants)	Department of Public Safety (Sentenced Felons)	Total
<b>Step 1 Calculate Eligibility Percentage</b>			
Number of felons and misdemeanants who filed a 2013 PFD application	4,987	892	
Eligibility Percentage <i>(Percentage of otherwise eligible applicants to number of filers)</i>	95.45%	94.73%	
Number of felons and misdemeanants who would have been otherwise eligible had they not been denied as a felon or misdemeanant	4,760	845	
<b>Step 2 Apply Percentage to Total Felons and Misdemeanants</b>			
Total Number of individuals reported by Agency	11,016	1,983	12,999
<b>Estimated gross number of otherwise eligible applicants</b> <i>(Eligibility Percentage applied to total number of individuals reported)</i>	<b>10,514</b>	<b>1,878</b>	<b>12,392</b>
<b>Step 3 Adjustments</b>			
Subtract individuals reported in multiple categories			
1. Felons and Misdemeanants Incarcerated <b>and</b> Felons Sentenced			-218
2. Misdemeanants Only Incarcerated <b>and</b> Felons Sentenced			-20
3. Felons Only Incarcerated <b>and</b> Felons Sentenced			-903
Subtract individuals denied in 2012 as a felon or misdemeanant who were subsequently paid			-197
<b>Total Adjustments</b>			<b>-1,338</b>
<b>Step 4 Estimated number of otherwise eligible applicants</b> <i>(Estimated gross number less adjustments)</i>			<b>11,054</b>
<b>Step 5 Appropriation Calculation</b>			
2013 Permanent Fund Dividend amount			<b>\$900.00</b>
<b>Total Appropriation</b> <i>(Estimated otherwise eligible applicants times the dividend amount)</i>			<b>\$9,948,600.00</b>

**The Department of Corrections changed the way they reported offender data from the DOC database in 2012. As a result, more individuals were reported in multiple categories than in prior years.**



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

## Department of Revenue

PERMANENT FUND DIVIDEND DIVISION  
DIRECTOR'S OFFICE

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Juneau, Alaska 99811-0460  
Main: 907.465.4785  
Fax: 907.500.300

[www.pfd.alaska.gov](http://www.pfd.alaska.gov)

TO: Karen Rehfeld  
Director  
Office of Management and Budget

DATE: October 21, 2014

THRU: Michelle Vuille  
Budget Manager  
Department of Revenue - ASD

TELEPHONE: 465-4785  
FAX: 500-0300

FROM: Sara Race  
Director  
Permanent Fund Dividend Division

SUBJECT: FY 16 PFD Fund Appropriation for  
Departments of Public Safety and  
Corrections

As required under AS 43.23.028(a)(6), the amount of dividends that would have been paid this year to individuals who were sentenced or incarcerated under AS 43.23.005(d) and would have otherwise been eligible is **\$22,340,472.00**.

Attached is our calculation for the basis of the FY 16 amount. The amount is based on the total amount of 2014 Permanent Fund Dividends that would have been paid to individuals had they not been determined ineligible because of criminal activities in calendar year 2013 (the qualifying year for the 2014 dividend).

Under AS 43.23.005(d), individuals are not eligible for a dividend if during the qualifying year, the individual was:

- Sentenced as a result of a conviction of a felony;
- Incarcerated as a result of a conviction of a
  - felony; or
  - misdemeanor if the individual was convicted of a prior felony or two or more prior misdemeanors.

The Departments of Corrections and Public Safety provided the Permanent Fund Dividend Division with a file of **11,883** and **1,812**, respectively incarcerated and/or sentenced during qualifying year 2013. We estimated that **11,858** individuals would have otherwise been eligible had they not been denied a dividend solely because they were sentenced or incarcerated under AS 43.23.005(d). Accordingly, the total amount that would have been otherwise paid to these individuals is \$22,340,472 (11,858 individuals multiplied by \$1884).

cc: Dan DeBartolo, Revenue ASD Director  
Ciara Meek, Revenue ASD Fiscal Officer



THE STATE  
of **ALASKA**

GOVERNOR BILL WALKER

Department of Revenue

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TO: Pat Pitney  
Director  
Office of Management and Budget

DATE: October 23, 2015

THRU: Michelle Vuille  
Budget Manager  
Department of Revenue - ASD

TELEPHONE: 465-4785  
FAX: 500-0300

FROM: Sara Race  
Director  
Permanent Fund Dividend Division

SUBJECT: FY 17 PFD Fund Appropriation for  
Departments of Public Safety and  
Corrections

As required under AS 43.23.028(a)(6), the amount of dividends that would have been paid this year to individuals who were sentenced or incarcerated under AS 43.23.005(d) and would have otherwise been eligible is **\$21,648,256.00**.

Attached is our calculation for the basis of the FY 17 amount. The amount is based on the total amount of 2015 Permanent Fund Dividends that would have been paid to individuals had they not been determined ineligible because of criminal activities in calendar year 2014 (the qualifying year for the 2015 dividend).

Under AS 43.23.005(d), individuals are not eligible for a dividend if during the qualifying year, the individual was:

- Sentenced as a result of a conviction of a felony;
- Incarcerated as a result of a conviction of a
  - felony; or
  - misdemeanor if the individual was convicted of a prior felony or two or more prior misdemeanors.

The Departments of Corrections and Public Safety provided the Permanent Fund Dividend Division with a file of 10,370 and 1,776, respectively incarcerated and/or sentenced during qualifying year 2014. We estimated that 10,448 individuals would have otherwise been eligible had they not been denied a dividend solely because they were sentenced or incarcerated under AS 43.23.005(d). Accordingly, the total amount that would have been otherwise paid to these individuals is \$21,648,256.00 (10,448 individuals multiplied by \$2072.00).



THE STATE  
of ALASKA

GOVERNOR BILL WALKER

Department of Revenue

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TO: Pat Pitney  
Director  
Office of Management and Budget

DATE: October 25, 2016

THRU: Michelle Vuille  
Budget Manager  
Department of Revenue - ASD

TELEPHONE: 465-4785

FAX: 500-0300

FROM: Sara Race *Sara Race*  
Director  
Permanent Fund Dividend Division

SUBJECT: FY 18 PFD Fund Appropriation for  
Departments of Public Safety and  
Corrections

As required under AS 43.23.028(a)(6), the amount of dividends that would have been paid this year to individuals who were sentenced or incarcerated under AS 43.23.005(d) and would have otherwise been eligible is \$12,613,524.00.

Attached is our calculation for the basis of the FY 18 amount. The amount is based on the total amount of 2016 Permanent Fund Dividends that would have been paid to individuals had they not been determined ineligible because of criminal activities in calendar year 2015 (the qualifying year for the 2016 dividend).

Under AS 43.23.005(d), individuals are not eligible for a dividend if during the qualifying year, the individual was:

- Sentenced as a result of a conviction of a felony;
- Incarcerated as a result of a conviction of a
  - felony; or
  - misdemeanor if the individual was convicted of a prior felony or two or more prior misdemeanors.

The Departments of Corrections and Public Safety provided the Permanent Fund Dividend Division with a file of 12,756 and 1,623, respectively incarcerated and/or sentenced during qualifying year 2014. We estimated that 12,342 individuals would have otherwise been eligible had they not been denied a dividend solely because they were sentenced or incarcerated under AS 43.23.005(d). Accordingly, the total amount that would have been otherwise paid to these individuals is \$12,613,524.00 (12,342 individuals multiplied by \$1022.00).

# LEGISLATIVE RESEARCH SERVICES

30<sup>th</sup> Alaska Legislature  
LRS Report 17.097  
February 6, 2017



(907) 465-3991 phone  
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## Victim Restitution Funds

Timothy Lash, Legislative Analyst

***You asked for data on victim restitution funds, especially information since 2013 on the following: what, if any, funds the Department of Law had collected from defendants; what funds had been appropriated from the Permanent Fund Dividend Criminal Fund, and to which state programs; and other noteworthy changes related to victim restitution in Alaska lately.<sup>1</sup>***

Our review of victim restitution in the state considers a variety of sources—especially the thorough report on victim restitution issued by the Alaska Criminal Justice Commission (ACJC) in December 2016. We obtained recent data from the Alaska Department of Law and the Alaska Division of Legislative Finance. These figures are available below, along with a few highlights from the ACJC's report, which we attach in full.<sup>2</sup>

### Department of Law Collections

Stacey K. Steinberg, Chief Assistant Attorney General and Collections and Support Section Supervisor, provided up-to-date information on court-ordered restitution from the Department of Law.<sup>3</sup> Notably, the department's Collections Unit is turning over its collections operations—including garnishing permanent fund dividends (PFDs) and collecting voluntary payments from defendants to pay restitution—to the Alaska Court System in 2017.<sup>4</sup> Recently, Ms. Steinberg partnered with the ACJC to present data for fiscal years 2015 and 2016, available in Table 1.<sup>5</sup>

<b>FY 2016</b>	<b>Total Payments</b>	<b>Net PFD</b>	<b>Voluntary Payment</b>	<b>PFD Garnishment %</b>	<b>Voluntary Payment %</b>
<i>Adult</i>	\$2,481,623	\$1,285,595	\$1,196,028	51.8%	48.2%
<i>Juvenile</i>	\$366,649	\$311,644	\$55,005	85.0%	15.0%
<b>FY 2015</b>					
<i>Adult</i>	\$2,373,475	\$1,227,219	\$1,146,256	51.7%	48.3%
<i>Juvenile</i>	\$413,359	\$325,737	\$87,622	78.8%	21.2%

<sup>1</sup> Specifically, you asked us to provide an update on funding data reported in LRS 13.404, "Status of Victim Restitution Laws in Alaska."

<sup>2</sup> The ACJC's report, "Victim Restitution: A Report to the Alaska State Legislature," December 1, 2016, is also available online at <http://www.ojc.state.ak.us/sites/default/files/commission-recommendations/acjcrestitutionreport12-1-2016.pdf>.

<sup>3</sup> The information provided by Ms. Steinberg is found, in greater detail, in the attached ACJC report. Ms. Steinberg can be reached at 907-269-5117 or [stacy.steinberg@alaska.gov](mailto:stacy.steinberg@alaska.gov).

<sup>4</sup> The ACJC's report states: "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."

<sup>5</sup> Ms. Steinberg notes: "I don't have the information for FY14 readily available. While initially it may seem very simple, it is not. We track the total amount of restitution collected. We don't track voluntary or other payments. We track PFD garnishments but that amount is a gross amount—refunds to debtors must be subtracted to arrive at the net PFD garnishments. This is explained on page 24 of the report. I worked extensively with the ACJC this past summer to determine the FY15 and FY16 figures."

<sup>6</sup> The figures for net PFDs and voluntary payments, along with the accompanying percentages, are estimates by the Department of Law.

As seen in Table 1, the amounts and percentages of restitution funds collected from adult defendants remained stable over the last two fiscal years. At the same time, total collections from juvenile defendants decreased slightly, although permanent fund dividend (PFD) garnishments from juveniles increased modestly. Further figures and charts from the Department of Law and the ACJC—on restitution recovery rates and amounts, victim types, PFD garnishments, voluntary payments, and Violent Crimes Compensation Board (VCCB) recovery rates—can be found in the attached ACJC report.<sup>7</sup>

#### Permanent Fund Dividend Criminal Fund

Kelly Cunningham, Fiscal Analyst, Alaska Division of Legislative Finance, provided the following data on appropriations from the Permanent Fund Dividend Criminal Fund over the last three fiscal years.<sup>8</sup>

<b>Table 2: Permanent Fund Dividend Criminal Fund Appropriations in FY 2014-2016</b>				
Department	Program	FY 2014	FY 2015	FY 2016
Administration	Violent Crimes Compensation Board	\$1,116,400	\$1,502,700	\$1,510,100
Corrections	Physical Health Care	\$10,047,400	\$8,445,900	\$20,830,400
<b>Total Appropriations</b>		<b>\$11,163,800</b>	<b>\$9,948,600</b>	<b>\$22,340,500</b>

As shown in Table 2, the inmate health care program in the Department of Corrections has continued to be the greatest recipient of appropriations from the Permanent Fund Dividend Criminal Fund.<sup>9</sup>

#### Alaska Criminal Justice Commission Report

In 2016, Senate Bill 91 made sweeping changes to Alaska’s criminal justice system, including some specifically related to victim restitution. The bill enacted measures to require defendants to pay restitution for the market value of stolen property and for loss of income, to increase restitution paid by probationers, and to mandate new procedures to improve the rate of voluntary payments collected for victims of crime.<sup>10</sup> In addition to those statutory provisions, SB 91 required that the Alaska Criminal Justice Commission (ACJC) deliver a report to the Legislature on “the implementation of a financial recovery and victim’s restitution program,” including “recommendations regarding restitution for crimes against a person and for property crimes

<sup>7</sup> See pp. 21-25, Appendix A, in the attached report.

<sup>8</sup> Ms. Cunningham can be reached at 907-465-3821 or [kelly.cunningham@akleg.gov](mailto:kelly.cunningham@akleg.gov).

<sup>9</sup> Among other options to provide better funding to the VCCB, the ACJC proposes the following: “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) [Property Crime Compensation Board – an entity proposed in the report].” For more on the ACJC’s proposals, see pp. 14-20 of the attached report.

<sup>10</sup> The ACJC report outlines, in greater detail, the following specific changes regarding restitution from probationers:

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 [Department of Corrections] 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.” 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. 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. 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. Shorter probation terms will mean less time during which restitution requirements can be enforced as conditions of probation.

against businesses and members of the public,” as well as “recommendations for statutory changes to improve the payment and collection of victim's restitution.”<sup>11</sup>

The resulting report, delivered by the ACJC on December 1, 2016, is a highly informative, thoroughly up-to-date study of victim restitution in the state—including funds and collections, statistics, further discussion of the ramifications of SB 91, and policy proposals to improve and increase restitution recovery for victims of crime.<sup>12</sup> As mentioned earlier, the ACJC also outlines recent and upcoming changes already underway, including the imminent transfer of collections of court-ordered restitution from the Department of Law to the Alaska Court System. The report explains:

The Department of Law's [DOL] 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 Department of Corrections (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.

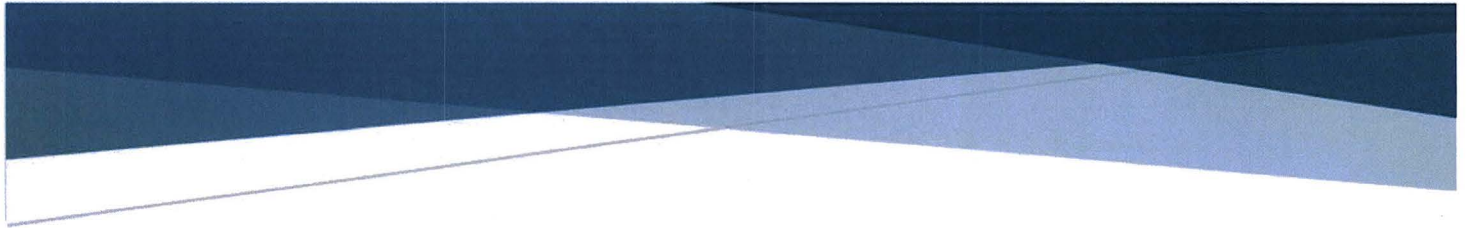
For further information, see the attached ACJC report.

We hope this is helpful. If you have questions or need additional information, please let us know.

---

<sup>11</sup> Sec. 183, Ch. 36, SLA 2016.

<sup>12</sup> The latest statistics from the Violent Crimes Compensation Board (VCCB) also appear in the ACJC report, including data on funds collected by the Department of Law for victims seeking restitution through the VCCB. Speaking for the Department of Law, Ms. Steinberg notes, “We cannot pull a victim report from our database to show all payments to VCCB, but that number as reported by VCCB is in the ACJC's report.” Additional data on the VCCB can be found in the VCCB's annual reports, available through 2016, at <http://doa.alaska.gov/vccb/annualReports.html>.



# 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."

---

<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

---

<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.*

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(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%.

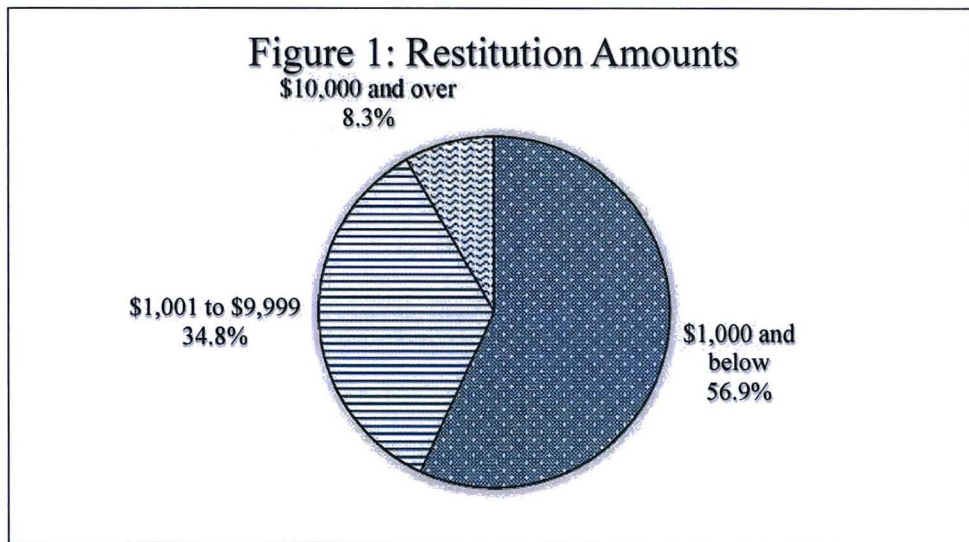
See Table 1 for restitution recovery rates and amounts to date for both adult and juvenile cases since 2002.

**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).

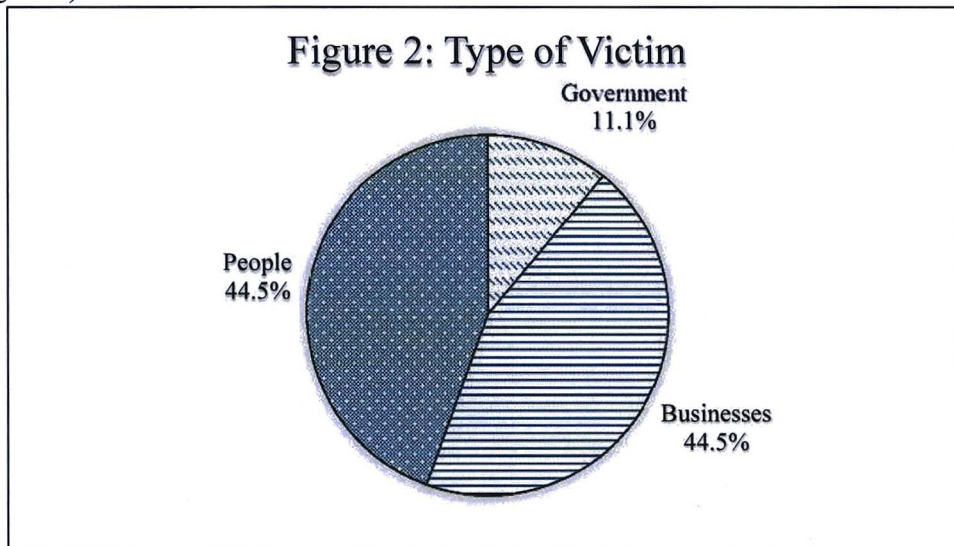


Source: Data from Alaska Department of Law, August 9, 2016

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.

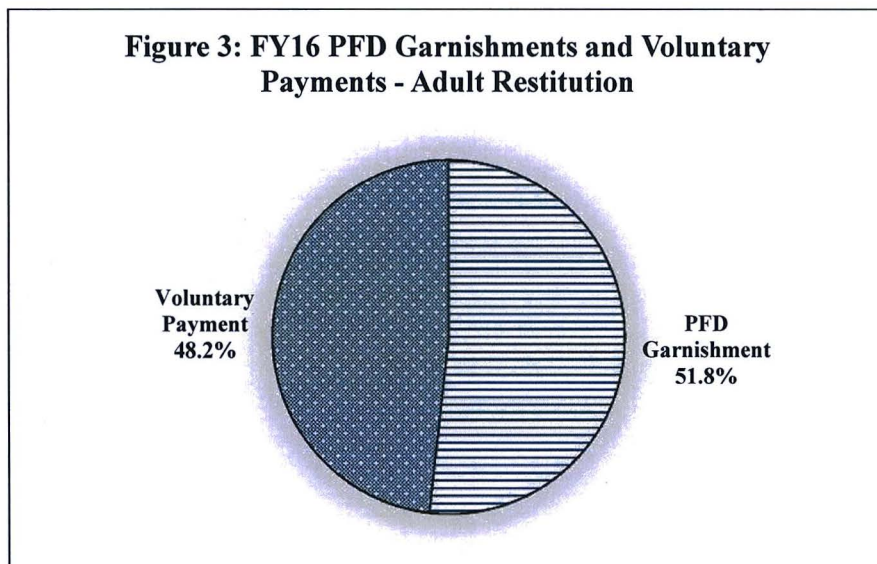
**Table 3: Restitution by Victim Type** (rounded to the nearest dollar)

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%

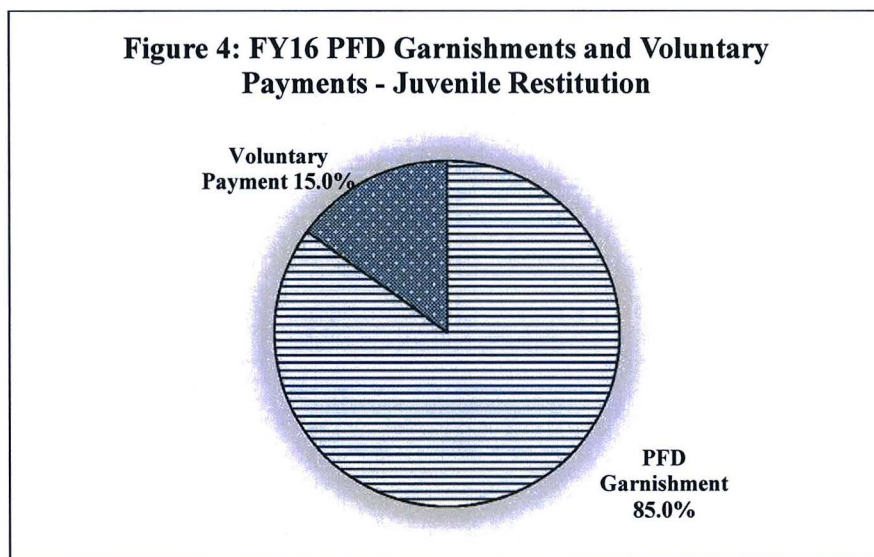
Source: Data from Alaska Department of Law, August 9, 2016

**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.



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



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**

	Total Garnishment Counts	Gross PFD Garnishments	Refunds Estimate	Net PFD Estimates
<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**

	Total Payments	Net PFD Estimate	Voluntary Payment Estimate	PFD Garnishment % Estimate	Voluntary Payment % Estimate
<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.

**Table 6: VCCB Restitution Amounts Awarded and Amounts Received**

Year	Total Compensation Paid	Awarded	Received
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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## Research Brief

TO: Senator Fred Dyson  
FROM: Susan Haymes, Legislative Analyst  
DATE: July 19, 2013  
RE: Status of Victim Restitution Laws in Alaska  
*LRS Report 13.404*

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***You asked about the status of victim restitution laws in Alaska. Specifically, you were interested in the effectiveness of current law. Additionally, you wished to know the priority under current law of collecting restitution compared to other fines.***

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In Alaska, a crime victim has a constitutional right to restitution from the offender. Accordingly, the Legislature and the Alaska Supreme Court have established rules to collect restitution from offenders and distribute payment to crime victims and organizations that provide counseling and other services to victims and their dependents. In addition to restitution, the offender is often required to pay other court-ordered fines and surcharges such as correctional facility surcharges, costs for court-appointed counsel, and costs for incarceration. Under current law, child support and victim restitution are typically the top two priorities when distributing an offender's assets to meet obligations for restitution and court-ordered fines.

The Department of Law's (DOL) Collection Unit is the agency primarily responsible for collecting court-ordered restitution, fines, and surcharges. Among other things, the Collections Unit may garnish an offender's permanent fund dividend (PFD) and wages, authorize bank account sweeps, and take money from an inmate's bank account for restitution. The primary tool used by the Collections Unit, however, is the garnishment of PFDs.<sup>1</sup>

According to the individuals we spoke with for this report, while victim restitution is an established priority under the constitution and the law, problems exist in the collection and distribution of restitution. This situation is due in part to the challenges inherent in collecting payment from offenders who have limited or no financial resources because they may be incarcerated or have limited employment opportunities. Nevertheless, all agree that offenders should be expected to pay what they can and the state should pursue collection whenever possible. A number of individuals cited the lack of communication and coordination among agencies that deal with victim restitution as the main problem in the process.

There has been some recent improvement, as the DOL's Collection Unit has taken active steps to increase collection of victim restitution, which has resulted in increased restitution payments and disbursement to victims. The Unit collected about \$2.3 million in restitution payments owed to crime victims in FY 2012, up 29 percent from FY 2011. The DOL has recently prioritized the distribution of money to victims, including improvements to internal processes and technology enhancements to more efficiently send checks to victims.

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<sup>1</sup> An amount of money approximately equal to the PFDs that would be owed to ineligible offenders is transferred to the PFD Criminal Fund each year. In recent years, the amount has been appropriated primarily to the Department of Corrections for inmate health.

***Victim Restitution***

In 1994, Alaska voters adopted a constitutional amendment to provide crime victims in Alaska with guaranteed rights, including the right to restitution from an offender.<sup>2</sup> The procedures for ordering and collecting victim restitution are governed primarily by Alaska Statutes 12.55.045 and 12.55.051, and Alaska Court Rules of Criminal Procedure, Rule 32.6.<sup>3</sup> Restitution for victims is second only to an obligation for child support when distributing an offender's assets to meet court-ordered fines and restitution.

Unless the crime victim expressly declines restitution, the court when presented with credible evidence, is required to order the defendant to make restitution, including restitution to the crime victim or other injured person, to an organization that provides counseling, medical or shelter services, or as otherwise authorized by law (AS 12.55.045[a]). For example, the defendant may be ordered to make restitution to the Violent Crimes Compensation Board (VCCB) for payments the VCCB has made on behalf of the victim. The restitution order identifies each victim and the amount of restitution owed to each, the date the payment is due or a schedule of installment payments, and whether the payment must be made through the clerk of court or the Department of Law's (DOL) Collections Unit (AS 12.55.045).<sup>4</sup> The criminal restitution order can only be for actual monetary expenses or losses, not for pain and suffering.<sup>5</sup>

If the judge orders restitution, there are multiple ways it can be enforced. The court automatically sends a copy of the restitution judgment to the DOL's Collections Unit. The DOL will notify crime victims of their right to have the State collect the debt or to collect the debt without State assistance. A crime victim may choose to have a private collection agency and/or private attorney attempt to collect payment, or may choose to collect the debt without assistance. Unless the crime victim notifies DOL that he or she does not want the Collection Unit's help, the unit will begin action on behalf of the victim (12.55.051).

The DOL can use a variety of means to collect restitution such as collecting voluntarily payments from the defendant, seizing the defendant's PFD, garnishing wages, filing a property lien, and/or authorizing a bank sweep. Garnishing a defendant's PFD is probably the most common method of collecting restitution. PFD garnishment is limited, however, because individuals sentenced or incarcerated during the qualifying year may not be eligible for a PFD for that year (AS 43.23.065). When the offender's PFD is garnished, no obligation is higher in priority than court-ordered restitution except child support.<sup>6</sup>

According to Stacy Steinberg, Chief Assistant Attorney General, Collections and Support Section, the Collections Unit collected about \$2.3 million in restitution payments owed to crime victims in FY 2012, an increase of 29 percent from FY 2011.<sup>7</sup> About half, or \$1.1 million, came from PFD garnishments. The other half came from voluntary payments made by offenders.

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<sup>2</sup> Alaska Const., Art I, sec. 24.

<sup>3</sup> We include AS 12.55.045, AS 12.55.051 and Alaska Criminal Court Rule 32.6 as Attachment A.

<sup>4</sup> In 2001, the legislature passed the Crimes Victims' Rights and Advocacy Act which, among other things, authorized the Department of Law (DOL) to collect court-ordered restitution on behalf of crime victims (AS 12.55.051[g]), and created the Office of Victims' Rights (AS 24.65) to assist crime victims in obtaining their guaranteed rights (ch 92 SLA 2001).

<sup>5</sup> A restitution order does not affect the ability of a victim to pursue a civil lawsuit (AS 12.045[b]).

<sup>6</sup> In 2002, the Alaska Supreme Court added a new Criminal Rule of Procedure 32.6 which establishes the procedure for ordering and collecting restitution including the priority of payments received from or on behalf of a defendant. Under Rule 32.6(g) payments received from execution of the PFD are allocated according to the following priority: child support obligations, court-ordered restitution for crime victims, defaulted student loans, court-ordered fines, and writs of execution under AS 09.35.

<sup>7</sup> Stacy Steinberg can be reached at 907.269.5100 or by email at [stacy.steinberg@alaska.gov](mailto:stacy.steinberg@alaska.gov).

In addition to garnishing PFDs, the wages and other monetary assets of an incarcerated offender may also be seized to pay victim restitution. Ms. Steinberg notes, however, that most offenders who are incarcerated have no money or make only meager prison wages so they cannot initially pay the court-ordered restitution. The Department of Correction's policy (304.02) for disbursing prisoner funds includes the following list of priorities:

1. Child-support;
2. Court-ordered restitution or fines;
3. Civil judgments resulting from that person's criminal conduct;
4. State reimbursement for violent crime compensation; and
5. Other judgments entered against a prisoner in litigation against the state (AS 09.19.100).

Kevin Worley, Director, Division of Administrative Services, DOC, explained that after the initial sweep of an inmate's account, 40 percent of his or her wages can go to ongoing child support payments.<sup>8</sup> Other attachments such as victim restitution are deducted monthly and can come from the remaining wages and monetary gifts in the inmate's account.<sup>9</sup> These attachments are taken in order of priority, which means victim restitution and other court-ordered fines are the second priority after child support. Mr. Worley indicated that some inmates refuse to work because they don't want to pay child support or other obligations.

One of the conditions of probation and parole is to pay court-ordered restitution (AS 12.55.100). A defendant convicted of a felony crime who has been released on probation must report to a probation officer who monitors the individual's compliance with probation including the requirement to pay restitution. Likewise, a parole officer supervises parolees to ensure they are following the conditions of parole. An offender must submit a completed sworn financial statement to the assigned probation officer. If the individual fails to pay restitution as required, the prosecutor or probation officer (in felony cases) or the prosecutor (in misdemeanor cases) may file a petition to revoke the offender's probation (AS 12.55.051[a]). A criminal restitution order becomes a civil judgment that accrues interest and remains enforceable even after the offender's probation ends (AS 12.55.045[1]).

An exception to the usual allocation of assets exists for those prisoners who qualify for prerelease or short duration furlough to begin reintegration into society in a halfway house or group home. The earnings from such prisoners are transmitted to the DOC and are distributed to 1) pay for the room, board and personal expenses of the prisoner, 2) pay any court-ordered restitution or fine; 3) reimburse the state for an award made for violent crimes compensation, 4) pay a civil judgment, and 5) pay child support (AS 33.30.131).

#### ***Other Judgments or Fees***

Persons convicted of a crime may also be subject to other judgments and fines, which are collected by the DOL's Collection Unit. Under AS 12.55.035, a defendant may be sentenced to pay a fine of from not more than \$500 for a violation, \$10,000 for a class A misdemeanor, \$100,000 for a class B felony, and \$500,000 for murder in the first or second degree. In addition to a fine, a defendant who pleads guilty or no contest, forfeits bail, or is convicted of felony, misdemeanor, or violation is

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<sup>8</sup> Mr. Worley can be reached at 907.465.4641. He notes that the DOC is in the process of reviewing policy 304.02 to ensure the new accounting system and the policies are functioning in tandem. Working inmates who have less than eight years to serve may also maintain a savings account.

<sup>9</sup> According to Mr. Worley, when the child support lien is first applied, the DOC can sweep the inmate's account and take everything but \$50. For ongoing support payments, money can only be taken from the inmate's wages.

assessed a surcharge ranging from \$10 for a violation to \$100 for a felony. The surcharge must be paid within 10 days of imposition. If a defendant cannot pay the surcharge the court may allow the defendant to perform community work (AS 12.55.039).

The State also imposes a correctional facility surcharge if in connection with a crime, an individual is arrested and taken to a correctional facility, regardless of whether he or she is released or admitted to the facility or sentenced to serve a term of imprisonment (AS 12.55.041). For individuals who are convicted, the surcharge is \$100 for a felony judgment and \$50 otherwise. The State may seek reimbursement from the defendant's PFD for the surcharge. In FY 2012, the DOL collected a little over \$400,000 in correctional facility surcharges and nearly \$1 million in incarceration costs on behalf of the Department of Corrections (DOC).<sup>10</sup>

Upon conviction an offender who qualifies for a public defender may be required to pay the costs of appointed counsel (AS 18.85.120). The schedule of fees is defined in Alaska Criminal Court Rule 39(d) and range from \$250 to \$5,000 for a trial and murder conviction in the first or second degree.<sup>11</sup> Upon a showing of financial hardship, the court may allow the individual to make payments under a repayment schedule and he or she may petition the court to reduce or defer the unpaid portion of the judgment. The judgment has the same force and effect as a civil judgment. Under Rule 39, payment may not be made a condition of the offender's probation. In FY 2012, the DOL collected nearly \$1 million on behalf of the Alaska Public Defender's Agency.

Those offenders who are incarcerated may also be required to pay fees and surcharges for such services as electric utilities (AS 33.30.017), medical co-payments (AS 33.30.028), photocopying, postage, and commissary. In addition, inmates who commit infractions such as destroying property may be required to pay restitution to the State (20 AAC 05.470).

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#### Issues Identified in the Collection and Distribution of Victim Restitution

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All of the individuals we spoke with agreed there was limited money available for restitution because of the lack of resources available from many offenders. At the same time, they emphasized there is more the State can be doing to collect and distribute restitution to crime victims.

#### Department of Corrections – Victim Services Unit

Gail Brimner, Victim Services Unit, Department of Corrections (DOC) concurs that in Alaska there are problems with the collection and distribution of court-ordered restitution.<sup>12</sup> Ms. Brimner notes that victim restitution often “falls through the cracks” and that problems exist with both collection and distribution. Part of the problem is that probation officers are not adamant enough about ensuring that offenders pay restitution. Many offenders may not be able to pay much in the way of restitution each month; however, it is the responsibility of the probation officer to review the offender's finances, such as pay stubs and bills, to determine an amount of restitution that can be paid. Even if the amount is only \$10, the payment process encourages the offender to fulfill his or her responsibility to the crime victim. Ms. Brimner suggested probation officers receive training that emphasizes the payment of restitution as a condition of probation and ways to monitor that payments are being made.

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<sup>10</sup> The Department of Law's 2012 Annual Report can be accessed at <http://law.alaska.gov/pdf/admin/AnnualReport12.pdf>.

<sup>11</sup> For a defendant who is ineligible for court-appointed counsel, the court may enter a judgment for the actual costs of appointed counsel, including actual expenses (AS 18.85.150 and Criminal Court Rule 39[e]).

<sup>12</sup> Gail Brimner, Criminal Justice Specialist, can be reached at 907.269.7384.

Ms. Brimner also said she has investigated several complaints where voluntary restitution had been made by the offender but the money had not been sent to the victim. She noted that some victims may not keep their addresses current with DOL, but thought perhaps the State could do more outreach to crime victims.

### **Violent Crimes Compensation Board (AS 18.67)**

A crime victim, dependent of a crime victim killed, or certain other persons by virtue of their relationship to the crime victim may apply for separate financial assistance to the Violent Crimes Compensation Board (VCCB). Recognizing the difficulty in collecting court-ordered restitution, the VCCB was established in 1972 to help ease the financial hardships experienced by victims of violent crimes. The VCCB may compensate victims for medical expenses, counseling costs, lost income, lost support, funeral expenses, or any other reasonable expenses and losses. The VCCB is a “payer of last resort,” which means compensation is awarded only for expenses not covered through other sources such as medical and auto insurance, a civil lawsuit or other assistance program. The Board also provides for the payment of financial losses experienced by dependents of deceased victims and to victims who are permanently disabled.

The VCCB is awarded restitution by the courts, but the recovery of that restitution has been modest. In FY 2012, for example, the VCCB was awarded \$637,154 in court-ordered restitution, but received only \$47,652, with 80 percent of this amount coming from court judgments from earlier years.<sup>13</sup> Because the VCCB does not have the staff to pursue collection independently, it relies on the Department of Law’s Collections Unit. According to Kate Hudson, Executive Director, VCCB, the DOL’s Collections Unit is not actively collecting restitution beyond garnishing permanent fund dividends, and the situation in Alaska is “crying out for something better.”<sup>14</sup> The VCCB has proposed the hiring of a dedicated collections agent in the VCCB to pursue restitution payments. In addition, Ms. Hudson suggests that the Department of Law, Office of Victim Rights, and the Department of Corrections (Probation Office) better coordinate the exchange of information.

### **Office of Victims’ Rights (AS 24.65)**

In 2001, the Alaska Legislature created the Office of Victims’ Rights (OVR), an independent agency within the legislative branch of state government, to help crime victims obtain their constitutional and statutory rights with regard to their interactions with criminal justice agencies in the State. While the OVR does not collect restitution for victims, the agency can advise crime victims of their right to restitution and give them instruction and assistance in obtaining restitution. Taylor Winston, Director, OVR, notes that one of the problems in getting restitution money to victims is the lack of interfacing between departments. The current system is inefficient and frustrating for many victims.<sup>15</sup> While victims have a responsibility to keep the DOL updated of their current address, this does not always happen. She suggested that matching the names of victims who are owed restitution to PFD data for current addresses could help victims.

Like Ms. Brimner, Ms. Winston emphasized the lack of follow-through by some probation officers to ensure offenders are paying some amount of victim restitution. She stressed that it is important for offenders to make restitution, even if the payment is as low as \$10 each month.

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<sup>13</sup> “Violent Crimes Compensation Board – Restitution White Paper” is included as Attachment B.

<sup>14</sup> Ms. Hudson can be reached at 907.465.5525.

<sup>15</sup> Ms. Winston can be reached at 907.272.2620.

## Department of Law – Collections Unit

The DOL's collection services include sending demand letters, processing voluntary payments, and seizing the defendant's permanent fund dividends if the defendant is eligible for the dividend and the dividend is not claimed by child support.<sup>16</sup> The DOL will record a property lien for restitution judgments over \$10,000. Collections may also request a wage garnishment or bank sweep if they learn the defendant has regular and consistent wages. The DOL described measures they have recently taken as follows:

- In 2012, we hired a restitution coordinator, who has greatly assisted in overseeing the restitution process and managing staff and projects.
- We streamlined our internal processes and enhanced our collections database. This has improved the timeliness of our case opening. In fact, our policy is to require new cases to be opened within 30 days, and the recent average has been between one and two weeks. This ensures that the collection process can begin as quickly as possible. And, once the case is opened, it also allows us to garnish the debtors permanent fund dividend (PFD).
- We continued to increase our restitution collections. In FY10, we collected roughly \$1.1 million followed by \$1.8 million in FY11 and \$2.3 million in FY12. Both voluntary payments and PFD garnishments have increased. Voluntary payments increased over 8% from 3,320 in FY11 to 3,595 payments in FY12. PFD garnishments increased over 50% from 905 in FY11 to 1,405 in FY12.
- As payments and garnishments increased, we have had corresponding increases in disbursements to victims. Disbursement requests increased from 1,719 in FY11 to 3,121 in FY12. We also expect the FY13 numbers to be similar to, or exceed those from FY12.
- We improved our internal processes and technology, and are more efficient at distributing money to victims. We changed internal processes so checks are mailed to victims faster. Technology enhancements include a new receipting program implemented in March of this year so that we can provide for a quicker and more efficient disbursement request process.
- Recently, we prioritized disbursements making that part of the process more efficient. Since April, we have focused on distributing the largest disbursements first, working our way down to disbursements of less than \$100. Within just the past few months, the Collections and Support Unit has made great progress, and less than 5% of the disbursements that remain are for amounts larger than \$1,000. Our goal is to have all disbursements for more than \$500 distributed by January 2014.
- Disbursements less than \$100 make up two-thirds of all payments that are waiting for disbursement, and approximately half of that amount (or one-third of the total) is made up of payments that are less than \$5.
- When dealing with payments of less than \$5, the cost of disbursement is more than the payment amount, which is why it is our policy to wait until more payments for that victim

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<sup>16</sup> The Collections and Support Section includes the collections unit and child support unit. The collections unit collects unsecured debts owed to the State including criminal judgments (fines, cost of appointed counsel, and cost of incarcerations) and various civil judgments, such as attorney fees. The Unit also collects restitution owed in criminal court cases and sends the funds to the restitution recipient. More information on the Section can be accessed at <http://law.alaska.gov/department/criminal/restitution.html>.

come in before disbursing them. These minimal payments (which can in some instances be less than a dollar) are often the result of money transferred from a prisoner's account by the Department of Corrections. These prisoners do not have a lot of money, so the amounts transferred are small and in some cases, the amounts are divided among multiple victims, resulting in even smaller payments.

- The department is currently in the process of hiring a temporary accountant to assist with disbursements. We expect the temporary accountant to help us get current on disbursements, at least those greater than a de minimis amount.<sup>17</sup>

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### Permanent Fund Dividend Criminal Fund

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In 1988, Alaska lawmakers passed legislation which makes any person who is convicted of a felony and incarcerated during any period of a qualifying PFD year as a result of the conviction ineligible for a PFD (AS 43.23.005[d]).<sup>18</sup> The Legislature further intended that an amount "approximately equal to the money" that would otherwise be paid as dividends to individuals ineligible under this law, be appropriated annually from the dividend fund to the Crime Victim Compensation Fund.<sup>19</sup>

In early September of each year, the Department of Corrections reports to the Department of Revenue (DOR) the total number of persons incarcerated in the system as of that date. The DOR then estimates the number of inmates who could have applied for a PFD and would have been found eligible had they not been incarcerated, and multiplies that number by the estimated amount of the dividend for that year. This amount represents the PFD Criminal Fund. In FY 2013, DOR calculated the PFD Criminal Fund at nearly \$16.7 million.<sup>20</sup>

Until recently, the Violent Crimes Compensation Board, the Council on Domestic Violence and Sexual Assault (CDVSA), the Office of Victim Rights, and the Department of Corrections received appropriations from the PFD Criminal Fund. The table below shows the appropriations from the PFD Criminal Fund for FY 2008-2013. As you can see, the Department of Corrections received almost 90 percent of the PFD Criminal Fund for inmate healthcare in FY 2012 and 89 percent in FY 2013. The VCCB received about \$1.8 million in FY 2012 and in FY 2013 to capitalize the Crime Victim Compensation Fund, which was then allocated to the VCCB.<sup>21</sup> From FY 2008-2013, the Department of Corrections received over 64 percent of the total appropriations, the CDVSA about 24 percent, the VCCB 9 percent, and the OVR a little over 2 percent.

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<sup>17</sup> Cori Mills, Assistant Attorney General, Department of Law, can be reached at 907.465.2132.

<sup>18</sup> The Alaska Supreme Court upheld the constitutionality of AS 43.23.005(d) in *State v. Anthony*, 816 P.2d 1377 (Alaska 1991), finding the measure does not violate the equal protection clause of the Alaska or U.S. constitutions. Subsequently, the Legislature has amended the statute to expand the number of persons ineligible for a PFD to include those persons who are incarcerated as a result of a misdemeanor if they had been convicted of two prior crimes as well as those persons who are incarcerated for a misdemeanor if they had a prior conviction for a felony or two prior misdemeanor convictions.

<sup>19</sup> The Crime Victim Compensation Fund, established at the same time as the Violent Crimes Compensation Board, was intended to provide a source of funding for the VCCB.

<sup>20</sup> Jerry Burnett, Deputy Commissioner, Department of Revenue, can be reached at 907.465.3669.

<sup>21</sup> Kelly Cunningham, Fiscal Analyst, Legislative Finance Division. Ms. Cunningham can be reached at 907.465.3821.

**Permanent Fund Dividend Criminal Fund Appropriations FY 2008 - FY 2013**  
 (\$ in thousands)

Department	Program	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
Administration	Violent Crimes Compensation Board	\$ 1,068	\$ 1,569	\$ 1,586	\$ 1,884	\$ 1,800	\$ 1,798
Corrections	Inmate Health Care	\$ 6,211	\$ 9,126	\$ 10,897	\$ 10,037	\$ 15,920	\$ 14,890
Legislature	Office of Victim Rights	\$ 401	\$ 589	\$ 767	\$ 707	\$ -	\$ -
Public Safety	Council on Domestic Violence and Sexual Assault	\$ 3,790	\$ 5,568	\$ 8,258	\$ 7,607	\$ -	\$ -
<b>TOTAL APPROPRIATION</b>		<b>\$ 11,470</b>	<b>\$ 16,851</b>	<b>\$ 21,507</b>	<b>\$ 20,234</b>	<b>\$ 17,720</b>	<b>\$ 16,688</b>

**Notes:** The amount of money in the PFD Criminal Fund each year is based on the number of incarcerated inmates who would have applied for a PFD and otherwise been found eligible that year. Prior to FY 2012, the Violent Crimes Compensation Board (VCCB) received an appropriation directly from the PFD Criminal Fund. In FY 2012 and FY 2013, \$1.8 million was appropriated from the PFD Criminal Fund to capitalize the Crime Victim Compensation Fund, which was then allocated to the VCCB.

**Sources:** Legislative Finance Division, Operating Budgets, Fiscal Years 2008-2013; Kelly Cunningham, Fiscal Analyst, Legislative Finance Division, 907.465.3821.

We hope this is helpful. If you have questions or need additional information, please let us know.

*Alaska Stat. § 12.55.045*

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TITLE 12. CODE OF CRIMINAL PROCEDURE  
CHAPTER 55. SENTENCING AND PROBATION

Alaska Stat. § 12.55.045 (2013)

Sec. 12.55.045. Restitution and compensation

(a) The court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law. The court shall, when presented with credible evidence, unless the victim expressly declines restitution, also order a defendant convicted of an offense to compensate a victim that is a nonprofit organization for the value of labor or goods provided by volunteers if the labor or goods were necessary to alleviate or mitigate the effects of the defendant's crime. In determining the amount and method of payment of restitution or compensation, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; and

(2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If the defendant fails to make one or more payments required under this section, the victim or the state on the victim's behalf may enforce the total amount remaining under the order of restitution as provided in (1) of this section.

(d) In any case, including a case in which the defendant is convicted of a violation of [AS 11.46.120](#) -- [11.46.150](#) and the property is commercial fishing gear as defined in [AS 16.43.990](#), the court shall consider the victim's loss, and the order of restitution may include compensation for loss of income.

(e) *[Repealed, § 7 ch 17 SLA 2004.]*

(f) *[Repealed, § 7 ch 17 SLA 2004.]*

(g) The court may not, in ordering the amount of restitution, consider the defendant's ability to pay restitution.

(h) In imposing restitution under this section, the court may require the defendant to make restitution by means other than the payment of money.

(i) An order of restitution made under this section is a condition of the defendant's sentence and, in cases in which the court suspends all or a portion of the defendant's sentence, the order of restitution is a condition of the suspended sentence. If the court suspends imposition of sentence under [AS 12.55.085](#), the order of restitution is a condition of the suspended imposition of sentence.

(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 authority.

(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.

(l) An order by the court that the defendant pay restitution is a civil judgment for the amount of the restitution. An order by the court that the defendant pay restitution when the court suspends imposition of sentence under [AS 12.55.085](#) is a civil judgment for the amount of the restitution and remains enforceable and is not discharged when a conviction is set aside under [AS 12.55.085](#). The victim or the state on behalf of the victim may enforce the judgment through any procedure authorized by law for the enforcement of a civil judgment. If the victim enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded. If the state on the victim's behalf enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded, up to a maximum of twice the amount of restitution owing at the time the civil process was initiated. This section does not limit the authority of the court to enforce orders of restitution.

(m) Notwithstanding another provision of law, the court shall accept (1) payments of restitution from a defendant at any time, and (2) prepayments of restitution or payments in anticipation of an order of restitution. If the recipient has elected to have the Department of Law collect the judgment of restitution under [AS 12.55.051\(g\)](#), the court shall forward all payments of restitution to the Department of Law within five days after the court's acceptance.

(n) In this section, "conviction" means that the defendant has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or has been found guilty or guilty but mentally ill by a court or jury.

**HISTORY:** (§ 12 ch 166 SLA 1978; am § 38 ch 102 SLA 1980; am § 1 ch 73 SLA 1986; am §§ 1, 2 ch 75 SLA 1988; am § 3 ch 53 SLA 1991; am §§ 3, 4 ch 71 SLA 1992; am § 4 ch 71 SLA 1996; am §§ 3, 4 ch 103 SLA 2000; am §§ 9, 10 ch 92 SLA 2001; am § 1 ch 23 SLA 2002; am § 1 ch 26 SLA 2003; am §§ 1 -- 4, 7 ch 17 SLA 2004; am § 11 ch 42 SLA 2006)

*Alaska Stat. § 12.55.051*

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TITLE 12. CODE OF CRIMINAL PROCEDURE  
CHAPTER 55. SENTENCING AND PROBATION

Alaska Stat. § 12.55.051 (2013)

Sec. 12.55.051. Enforcement of fines and restitution

(a) If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment and, if the payment was made a condition of the defendant's probation, may revoke the probation of the defendant. In a contempt or probation revocation proceeding brought as a result of failure to pay a fine or restitution, it is an affirmative defense that the defendant was unable to pay despite having made continuing good faith efforts to pay the fine or restitution. If the court finds that the defendant was unable to pay despite having made continuing good faith efforts, the defendant may not be imprisoned solely because of the inability to pay. If the court does not find that the default was attributable to the defendant's inability to pay despite having made continuing good faith efforts to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each \$ 50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

(b) When a fine or restitution is imposed on an organization, the person authorized to make disbursements from the assets of the organization shall pay the fine or restitution from those assets. A person required to pay a fine or restitution under this subsection who intentionally refuses or fails to make a good faith effort to pay is punishable under (a) of this section.

(c) A defendant who has been sentenced to pay a fine or restitution may request a hearing regarding the defendant's ability to pay the fine or restitution at any time that the defendant is required to pay all or a portion of the fine or restitution. The court may deny the request if it has previously considered the defendant's ability to pay and the defendant's request does not allege changed circumstances. If, at a hearing under this subsection, the defendant proves by a preponderance of the evidence that the defendant will be unable

through good faith efforts to satisfy the order requiring payment of the fine or restitution, the court shall modify the order so that the defendant can pay the fine or restitution through good faith efforts. The court may reduce the fine ordered, change the payment schedule, or otherwise modify the order. The court may not reduce an order of restitution but may change the payment schedule.

(d) The state may enforce payment of a fine against a defendant under [AS 09.35](#) as if the order were a civil judgment enforceable by execution. This subsection does not limit the authority of the court to enforce fines.

(e) The Department of Law is authorized to collect restitution on behalf of the recipient unless

(1) the recipient elects as provided in (f) of this section to enforce the order of restitution without the assistance of the Department of Law; or

(2) the order requires restitution to be made in a form other than payment of a specific dollar amount.

(f) The court shall forward a copy of an order of restitution to the Department of Law when the judgment is entered. Along with the copy of the order, the court shall provide the name, date of birth, social security number, and current address of the recipient of the restitution and the defendant, to the extent that the court has that information in its possession. Upon receipt of the order and other information from the court, the Department of Law shall send a notice to the recipient regarding the recipient's rights under this section, including the right to elect to enforce the order of restitution without the assistance of the Department of Law. The information provided to the Department of Law under this subsection is confidential and is not open to inspection as a public record under [AS 40.25.110](#). The Department of Law or its agents may not disclose the information except as necessary to collect on the restitution.

(g) The Department of Law may not begin collection procedures on the order of restitution until the recipient has been given notice and has been given 30 days after receipt of notice to elect to collect the restitution without the assistance of the Department of Law. A recipient may inform the Department of Law at a later time of the recipient's election to collect the restitution without the assistance of the Department of Law; upon receipt of that information, the Department of Law may no longer proceed with collection efforts on behalf of the recipient. A recipient who has elected under this section to collect restitution without the assistance of the Department of Law may not later request the services of that department to collect the restitution.

(h) If the Department of Law or its agents proceed to collect restitution on behalf of a recipient under (g) of this section, the actions of the Department of Law or an agent of the Department of Law on behalf of the recipient do not create an attorney-client relationship between the Department of Law and the recipient. The Department of Law or its agents may not settle a judgment for restitution without the consent of the recipient of the

restitution.

(i) An action for damages may not be brought against the state or any of its agents, officers, or employees based on an action or omission under this section.

(j) The Department of Law may enter into contracts on behalf of the state to carry out the collection procedures of this section. The Department of Law may adopt regulations necessary to carry out the collection procedures of this section, including the reimbursement of attorney fees and costs in appropriate cases.

**HISTORY:** (§ 12 ch 166 SLA 1978; am §§ 3, 4 ch 75 SLA 1988; am §§ 5, 6 [ch 71 SLA 1992](#); am §§ 11, 12 [ch 92 SLA 2001](#); am § 5 [ch 17 SLA 2004](#))

## **Rule 32.6. Judgment for Restitution.**

(a) **Definition.** When a sentence includes a requirement that the defendant pay restitution, the judge shall either enter a separate judgment for restitution or shall include the order of restitution as a separate section of the criminal judgment. For the purpose of these rules, either of these constitutes a "judgment for restitution."

(b) **Content.** The judgment for restitution must:

(1) Identify each victim or other person entitled to restitution and the amount of restitution owed to each.

(2) State the date restitution is due or, if the court schedules installment payments, the amount and due date of each payment. If no due date is stated, the restitution amount is due immediately.

(3) State whether payment must be made through the clerk of court or the Collections Unit of the Department of Law. Ordinarily, the restitution payment will be made through the Collections Unit of the Department of Law unless (A) the victim or other person elects to pursue collection without the assistance of the Collections Unit; (B) the order requires restitution to be made in a form other than payment of a specific dollar amount; or (C) the case is being prosecuted by a municipality. When payment is to be made through the Collections Unit, the judgment must state that the court will also accept payments and prepayments of restitution.

(4) Identify by name and case number any defendants who are jointly and severally liable for the restitution owed to each victim or other person.

(5) State whether post-judgment interest is owed on the judgment and, if so, when it begins to accrue.

(c) **Entering the Judgment for Restitution.**

(1) *At Sentencing.* If the amount of restitution and the names of the victims are known at the time of sentencing, the court shall enter the judgment for restitution at the time of sentencing.

(2) *After Sentencing.* If the amount of restitution and the names of the victims or other persons seeking restitution are not known at the time of sentencing, the prosecutor shall file and serve within 90 days after sentencing a proposed judgment for restitution on a form designated by the Administrative Director, and a notice that includes information concerning the identity of any victims or other persons seeking restitution, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers. Within 30 days after receipt of the proposed judgment for restitution, the defense shall file any

objection to the proposed judgment, a statement of grounds for the objection, and a financial statement on a form designated by the Administrative Director under AS 12.55.045(j). If the defendant does not file an objection, the court may enter the judgment for restitution without further proceedings. If the defendant files an objection and either party requests a hearing, the court shall schedule a hearing.

(3) *Municipal Cases*. In addition to the requirements of (c)(1) and (2) above, a municipal prosecutor shall file an ex parte victim information statement on a form provided by the Administrative Director, which includes information concerning the identity and addresses of the victims. The victim information statement shall be filed within 15 days after entry of the restitution judgment under (c)(1) above or at the time the municipal prosecutor submits a proposed judgment to the court under (c)(2) above.

(d) **Hearing Regarding Payment Schedule**. A defendant who is unable to pay restitution because of financial circumstances may request a hearing to ask the court to modify the restitution payment schedule. If the court holds a hearing and the defendant proves by a preponderance of the evidence that the defendant is unable through good faith efforts to satisfy the payment schedule in the judgment for restitution, the court may modify the payment schedule, but may not reduce the amount of restitution.

(e) **Execution**. Civil execution to enforce the judgment may issue if restitution is ordered to be paid by a specified date and defendant fails to make full payment by that date. If restitution is ordered to be paid in specified installments and defendant fails to make one or more installment payments, civil execution to collect the entire remaining balance may issue. The automatic stays on enforcement provided in Civil Rule 62(a) and District Court Civil Rule 24(a) do not apply to the enforcement of restitution judgments.

**(f) Transfer of State Restitution Judgments and Payments to the Collections Unit of the Department of Law.**

(1) Upon issuance of a judgment for restitution in cases prosecuted by the state, the court will send, either on paper or electronically, a copy of the judgment to the Collections Unit of the Department of Law. The court will also send the name, address, birth date, and social security number of each victim or other person entitled to restitution and each defendant, to the extent the court has the information.

(2) If payment for restitution is tendered to the court, the court shall accept the tendered payment. If the victim or other person entitled to restitution has elected to proceed through the Collections Unit, the court shall forward the payment to the Collections Unit within five days after clearance of the payment tendered to the court.

(g) **Priority of Payments**. Unless the court finds good cause to order a different priority, payments received from or on behalf of a defendant will be allocated as follows:

(1) If a defendant makes a voluntary payment and designates how or to what criminal or civil judgments the payment should be applied, the payment will be applied as designated by the defendant.

(2) Payments received as the result of execution on the defendant's permanent fund dividend will be applied to judgments according to the priorities stated in AS 43.23.065.

(3) If a defendant makes a voluntary payment but does not designate how the payment is to be applied or if a payment is received as a result of execution by the Collections Unit of the Department of Law or a comparable unit of a municipality, the payment will be applied using the following rules:

(A) Judgments for restitution will be paid in full before any amounts collected from the defendant will be applied to criminal or civil judgments owed to the state or a municipality.

(B) If restitution is owed to the state or a municipality, amounts collected from the defendant will be applied first to judgments for restitution owed to victims other than the state or a municipality.

(C) When restitution is ordered to be paid by a defendant to victims in the same criminal case, amounts collected from the defendant will be allocated among the victims based on the percentage of the amount of restitution owed to each victim to the total amount of restitution owed by the defendant to all of the victims; except that if a payment is less than \$100, the payment may be paid to a single victim if such payments are paid to all victims on an alternating basis.

(D) When restitution is ordered to be paid by a defendant to victims in different criminal cases, amounts collected from the defendant will be applied to the judgment that is first in time.

(4) If a payment is received as a result of execution by a victim, the payment will be applied to the judgment for restitution owed to that victim.

**(h) Financial Statement.**

(1) If restitution has been ordered and has not been paid, and no financial statement has been required under Rule 32.1(a)(2)(B) or Rule 32.6(c)(2), the court shall order the defendant to complete and submit such statement within 30 days of the restitution judgment. The statement shall be on a form designated by the administrative director and shall be submitted to the Collections Unit of the Department of Law in state cases or the prosecuting authority in municipal cases.

(2) If the defendant fails to submit a completed financial statement as ordered, the probation officer or prosecuting authority (including the Collections Unit of the Department of Law) may notify the court by affidavit. Upon receipt of an affidavit under

this paragraph, the court shall schedule a hearing for the defendant to show cause why the defendant should not be held in contempt for failure to comply with the order to submit the financial statement.

(3) At any time after sentencing, the probation officer or prosecuting authority (including the Collections Unit of the Department of Law) may request that the defendant be ordered to provide a financial statement pursuant to AS 12.55.045(k).

(i) **Victim Election.** If, after the judgment for restitution has been transferred to the Collections Unit of the Department of Law, the victim elects to pursue collections without the assistance of the Collections Unit, the Collections Unit shall notify the court of the victim's election. The Collections Unit shall include with the notice copies of

(1) the judgment for restitution;

(2) the signed election form received from the victim;

(3) a statement of all payments received from the defendant and applied to the restitution judgment; and

(4) any relevant victim and defendant identifying information needed by the court system to properly identify and distribute restitution payments.

(j) **Suspended Imposition of Sentence.** The judgment for restitution remains civilly enforceable after the expiration of the period of probation or the set-aside of conviction in a case where imposition of sentence is suspended.

(Adopted by SCO 1464 effective March 5, 2002; amended by SCO 1482 effective October 15, 2002; and by SCO 1554 effective April 15, 2006)

## VIOLENT CRIMES COMPENSATION BOARD RESTITUTION – WHITE PAPER

### Introduction

The right of crime victims to restitution is enshrined in the Alaska Constitution:

#### § 24. Rights of Crime Victims

Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; **the right to restitution from the accused**; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication. [Amended 1994]

AS 12.55.045 authorizes the payment of restitution by a convicted defendant to the victim, and “to a public, private or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense”.

Pursuant to this statute, the courts have regularly been ordering a defendant to make restitution to the Violent Crimes Compensation Board (VCCB), where monies have been paid out by VCCB to or on behalf of the crime victim.

Restitution and other recoveries (such as reimbursements from subrogation agreements and refunds of overpayments) that are received by VCCB can now be appropriated back to the Crime Victim Compensation Fund. This presents an opportunity for VCCB to have a more self-sustaining stream of funding.

### Funding

At present VCCB receives 60% of its annual funding through the Crime Victim Compensation Fund which in turn is funded from the Permanent Fund Criminal Fund. 40% comes from the federal Victims of Crime Act annual formula grant<sup>1</sup>. Given the fluctuations both in the Permanent Fund earnings, and in the number of felons' confiscated dividends available for distribution at any one time, it makes sense to try and maximize recoveries from other sources, in order to ensure a consistent level of funding for the future.

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<sup>1</sup> Payments to states under the Victims of Crime Act (VOCA) come from the federal Crime Victim Compensation Fund. The balance in this Fund currently stands at approximately \$8 billion. The Fund, and VOCA, enjoy bipartisan support in Congress. If sequestration takes effect at the beginning of 2013, the amount available from the Fund would be reduced by 7.6% but because of the way in which the formula grants are calculated, this will impact victim assistance programs (the Council on Domestic Violence and Sexual Assault in Alaska) rather than victim compensation programs.

VCCB is currently being **awarded** restitution on a significant scale, but only **recovering** restitution on a very modest scale. In FY12, VCCB was awarded \$637,154 in restitution by the courts. In FY12 total restitution received by VCCB was \$47,652.43, with 80 % of this coming from court judgments in years prior to FY12 (actual recovery from FY12 court orders amounted to only \$9,695). Due to staffing levels it has not been possible to devote staff time to pursuing recovery independently, and as a result VCCB has had to rely upon the Department of Law Collections Unit. However, this is not an active agency (according to newly appointed Restitution Coordinator, Jayne Fallon).

Other states are doing much more to actively recover restitution from convicted felons, and have created dedicated restitution units with dedicated collections staff. Many states are seeing great results. To take two examples, Oregon and Idaho have improved their collection rate to an average of 16-19% of their annual award total. If Alaska was to have the same success rate, that would mean a recovery of around \$320,000 annually.

Some states have come up with creative ways to improve their systems in favor of crime victims. Maricopa County in Arizona has been leading the way, by establishing a monthly Restitution Court. This court has been lauded as one of the five most successful models in the country for collecting money that defendants owe. In Vermont, the compensation program cooperates with other state agencies whereby the Department of Labor sends the Restitution Unit a list of defendants currently on probation and where they are working so that collection can be enforced. And cooperation with the Department of Fish and Wildlife has meant that recreational licenses (hunting and fishing) can be suspended until the restitution debt is paid in full. These are in addition to traditional methods of collection such as garnishment.

### **Proposal**

VCCB would like to propose that we give serious thought as to how to improve the recovery of restitution. Many of our claimants, who are very grateful for the assistance we have provided, want to see money coming back to VCCB from the defendants. We would anticipate working with the Office of Victims Rights, the Department of Law, the Department of Corrections, particularly Probation, in order to coordinate the exchange of information. Going forward, VCCB would also likely need to employ a dedicated collections agent akin to a Child Support Specialist. This would require a budget increment. However, up to 5% of our annual federal grant<sup>2</sup> may be used for personal services and could be used to help pay for a new position. Additionally, the extra revenue generated by improved collections, should, we hope, more than outweigh the additional annual personal services expense.

---

<sup>2</sup> 5% of our FFY11 grant would be 21,700. 5% of our FFY12 grant would be \$32,300. Based on what we anticipate for our FFY13 grant, 5% will be approximately \$49,458.

## Restitution Data - Including both State and Municipal prosecutions

As of 12/31/2017

Note: The Alaska Court System took over collection of newly issued Restitution Judgments on 4/1/2017. On 7/1/2017, the Attorney General's Collection Unit transferred all outstanding judgments back to the Court for continuing collections.

# of Restitution Victims since 1980 <sup>1</sup> :	44436
# of Restitution Victims since 1980 with an unpaid balance:	20009

New Restitution Victim Judgments since 4/1/17:	1018
New Restitution Victim Judgments since 4/1/17 satisfied:	637
New Restitution Victim Judgments since 4/1/17 partially satisfied:	15
Total Restitution paid to Victims since 4/1/17:	\$ 1,374,670.06

Restitution Amounts Ordered (by year):	
Year	Total
1980	\$ 700.00
1981	\$ 57,247.44
1982	\$ 25,769.96
1983	\$ 216,924.60
1984	\$ 373,151.05
1985	\$ 1,247,412.04
1986	\$ 1,312,122.91
1987	\$ 831,583.92
1988	\$ 1,532,651.94
1989	\$ 1,117,024.96
1990	\$ 1,412,450.76
1991	\$ 2,633,177.70
1992	\$ 3,360,356.34
1993	\$ 4,261,585.42
1994	\$ 4,407,344.73
1995	\$ 5,939,116.70
1996	\$ 5,873,342.78
1997	\$ 4,052,643.59
1998	\$ 4,593,168.86
1999	\$ 4,731,620.85
2000	\$ 4,829,451.28
2001	\$ 3,880,660.30
2002	\$ 4,749,515.33
2003	\$ 4,439,032.60
2004 <sup>2</sup>	\$ 23,758,988.21
2005	\$ 4,779,211.37
2006	\$ 6,251,829.41
2007	\$ 5,387,576.41
2008	\$ 10,105,453.59
2009	\$ 6,817,756.61
2010	\$ 4,989,704.43
2011	\$ 7,411,195.19
2012	\$ 7,650,439.36
2013	\$ 9,507,240.07
2014	\$ 6,891,133.83
2015	\$ 5,014,341.70
2016	\$ 9,953,824.12
2017	\$ 5,215,324.95
	\$ 179,612,075.31

Restitution Amounts Still Owed (by year):		
Year	As of 12/31/2017	Recovery Rate %
1980	\$ 700.00	0.00%
1981	\$ 21,148.36	63.06%
1982	\$ 4,626.70	82.05%
1983	\$ 179,065.85	17.45%
1984	\$ 186,701.58	49.97%
1985	\$ 901,595.71	27.72%
1986	\$ 1,065,027.13	18.83%
1987	\$ 383,833.81	53.84%
1988	\$ 882,368.37	42.43%
1989	\$ 396,714.47	64.48%
1990	\$ 623,682.94	55.84%
1991	\$ 1,312,588.73	50.15%
1992	\$ 1,998,405.52	40.53%
1993	\$ 2,553,660.98	40.08%
1994	\$ 2,419,438.30	45.10%
1995	\$ 3,587,576.80	39.59%
1996	\$ 2,705,794.75	53.93%
1997	\$ 2,140,050.00	47.19%
1998	\$ 2,768,135.03	39.73%
1999	\$ 2,358,797.46	50.15%
2000	\$ 2,519,134.06	47.84%
2001	\$ 1,388,502.75	64.22%
2002	\$ 3,238,725.20	31.81%
2003	\$ 2,284,337.08	48.54%
2004 <sup>2</sup>	\$ 20,405,170.78	14.12%
2005	\$ 2,974,441.82	37.76%
2006	\$ 3,623,517.11	42.04%
2007	\$ 3,611,497.52	32.97%
2008	\$ 8,947,966.38	11.45%
2009	\$ 5,725,388.62	16.02%
2010	\$ 3,925,336.27	21.33%
2011	\$ 6,164,902.21	16.82%
2012	\$ 6,315,258.53	17.45%
2013	\$ 8,303,808.53	12.66%
2014	\$ 5,507,890.34	20.07%
2015	\$ 4,249,433.47	15.25%
2016	\$ 9,030,501.57	9.28%
2017	\$ 4,697,416.96	9.93%
	\$ 129,403,141.69	27.95%

<sup>1</sup> Please note this number is derived from best available data in current court electronic records. Accuracy as to exact number of judgments actually ordered declines with age of records.

<sup>2</sup> Please note that the 2004 restitution judgment totals are skewed by case 4FA-01-03111CR, in which the defendant was ordered to pay \$17.4 million to Alyeska Pipeline Company for shooting a hole in the pipeline. Removing that outlier improves the recover rate for 2004 to 52.48%, and increases the overall recovery rate to 30.95%.



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Administration**

VIOLENT CRIMES COMPENSATION BOARD

PO Box 110230  
Juneau, Alaska 99811  
Main: 800.764.3040  
Fax: 907.465.2379  
[www.doa.alaska.gov/vccb](http://www.doa.alaska.gov/vccb)  
doa.vccb@alaska.gov

January 18, 2018

The Honorable Representative Kopp  
State Capitol, Room 13  
Juneau, Alaska 99801

Re: House Bill, 216 Transfers from the Dividend Fund.

I write on behalf of the Violent Crimes Compensation Board in support of House Bill 216.

In 1988, the Legislature passed a law making certain convicted criminals ineligible for a dividend. The intent was that those funds should be used for the primary purpose of helping restore victims of crime to a pre-offense condition. Senate Bill HB216 will ensure that intent is realized; by establishing a restorative justice account into which the withheld dividends are appropriated, and then appropriating from that criminal fund to specified recipients, with the crime victim compensation fund administered by the Violent Crimes Compensation Board being the first in priority order, this Bill establishes a reliable funding source for the work of this Board, and makes compensation to victims of violent crime a priority in the State of Alaska. We also support the adjunct purpose of the bill: helping victims of crime who have been awarded restitution, to receive outstanding payments more promptly via the intercession of the Office of Victim's Rights.

Thank you for your continued support and for working to ensure that victims come first in Alaska.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Gerad Godfrey".

Gerad Godfrey  
Chair, Violent Crimes Compensation Board

# House Bill 216

Establishing the Restorative Justice Account and Prioritizing Help for  
Victims of Crimes

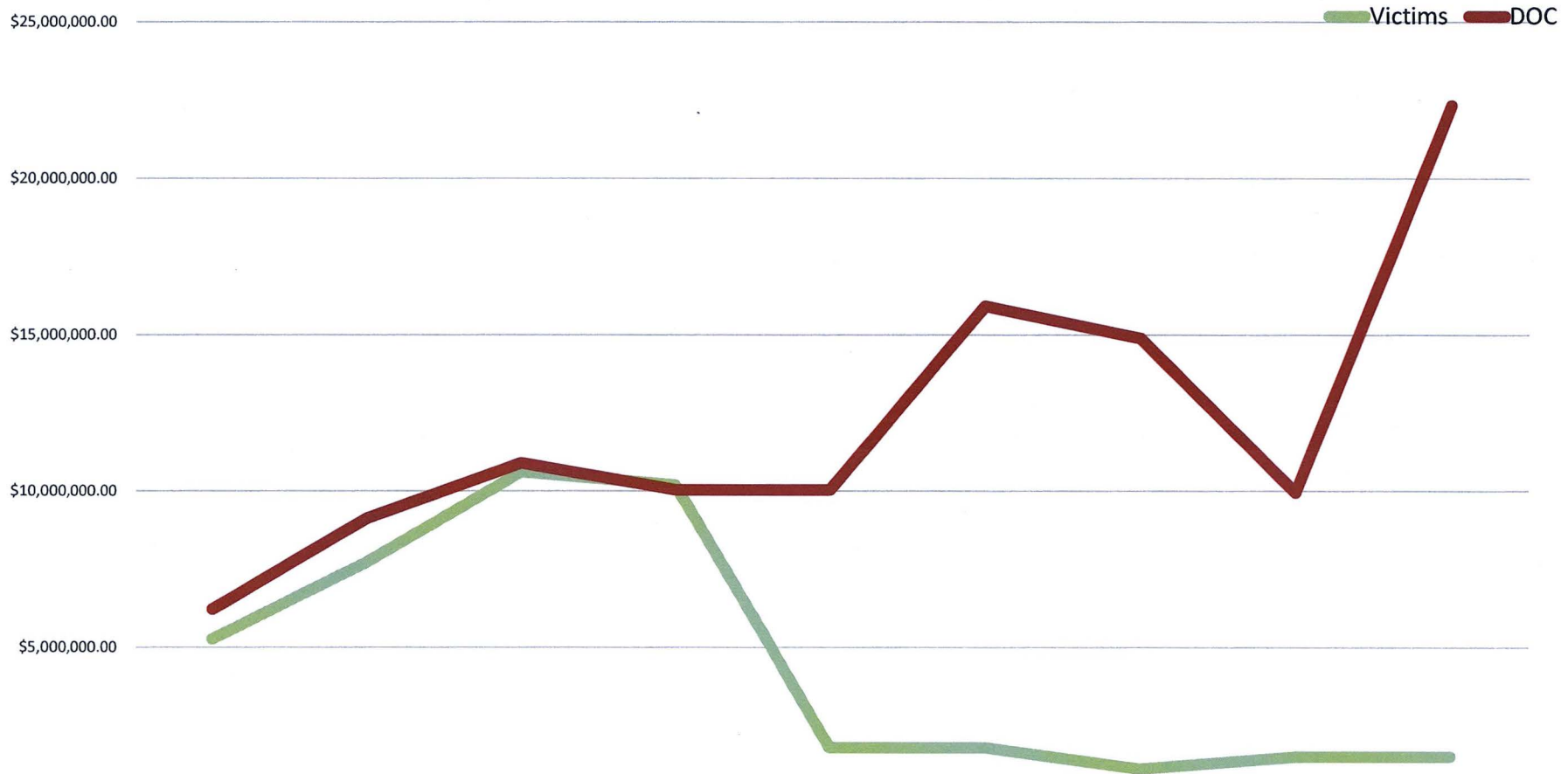
Office of Representative Chuck Kopp

## Legislative Intent

Restoring crime victims to a pre-offense condition through the Criminal Fund established in 1988.

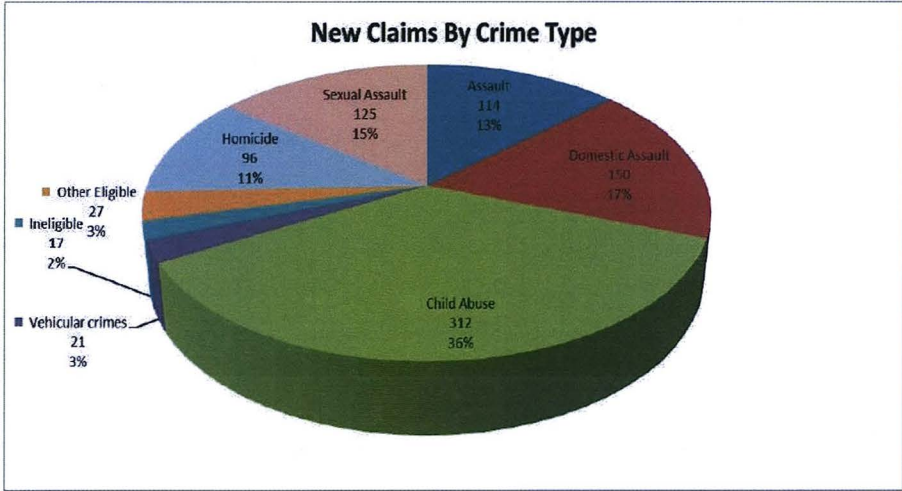
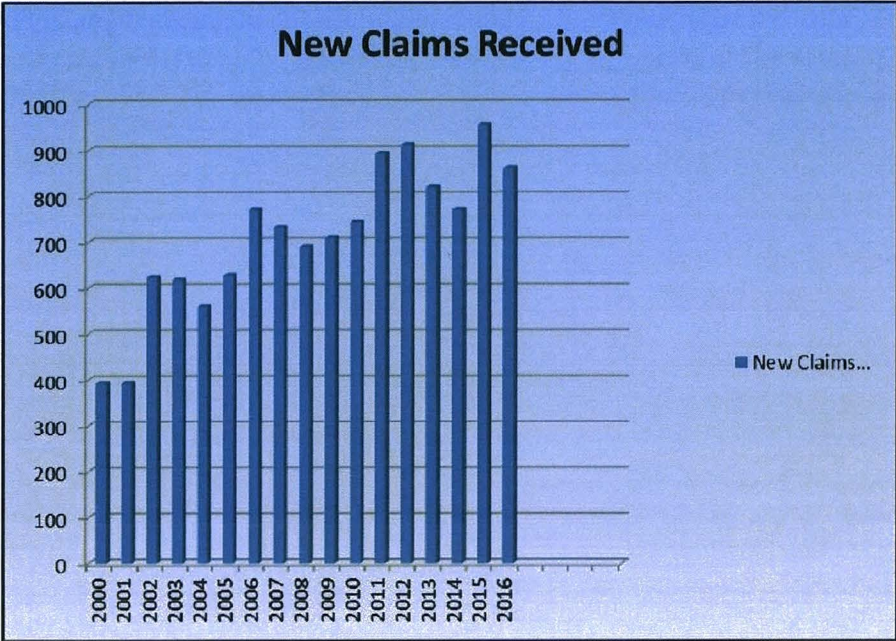
- 59% of adult women in Alaska have experienced domestic violence or sexual violence throughout their lifetime. (CDVSA Report)
- Compensation claims continue to increase yearly. (VCCB Report)
- The outstanding balance of restitution orders is over \$129 million.

## Criminal Fund Use Over the Years



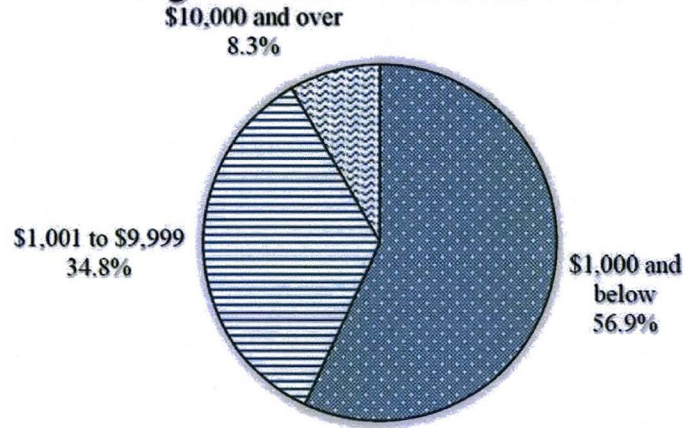
	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Victims	\$5,259,000.00	\$7,726,000.00	\$10,611,000.00	\$10,198,000.00	\$1,800,000.00	\$1,798,000.00	\$1,116,400.00	\$1,502,700.00	\$1,510,100.00
DOC	\$6,211,000.00	\$9,126,000.00	\$10,897,000.00	\$10,037,000.00	\$10,037,000.00	\$15,920,000.00	\$14,890,000.00	\$9,948,600.00	\$22,340,500.00

VIOLENT CRIMES COMPENSATION BOARD AWARDS – 2016



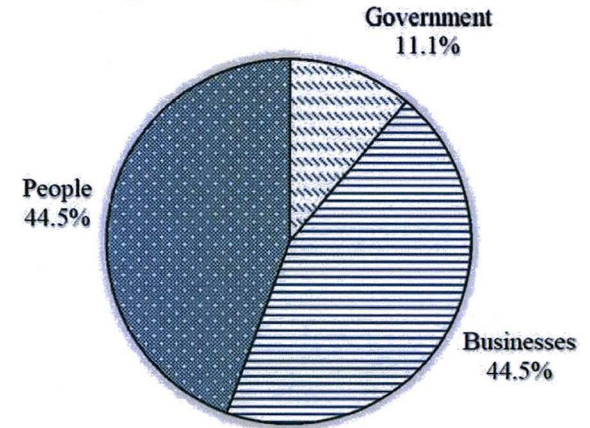
# Compensation Claims

**Figure 1: Restitution Amounts**



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

**Figure 2: Type of Victim**



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

# Restitution Orders

# Highlights of Current Law | Changes Under HB 216

<ul style="list-style-type: none"><li>• A criminal fund was established in 1988 using Permanent Fund dividends that would otherwise be paid to ineligible offenders of certain crimes.</li></ul>	<ul style="list-style-type: none"><li>• HB 216 creates a mechanism by which the Permanent Fund Division will set aside the determined amount in a separate account within the Permanent Fund for the Legislature to consider appropriations.</li><li>• HB 216 authorizes the Legislature to re-appropriate restitution payments recovered by the State to the new account.</li></ul>
<ul style="list-style-type: none"><li>• The Legislature can appropriate these funds to entities and state agencies to provide services to crime victims, such as; the Violent Crimes Compensation Board, the Office of Victims' Rights', the Council on Domestic Violence and Sexual Assault, and to the Department of Corrections for certain costs associated with incarceration and probation <i>without</i> a priority.</li></ul>	<ul style="list-style-type: none"><li>• HB 216 prioritizes the use of funds, if appropriated, to crime victims and adds restitution as another means to assist some victims through OVR</li><li>• HB 216 allows for direct appropriations to state agencies and/or nonprofits to provide services to victims of domestic violence and sexual assault</li><li>• HB 216 authorizes use of the funds for treatment for offenders.</li></ul>

## Highlights of Current Law | Changes Under HB 216

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>• The Court System is required to forward copies of restitution orders to the Alaska Department of Law. LAW is required to notify victims that the State will provide them with automatic assistance unless they opt-out within 30 days. In the case of minors, the notification would be from the Department of Health and Social Services</li></ul> | <ul style="list-style-type: none"><li>• HB 216 requires the Court System to share restitution orders with OVR in addition to LAW or DHSS (in the case of minors) and to notify victims that they may qualify for assistance with OVR.</li><li>• HB 216 expands the opt-out period from 30 to 90 days</li></ul> |
|---|--|

**Under current law and HB 216  
offenders remain liable**

Questions?



**Medicaid Coverage for Inmates**

Medicaid only covers those inmates that are hospitalized for more than 24 hours with an income up to 133% of the federal poverty level. Not all inmates hospitalized are eligible for Medicaid coverage.

**Medicaid Coverage for Hospitalized Inmates**

FY16 Post-Expansion	
Approved	125
Ineligible	8
Incapacitated	9
Refused	5
<b>Total Hospitalizations</b>	<b>147</b>

FY17	
Approved	160
Ineligible	17
Incapacitated	0
Refused	1
<b>Total Hospitalizations</b>	<b>178</b>

YTD FY18	
Approved	74
Ineligible	9
Incapacitated	0
Refused	2
<b>Total Hospitalizations</b>	<b>85</b>



**Alaska Department of Revenue  
Permanent Fund Dividend Division  
FY 19 PFD Fund Appropriation Calculation  
for Departments of Corrections and Public Safety**

	Department of Corrections (Incarcerated Felons and Misdemeanants)	Department of Public Safety (Sentenced Felons)	Total
<b>Step 1 Calculate Eligibility Percentage</b>			
Number of felons and misdemeanants who filed a 2017 PFD application	4,588	665	
Eligibility Percentage <i>(Percentage of otherwise eligible applicants to number of filers)</i>	95.20%	95.94%	
Number of felons and misdemeanants who would have been otherwise eligible had they not been denied as a felon or misdemeanant	4,368	638	
<b>Step 2 Apply Percentage to Total Felons and Misdemeanants</b>			
Total Number of individuals reported by Agency	11,521	1,460	12,981
<b>Estimated gross number of otherwise eligible applicants</b> <i>(Eligibility Percentage applied to total number of individuals reported)</i>	<b>10,968</b>	<b>1,400</b>	<b>12,368</b>
<b>Step 3 Adjustments</b>			
Subtract individuals reported in multiple categories			
1. Felons and Misdemeanants Incarcerated <b>and</b> Felons Sentenced			-149
2. Misdemeanants Only Incarcerated <b>and</b> Felons Sentenced			-16
3. Felons Only Incarcerated <b>and</b> Felons Sentenced			-680
Subtract individuals denied in 2016 as a felon or misdemeanant who were subsequently paid			-94
<b>Total Adjustments</b>			<b>-939</b>
<b>Step 4 Estimated number of otherwise eligible applicants</b> <i>(Estimated gross number less adjustments)</i>			<b>11,429</b>
<b>Step 5 Appropriation Calculation</b>			
2017 Permanent Fund Dividend amount			<u>\$1,100.00</u>
<b>Total Appropriation</b> <i>(Estimated otherwise eligible applicants times the dividend amount)</i>			<u><b>\$12,571,900.00</b></u>

\*The Department of Corrections changed the way they reported offender data from the DOC database in 2012. As a result, more individuals were reported in multiple categories than in prior years.



THE STATE  
of **ALASKA**

GOVERNOR BILL WALKER

**Department of Revenue**

PERMANENT FUND DIVIDEND DIVISION  
DIRECTOR'S OFFICE

State Office Building  
PO Box 110460  
Juneau, Alaska 99811-0460  
Main: 907.465.4785  
Fax: 907.500.300

www.pfd.alaska.gov

TO: Pat Pitney  
Director  
Office of Management and Budget

DATE: December 18, 2017

THRU: Michelle Vuille  
Budget Manager  
Department of Revenue - ASD

TELEPHONE: 465-4785  
FAX: 500-0300

FROM: Sara Race *Sara Race*  
Director  
Permanent Fund Dividend Division

SUBJECT: FY 19 PFD Fund Appropriation for  
Department of Corrections and the  
Violent Crime Compensation

As required under AS 43.23.028(a)(6), the amount of dividends that would have been paid this year to individuals who were sentenced or incarcerated under AS 43.23.005(d) and would have otherwise been eligible is \$12,571,900.00.

Attached is our calculation for the basis of the FY 19 amount. The amount is based on the total amount of 2017 Permanent Fund Dividends that would have been paid to individuals had they not been determined ineligible because of criminal activities in calendar year 2016 (the qualifying year for the 2017 dividend).

Under AS 43.23.005(d), individuals are not eligible for a dividend if during the qualifying year, the individual was:

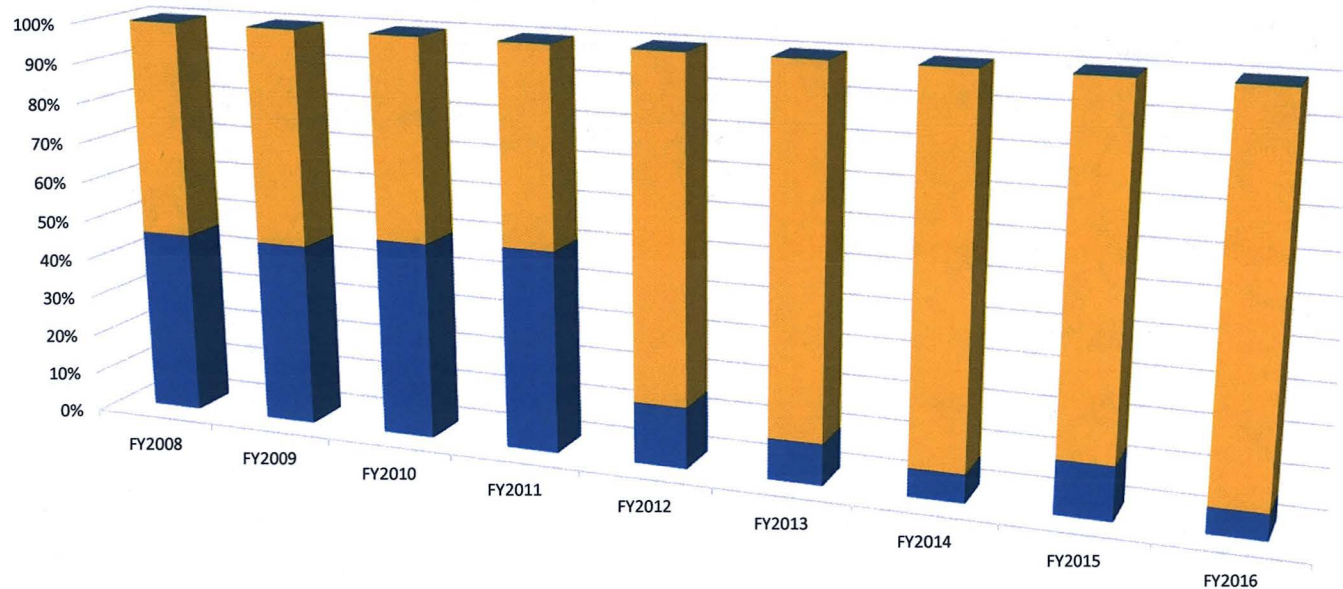
- Sentenced as a result of a conviction of a felony;
- Incarcerated as a result of a conviction of a
  - felony; or
  - misdemeanor if the individual was convicted of a prior felony or two or more prior misdemeanors.

The Departments of Corrections and Public Safety provided the Permanent Fund Dividend Division with a file of 11,521 and 1,460 respectively incarcerated and/or sentenced during qualifying year 2016. We estimated that 11,429 individuals would have otherwise been eligible had they not been denied a dividend solely because they were sentenced or incarcerated under AS 43.23.005(d). Accordingly, the total amount that would have been otherwise paid to these individuals is \$12,571,900 (11,429 individuals multiplied by \$1,100.00).

Agency	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
VCCB	\$ 1,068,000.00	\$ 1,569,000.00	\$ 1,586,000.00	\$ 1,884,000.00	\$ 1,800,000.00	\$ 1,798,000.00	\$ 116,400.00	\$ 1,502,700.00	\$ 1,510,100.00
OVR	\$ 401,000.00	\$ 589,000.00	\$ 767,000.00	\$ 707,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
CDVSA	\$ 3,790,000.00	\$ 5,568,000.00	\$ 8,258,000.00	\$ 7,607,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Inmate Healthcare (DOC)	\$ 6,211,000.00	\$ 9,126,000.00	\$ 10,897,000.00	\$ 10,037,000.00	\$ 10,037,000.00	\$ 15,920,000.00	\$ 14,890,000.00	\$ 9,948,600.00	\$ 22,340,500.00
<b>Total</b>	<b>\$ 11,470,000.00</b>	<b>\$ 16,852,000.00</b>	<b>\$ 21,508,000.00</b>	<b>\$ 20,235,000.00</b>	<b>\$ 11,837,000.00</b>	<b>\$ 17,718,000.00</b>	<b>\$ 15,006,400.00</b>	<b>\$ 11,451,300.00</b>	<b>\$ 23,850,600.00</b>

<b>Victims</b>	\$ 5,259,000.00	\$ 7,726,000.00	\$ 10,611,000.00	\$ 10,198,000.00	\$ 1,800,000.00	\$ 1,798,000.00	\$ 1,116,400.00	\$ 1,502,700.00	\$ 1,510,100.00
<b>%</b>	46%	46%	49%	50%	15%	10%	1%	13%	6%
<b>DOC</b>	\$ 6,211,000.00	\$ 9,126,000.00	\$ 10,897,000.00	\$ 10,037,000.00	\$ 10,037,000.00	\$ 15,920,000.00	\$ 14,890,000.00	\$ 9,948,600.00	\$ 22,340,500.00
<b>%</b>	54%	54%	51%	50%	85%	90%	99%	87%	94%

Last 9 Years Sample



	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
■ %	54%	54%	51%	50%	85%	90%	99%	87%	94%
■ DOC	\$6,211,000.00	\$9,126,000.00	\$10,897,000.00	\$10,037,000.00	\$10,037,000.00	\$15,920,000.00	\$14,890,000.00	\$9,948,600.00	\$22,340,500.00
■ %	46%	46%	49%	50%	15%	10%	1%	13%	6%
■ Victims	\$5,259,000.00	\$7,726,000.00	\$10,611,000.00	\$10,198,000.00	\$1,800,000.00	\$1,798,000.00	\$1,116,400.00	\$1,502,700.00	\$1,510,100.00

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 23, 2018

**SUBJECT:** Eligibility for PFD (SSHB 216; Work Order No. 30-LS0572\T.3)

**TO:** Representative David Eastman

**FROM:** Hilary V. Martin *HVM*  
Legislative Counsel

Attached is the amendment you requested which removes the words "if they had been eligible" from three places in SSHB 216.

This language does not require persons who are ineligible under AS 43.23.005(d) to apply for a permanent fund dividend (PFD) in order to be counted for purposes of public notice and deposit into the restorative justice account. When the sentence is read in total, the language requires a count of the people who are ineligible under AS 43.23.005(d) who would otherwise have been eligible. This assumes they would have completed all steps to be eligible, including applying for the dividend.

Removing the language "if they had been eligible" also potentially increases the number of people counted. There are presumably some people who have been sentenced for a felony, or incarcerated as a result of conviction of a felony or misdemeanor that are not otherwise eligible for a PFD. For example, it could be a person who is not a state resident and committed a crime here and therefore is not otherwise eligible for a PFD.

Further, I would advise caution in amending a statute to remove language that has existed for a number of years and has been interpreted one way. The Department of Revenue (Department) currently interprets this language in AS 43.23.028 to not require the persons ineligible due to AS 43.23.005(d) to apply to be counted for purposes of AS 43.23.028(a)(6). To remove the language could possibly require the Department to interpret this language in a different way.

If I may be of further assistance, please advise.

HVM:boo  
18-027.boo

Attachment

AMENDMENT

#1

*Adopted*

OFFERED IN THE HOUSE

TO: SSHB 216

BY REPRESENTATIVE KREISS-TOMKINS

*+  
Representative Reinbold*

1 Page 6, lines 8 - 11:

2 Delete all material and insert:

3 "(3) nonprofit organizations to provide grants for services for crime  
4 victims and domestic violence and sexual assault programs;

5 (4) nonprofit organizations to provide grants for mental health services  
6 and substance abuse treatment for offenders; and"

AMENDMENT

#2 Adopted

OFFERED IN THE HOUSE  
TO: SSHB 216

BY REPRESENTATIVE REINBOLD

1 Page 1, line 6, following "costs;":

2 Insert "**relating to contributions from dividends;**"

3

4 Page 8, following line 5:

5 Insert new bill sections to read:

6 "\* **Sec. 8.** AS 43.23.062(a) is amended to read:

7 (a) Notwithstanding AS 43.23.069, the Department of Revenue shall prepare  
8 the electronic Alaska permanent fund dividend application to allow an applicant who  
9 files electronically to direct that money be subtracted from the dividend payment and  
10 contributed to **the crime victim compensation fund (AS 18.67.162)**, the peace officer  
11 and firefighter survivors' fund, or [TO] one or more of the educational organizations,  
12 community foundations, or charitable organizations that appear on the contribution list  
13 contained in the application. A contribution to **the crime victim compensation fund,**  
14 the peace officer and firefighter survivors' fund or to an organization may be \$25, \$50,  
15 \$75, \$100, or more, in increments of \$50, up to the total amount of the permanent fund  
16 dividend that the applicant is entitled to receive. If the total amount of contributions  
17 elected by an applicant exceeds the amount of the permanent fund dividend that the  
18 applicant is entitled to receive, contributions shall be deducted from the dividend in  
19 the order of priority elected by the applicant on the application until the entire amount  
20 of the dividend that the applicant is entitled to receive is allocated for contribution.  
21 The electronic dividend application form must include notice that seven percent of the  
22 money contributed will be used for administrative costs incurred in implementing this  
23 section, and money from the dividend fund will not be used for that purpose.

1 \* **Sec. 9.** AS 43.23.062(b) is amended to read:

2 (b) The department shall list each educational organization, community  
3 foundation, or charitable organization eligible under (c) and (d) of this section, each  
4 university campus that applies under (l) of this section, **the crime victim**  
5 **compensation fund**, and the peace officer and firefighter survivors' fund on the  
6 contribution list. The department shall maintain an electronic database for the  
7 contribution list that is accessible to the public and that permits searches by  
8 organization or fund name, geographic location, and type. The department shall  
9 provide a statement of the contributions made by an individual that is suitable for  
10 federal income tax purposes to each individual who elects to contribute under (a) of  
11 this section.

12 \* **Sec. 10.** AS 43.23.062(m) is amended to read:

13 (m) In addition to the application fee in (f) of this section, the department shall  
14 withhold a coordination fee from each organization, foundation, or university campus  
15 that receives contributions under this section in the immediately preceding dividend  
16 year. The coordination fee for an organization, foundation, or university campus that  
17 receives contributions under this section shall be seven percent of the amount of  
18 contributions reported by the department under (j) of this section for the organization,  
19 foundation, or university campus for the immediately preceding dividend year. The  
20 coordination fee shall be separately accounted for under AS 37.05.142 and shall be  
21 accounted for separately from the application fee collected under (f) of this section.  
22 The annual estimated balance in the account maintained under AS 37.05.142 for  
23 coordination fees collected under this subsection may be appropriated for costs of  
24 administering this section. The department may not withhold a coordination fee for  
25 contributions to **the crime victim compensation fund or** the peace officer and  
26 firefighter survivors' fund."

27  
28 Renumber the following bill sections accordingly.

AMENDMENT

# 3 Adopted

OFFERED IN THE HOUSE

BY REPRESENTATIVE KOPP

TO: SSHB 216

Page 2, line 23, following "Law":

Insert "**If the Department of Law receives a response to the notice before the 90-day period, the Department of Law may begin collection on the restitution.**"

Page 9, line 9, following "Law":

Insert "**If the Department of Law receives a response to the notice before the 90-day period, the Department of Law may begin collection on the restitution.**"

30-LS0572\T.6  
Martin  
1/22/18

AMENDMENT

#4 Adopted

OFFERED IN THE HOUSE  
TO: SSHB 216

BY REPRESENTATIVE KOPP

- 1 Page 3, lines 7 - 9:
- 2 Delete all material and insert:
- 3 "(b) The office of victims' rights shall make restitution payments to eligible
- 4 victims in the following priority order:"

AMENDMENT

#5 Withdrawn

OFFERED IN THE HOUSE

BY REPRESENTATIVE EASTMAN

TO: SSHB 216

- 1 Page 4, line 31:
- 2 Delete "if they had been eligible"
- 3 Insert "[IF THEY HAD BEEN ELIGIBLE]"
- 4
- 5 Page 5, line 7:
- 6 Delete "if they had been eligible"
- 7 Insert "[IF THEY HAD BEEN ELIGIBLE]"
- 8
- 9 Page 5, lines 30 - 31:
- 10 Delete "if they had been eligible"

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version: HB 216  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB216SS-DHSS-PS-1-19-18  
Title: TRANSFERS FROM DIVIDEND FUND; CRIMES  
Sponsor: KOPP  
Requester: House JUD

Department: Department of Health and Social Services  
Appropriation: Juvenile Justice  
Allocation: Probation Services  
OMB Component Number: 2134

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019 Appropriation Requested	Included in Governor's FY2019 Request	Out-Year Cost Estimates					
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

**Change in Revenues**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2019) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed? n/a

**Why this fiscal note differs from previous version/comments:**

Not applicable; initial version.

Prepared By: Tracey Dompeling, Director  
Division: Juvenile Justice  
Approved By: Shawnda O'Brien, Asst. Commissioner  
Agency: Health and Social Services

Phone: (907)465-2214  
Date: 01/17/2018 01:00 PM  
Date: 01/18/18

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2018 LEGISLATIVE SESSION

BILL NO. SSHB216

**Analysis**

Under the proposed legislation, court-ordered restitution (up to \$10,000) owed by juvenile offenders will be paid to victims by the Office of Victims' Rights out of the newly-created *restorative justice fund*. Juvenile offenders and their families will continue to pay restitution orders, but the restitution will be used to repay this fund, rather than directly to the victim.

It is expected this change will lead to more timely restitution payments while preserving the juvenile's responsibility to pay restitution. The Court system will continue to track formal juvenile restitution orders and administer garnishments of juvenile permanent fund dividends. "Informal" juvenile restitution agreements will continue to be administered by the Division of Juvenile Justice.

This legislation will have no fiscal impact on the division.

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version: HB 216  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: SSHB216-DOA-VCCB-01-17-18  
Title: TRANSFERS FROM DIVIDEND FUND; CRIMES  
Sponsor: KOPP  
Requester: H JUD

Department: Department of Administration  
Appropriation: Violent Crimes Compensation Board  
Allocation: Violent Crimes Compensation Board  
OMB Component Number: 2694

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>OPERATING EXPENDITURES</b>	<b>FY 2019</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

**Change in Revenues**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2019) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version/comments:**

The sponsor substitute for HB 216 differs from the original version of HB 216 by providing authorization for the Office of Victim's Rights to pay outstanding restitution balances to crime victims.

Prepared By: Kate Hudson  
Division: Violent Crimes Compensation Board  
Approved By: Cheri Lowenstein, Director  
Agency: Administrative Services

Phone: (907)465-5525  
Date: 01/17/2018 01:00 PM  
Date: 01/17/18

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2018 LEGISLATIVE SESSION

BILL NO. SSHB 216

**Analysis**

The Violent Crimes Compensation Board currently receives an annual appropriation from the PFD Criminal Fund, which is its primary source of funding. The amount of the appropriation is calculated by the Office of Management and Budget and is based on (a) the amount of the permanent fund dividend, calculated by the Commissioner of Revenue on an annual basis and (b) the number of individuals who are ineligible to receive a permanent fund dividend because they are incarcerated felons. This annual appropriation is used by the Board for operating costs, as well as paying compensation to victims of violent crime.

This bill proposes to establish a new restorative justice account in the dividend fund from which the Board will continue to receive an annual appropriation. The bill does not impose a limit or increase of the amount of the appropriation to the Board. The bill seeks to ensure the appropriation to the Board takes first priority over other listed recipients.

The sponsor substitute for House Bill 216 confers new authorization to the Office of Victim's Rights to pay outstanding balances of restitution from the restorative justice account. The bill will have no financial impact on the Board. The agency submits a zero fiscal note.

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version: HB 216  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB216-DOR-PFD-1-18.2018  
Title: TRANSFERS FROM DIVIDEND FUND; CRIMES  
Sponsor: KOPP  
Requester: JUD CHAIR

Department: Department of Revenue  
Appropriation: Taxation and Treasury  
Allocation: Permanent Fund Dividend Division  
OMB Component Number: 981

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019 Appropriation Requested	Included in Governor's FY2019 Request	Out-Year Cost Estimates					
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services	20.0							
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

1004 Gen Fund (UGF)	20.0							
<b>Total</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

**Change in Revenues**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2019) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? YES  
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/18

**Why this fiscal note differs from previous version/comments:**

Prepared By:	Sara Race	Phone:	(907)465-4785
Division:	Permanent Fund Dividend Division	Date:	01/23/2018 01:00 PM
Approved By:	Mike Barnhill	Date:	01/23/2018
Agency:	OOC		

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2018 LEGISLATIVE SESSION

BILL NO. 30-LS0572T

### Analysis

The intent of this bill is to use existing law AS 43.23.005(d) which states that an individual is ineligible to receive a dividend if sentenced or convicted of a felony or a combination of misdemeanors and a felony, and to create a priority order that must be considered when appropriating funds. Annually a calculation is performed to determine the amount available for possible appropriation. It is based on actual applications filed during a dividend year. From that, a percentage of applicants that would have otherwise been eligible to receive the dividend, had they not been denied as a felon or misdemeanant, is determined and multiplied by the total number of individuals reported by Department of Corrections and Public Safety. The estimated number of otherwise eligible applicants is then multiplied by the dividend amount. That total calculated amount will be placed into a new Restorative Justice Account, a sub account of the Dividend Fund, and appropriated funds will be transferred to the respective recipients.

In the appropriation process the following priority order will be considered:

- DOA's Violent Crimes Compensation Board
- Restitution payments
- Grant funds
- Office of Victims' Rights
- DPS Council on Domestic Violence and Sexual Assault for program grants
- Department of Corrections costs related to incarceration or probation

The existing structure under AS 43.23.005(d) requires the Department of Revenue report the total amount calculated to OMB, and through the budgeting process funds have been appropriated to Department of Corrections and Public Safety. The proposed bill specifies that funds appropriated to Public Safety may only be used for funding grants, and Department of Corrections is moved to a lower priority.

The Department of Revenue and Permanent Fund Dividend Division are affected by this bill fiscally as a new subaccount will need to be added to the Dividend Fund, which will require additional accounting and operational task to be performed. Not only will a new subaccount need to be created, annually multiple financial transactions will be processed to transfer funds to the respective recipients and reporting requirements will be necessary. If funds outside of the calculation are appropriated to the Restorative Justice Account through the new section 6 AS 43.23.048(d) the number of transactions that will be required is unknown.

The primary mission of the division will not be significantly impacted as it does not change eligibility or payment requirements. However, it will require additional administrative and fiscal time to accomplish each year. Regulations will need to be adopted with enactment of the bill to execute the changes in 43.23.048.

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version: HB 216  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: Draft CSHB216-ACS-1-18-18  
Title: TRANSFERS FROM DIVIDEND FUND; CRIMES  
Sponsor: KOPP  
Requester: House Judiciary Committee

Department: Judiciary  
Appropriation: Alaska Court System  
Allocation: Administration and Support  
OMB Component Number: 769

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>OPERATING EXPENDITURES</b>	<b>FY 2019</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Personal Services	31.0		31.0	31.0	31.0	31.0	31.0
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>31.0</b>	<b>0.0</b>	<b>31.0</b>	<b>31.0</b>	<b>31.0</b>	<b>31.0</b>	<b>31.0</b>

**Fund Source (Operating Only)**

1004 Gen Fund (UGF)	31.0		31.0	31.0	31.0	31.0	31.0
<b>Total</b>	<b>31.0</b>	<b>0.0</b>	<b>31.0</b>	<b>31.0</b>	<b>31.0</b>	<b>31.0</b>	<b>31.0</b>

**Positions**

Full-time							
Part-time	1.0		1.0	1.0	1.0	1.0	1.0
Temporary							

**Change in Revenues**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2019) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version/comments:**

Initial version.

Prepared By:	Doug Wooliver, Deputy Administrative Director	Phone:	(907)463-4750
Division:	Alaska Court System	Date:	01/18/2018 05:00 PM
Approved By:	Doug Wooliver for Christine Johnson, Administrative Director	Date:	01/18/18
Agency:	Alaska Court System		

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2018 LEGISLATIVE SESSION

BILL NO. HB 216

**Analysis**

Draft Committee Substitute for House Bill 216 establishes an account into which the legislature may deposit funds for the purpose of paying restitution owed crime victims. The Office of Victim's Rights (OVR) will carry out this responsibility with the funds appropriated. Currently, the court system collects restitution on behalf of crime victims, pays the victims, and reduces the amount of restitution owed by the defendant. If HB 216 becomes law, the court will work with the OVR to coordinate our records so that the OVR receives all restitution judgments (past and future). The OVR will inform the court of all payments made to victims in each case so that the court can update its records to reflect the payment made to the victim and to enter a record indicating that the amount paid to the victim by the state is now owed to the state rather than to the victim. (The defendant will still owe the restitution ordered, but once the victim has been paid by the state, the state will be entitled to the restitution the defendant owes.)

Each record update within the court's case management system takes about 10 minutes of clerical time to complete. This note assumes that the OVR will pay roughly 100 victims a week (this is roughly the number of restitution checks the court writes each week), which will require about 17 hours a week of clerical time for a court employee. This note reflects the cost of a part-time court clerk working 15 hours a week. This estimate is necessarily speculative because the amount of clerical work involved will depend on the number of payments made, and the level of funding made available for restitution payments by the OVR is not yet known. If there are substantially more restitution payments made, the clerical work and costs would increase, if substantially fewer payments are made, the work and costs would be less than estimated.

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version: HB 216  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB216-DHSS-BHTRG-1-12-2018  
Title: TRANSFERS FROM DIVIDEND FUND; CRIMES  
Sponsor: KOPP  
Requester: House JUD

Department: Department of Health and Social Services  
Appropriation: Behavioral Health  
Allocation: Behavioral Health Treatment and Recovery Grants  
OMB Component Number: 3099

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>OPERATING EXPENDITURES</b>	<b>FY 2019</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

**Change in Revenues**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2019) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? no  
If yes, by what date are the regulations to be adopted, amended or repealed? n/a

**Why this fiscal note differs from previous version/comments:**

Not applicable; initial version.

Prepared By: Randall Burns, Director  
Division: Behavioral Health  
Approved By: Shawnda O'Brien, Asst. Commissioner  
Agency: Health and Social Services

Phone: (907)269-5948  
Date: 04/17/2017  
Date: 04/18/17

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2018 LEGISLATIVE SESSION

BILL NO. HB216

**Analysis**

HB 216 formally establishes a restorative justice account within the dividend fund, and prioritizes its use. The bill lists, as the third of five priorities, nonprofit organizations as potential recipients of grants from the restorative justice account to provide mental health services and substance abuse treatment services to offenders. This would be a new revenue stream for these behavioral health treatment providers.

While new revenue for nonprofit mental health and substance abuse treatment providers has the potential to increase access to such services, providing an opportunity for more individuals to get help, the Division of Behavioral Health does not anticipate account funds being available past the first two priorities established by this bill.

Thus, the division anticipates no fiscal impacts from this proposed legislation.

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version: HB 216  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB216-LEG-OVR-01-18-18  
Title: TRANSFERS FROM DIVIDEND FUND; CRIMES  
Sponsor: KOPP  
Requester: House Judiciary

Department: Legislature  
Appropriation: Legislative Council  
Allocation: Office of Victims Rights  
OMB Component Number: 2769

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019 Appropriation Requested	Included in Governor's FY2019 Request	Out-Year Cost Estimates				
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
<b>OPERATING EXPENDITURES</b>	<b>FY 2019</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Personal Services	77.6						
Travel							
Services	6.2						
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>83.8</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

1005 GF/Prgm (DGF)	83.8						
<b>Total</b>	<b>83.8</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary	1.0						

**Change in Revenues**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2019) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version/comments:**

N/A Initial Version

Prepared By: <u>Taylor Winston, Director</u>	Phone: <u>(907)754-3466</u>
Division: <u>Office of Victims Rights</u>	Date: <u>01/18/2018 12:00 AM</u>
Approved By: <u>Jessica Geary, Deputy Executive Director</u>	Date: <u>01/18/18</u>
Agency: <u>Legislative Affairs Agency</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2018 LEGISLATIVE SESSION

BILL NO. HB216

**Analysis**

If HB216 passes, the Office of Victims' Rights (OVR) anticipates the need for additional funding to implement and execute new duties requiring OVR to provide funds from the bill's proposed restorative justice account to crime victims who have restitution judgments with outstanding balances.

A full-time, nonpermanent employee at a Range 13 would be needed for one year (12 months) to perform data entry and establish electronic files for all restitution judgements with unpaid balances; the Court System statistics indicate that there are 20,000 restitution judgments with unpaid balances.

Specifically, to meet the requirements under HB216, OVR needs:

One Range 13 full-time, nonpermanent position for 12 months; salary and benefits = \$77,620

Parking for nonpermanent employee for 12 months = \$1,200

Additional license and new configuration for case management program, one-time cost = \$4,000

Print materials for victim restitution options and notice of restorative justice account = \$1,000

Total anticipated fiscal impact: \$83,820

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version: HB 216  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB216-DOC-PHC-01-12-18  
Title: TRANSFERS FROM DIVIDEND FUND; CRIMES  
Sponsor: KOPP  
Requester: (H)Judiciary

Department: Department of Corrections  
Appropriation: Health and Rehabilitation Services  
Allocation: Physical Health Care  
OMB Component Number: 2952

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation	Governor's					
Requested	FY 2019	FY2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>OPERATING EXPENDITURES</b>	<b>FY 2019</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

1004 Gen Fund (UGF)	11,493.4		11,493.4	11,493.4	11,493.4	11,493.4	11,493.4
1171 PFD Crim (Other)	(11,493.4)		(11,493.4)	(11,493.4)	(11,493.4)	(11,493.4)	(11,493.4)
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

**Change in Revenues**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2019) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version/comments:**

Prepared By:	<u>April Wilkerson</u>	Phone:	<u>(907)465-3460</u>
Division:	<u>Administrative Services - Department of Corrections</u>	Date:	<u>01/12/2018 12:00 PM</u>
Approved By:	<u>Dean Williams, Commissioner</u>	Date:	<u>01/12/18</u>
Agency:	<u>Department of Corrections</u>		

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2018 LEGISLATIVE SESSION

BILL NO. HB 216

### Analysis

Passage of this legislation would create a new subaccount of the Permanent Fund Dividend Fund and establish a priority order for distribution of funding from PFDs that would have been paid to those who are ineligible as a result of AS 43.23.005(d).

Currently, the Department of Revenue, in concert with the Department of Corrections, estimates the total amount of potential PFDs deemed ineligible under AS 43.23.005(d). This figure is estimated at \$12,613,500 for FY2018 and \$12,571,900 for FY2019. These funds are allocated to various department budgets by the Office of Management and Budget and approved by the legislature through their budget process. In the Governor's FY2019 budget request, \$11,493,400 has been allocated to the Department of Corrections with the remainder being allocated to the Crime Victim Compensation Fund. Historically, appropriations to the Crime Victim Compensation Fund have been given first priority, then any remaining funding is used to offset general funds allocated to the Department of Corrections Physical Health Care Component.

This bill establishes a new priority order for allocation of these funds as follows:

1. Crime Victim Compensation Fund (AS 18.67.162)
2. Office of Victim's Rights for payments to victims
3. Nonprofit organizations to provide grants for mental health and substance abuse services
4. Nonprofit organizations to provide grants for services for crime victims and domestic violence and sexual assault programs
5. Programs in the Department of Corrections

Given these additional priorities, and depending on the size of these allocations, funds may not be sufficient to continue providing the current allocation to the Department of Corrections. Should this happen, any reductions to the PFD allocations to the department will have to be replaced with general funds while appropriations to the Crime Victim Compensation Fund will continue, but from the newly created "Restorative Justice Account" rather than the PFD Criminal fund.

Notwithstanding the new allocations of PFD criminal funds in this bill, it remains to be seen whether the legislature will reallocate funding in the budget bill or simply leave these allocations as they are. Current law (AS 43.23.028(b)) suggests 6 permissible uses of these funds, in practice however, since FY2012, only 2 have been funded (Crime Victim Compensation Fund and Department of Corrections). As such, the fund change in the Department of Corrections may shift to the "Restorative Justice Account" rather than the general fund.