

Special Review

OFFICE OF THE STATE AUDITOR



Vermont's Restitution System: Failing to Pay the Victim



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State Auditor’s Special Review of Vermont’s Restitution System

Table of Contents

	Page
Executive Summary	3
Purpose	8
Authority	8
Scope & Methodology	8
Background - The Purpose of Restitution	9
Background - The Restitution Process	10
In Their Words (Victims Speak Out)	14-16
Findings and Recommendations	18
Finding 1: Restitution is not efficiently collected	18
Finding 1a: Restitution is a lower payment priority	21
Finding 1b: There is not adequate recourse when restitution is not paid	23
Finding 1c: The obligation to pay restitution is being discharged	23
Finding 1d: Court Diversion returns restitution payments to offenders	25
Finding 1e: Use of an outside collection agency limits the form of payments ...	26
Finding 1f: Changes to restitution obligations are not sufficiently monitored ...	27
Finding 1g: The process to track, monitor and distribute payments is inefficient ..	28
Finding 1h: The contract with a collection agency raises compliance questions...	30
Finding 2: Interagency information systems do not exist in regards to restitution. .	31
Finding 2a: Interagency procedures to enhance restitution are not identified..	34
Finding 2b: Restitution collection is not effectively monitored by key departments	35
Finding 3: The courts have no systems in place to carry out restitution obligations ...	36
Finding 4: System inefficiencies and lack of prioritization are stumbling blocks	38

Appendices

Appendix A:	Department of Corrections’ Response to Draft Review
Appendix B:	Court Administrator’s Response to Draft Review
Appendix C:	Vermont Center for Crime Victim Services’ Response to Draft Review
Appendix D:	Department of Social and Rehabilitation Services’ Response to Draft Review
Appendix E:	Vermont Association of Court Diversion Programs’ Response to Draft Review
Appendix F:	Department of State’s Attorneys and Sheriffs’ Response to Draft Review

Executive Summary

Review Highlights

- > *Restitution is not a high priority for any of the agencies responsible for its imposition, collection, monitoring or disbursement.*
- > *Restitution is not effectively or efficiently collected, and there is no coordinated system for its management.*
- > *The Courts have no systems in place to help carry out their statutory obligations to consider restitution.*
- > *A lack of interagency information systems makes coordination between the nearly 80 public offices involved in Vermont's restitution process difficult.*
- > *The use of an outside billing and collection agency has not substantially improved collection efforts as originally anticipated.*

An average of only 13¢ of every dollar owed for restitution in Vermont has been collected and repaid to victims during the past ten years. Nearly 5,000 people are currently owed restitution, many of whom will wait years to be paid.

Restitution is the process where victims of crime are fully, or partially, compensated by their offenders for financial losses incurred during a crime. While the idea of offenders paying restitution to victims is fairly straightforward and simple, the actual process of making restitution happen within a justice system can be extremely complicated.

In Vermont, the restitution process involves a myriad of private and public offices, each of which has a broad array of responsibilities, including many that demand a higher priority than victim restitution. These entities include the regional offices of six different agencies within state government - State's Attorneys, Center for Crime Victims, District Court, Family Court, Corrections and Social and Rehabilitation Services (SRS); the regional diversion boards overseen by the Attorney General's Office; and a private collection agency who contracts with the Department of Corrections.

For many crime victims, winding through this maze of offices, agencies and departments can be frustrating and time-consuming - especially if the offender fails to pay on time, or at all. The Office of the State Auditor conducted a review of the funds and procedures associated with making restitution to victims of crime. Throughout our review, we found numerous occurrences of a broken system.

A commonly held belief that offenders cannot afford to pay restitution may, in part, contribute to these problems. We found no evidence to suggest too much of a financial burden is placed on offenders. Vermont judges must, by law, review a person's ability to pay when ordering restitution, and offenders can request a hearing at any time to re-evaluate the amount ordered.

It is important to note that the failures of Vermont's restitution system are NOT due to a lack of interest or commitment on the part of the many state employees charged with implementing portions of the restitution system. Throughout our review, we spoke with many state employees who are deeply committed to providing restitution

The percent of restitution owed that is being collected has declined from a high of just under 30 percent of the previous year's ending balance in FY 1988 to only 11.4 percent for FY 2001. As a result, the uncollected balance owed to victims is growing at an annual average of more than \$583,000 while collections have increased by only \$39,000.

to victims. They offered numerous suggestions for improving the system, many of which are detailed below.

Our review found these problems:

- Restitution is not a high priority for any of the agencies responsible for its imposition, collection, monitoring or disbursement.
- Restitution is not effectively nor efficiently collected, and there is no coordinated system for its management. As a result, victims are not being compensated in a timely manner.
- The Courts have no systems in place to help carry out their statutory obligations to consider restitution. They lack any systemic approach to the ordering, tracking and oversight of restitution.
- The lack of a systemwide information system serving the various agencies involved with the restitution process makes coordination between these entities difficult. These systems provide little or no information about the amount of restitution ordered, nor enough information to monitor and encourage collection.
- The use of Gragil Associates, an outside billing and collection agency, has not substantially improved collection efforts as originally anticipated.

Responsibility for collecting the vast majority of restitution rests with the Department of Corrections (DOC). The uncollected balance owed to victims has been growing by an average of \$583,000 per year, while collections have increased by an annual average of \$39,000 during the past 10 years. The percent of restitution owed that is being collected has declined from a high of just under 30 percent of the previous year's ending balance in FY 1988 to 11.4 percent for FY 2001.

These declines occur because:

- Restitution is not a statutory priority among the variety of fines and fees received from offenders.
 - The Department of Corrections is discharging obligations when offenders violate probation.
 - Judges are not defining the amount and manner of payments at sentencing.
- The process by which DOC repays victims is inefficient.

Victims have no direct recourse when they do not receive restitution. Currently, their only option is to file an affidavit with the State's Attorney asserting non-compliance. The State's Attorney then decides whether to initiate a proceeding for revocation of probation. Even if revocation is ordered, there is no assurance that restitution will be paid.

Currently, all payments are sent to Gragil Associates, the outside collection agency. At the end of each month, the total fines and fees collected are sent to the regional Court and Reparative Services Units (CRSU). Within a few weeks, each CRSU issues a payment to each victim for whom a restitution fee was received during the previous month. In all offices, except Burlington, the payments, accounting and reconciliation of payments are recorded using handwritten ledger cards, checks and work papers.

Beyond the cumbersome nature of this process, victims have no direct recourse when they do not receive restitution. Currently, a victim's only option is to file an affidavit with the State's Attorney asserting non-compliance. The State's Attorney then decides whether to initiate a proceeding for revocation of probation. Even if revocation is ordered, there is no assurance that restitution will be paid.

In calendar year 2000, restitution was ordered in about one out of every five court cases that resulted in probation. The frequency by which restitution was ordered varied by county, from a low of 7.4 percent to a high of 27.7 percent. Variations may be due to the nature of crimes committed, the adequacy of a Victim's Advocate's case file, the State's Attorney's interest in pursuing restitution, the Judge's interest in ordering restitution and/or the accuracy of the Court records regarding restitution.

Each of the major players within the judicial system maintains separate information systems for tracking relevant information about their caseload. The State's Attorneys are currently in the midst of developing a uniform statewide information system, while the Courts have a case tracking system in place and Corrections maintains complete records on each offender. While all three agencies are often tracking the same people, there are currently no integrated systems providing system-wide information.

Tracking restitution obligations is also handled differently by each of the three agencies - DOC, SRS and the Court Diversion Programs - responsible for its collection. While the collection agency contracting with DOC uses a fairly sophisticated database to record and monitor collections, its reporting functions are not fully utilized nor are they readily accessible to DOC line staff. This system also requires DOC staff to separately enter payment obligation data in addition to entering information on the offender database. SRS tracks client obligations using a spreadsheet program while the Court Diversion program tracks information primarily by hand. Neither office could provide historic information

Victims should be provided with recourse if restitution is not paid. Examples include civil remedies levied by the Court such as garnishing wages, freezing bank accounts, ordering the sale of assets, or withholding state payments like income tax returns, lottery winnings or vendor payments.

detailing the annual balance of obligations owed, although both provided information about payments received from offenders.

Recommendations

Vermont must make improvements, through legislative, judicial and administrative channels, to make restitution a top judicial priority.

Research by the Victim Assistance Legal Organization regarding restitution outlined five critical goals for a successful interagency approach:¹

1. Effective communication and coordination among criminal justice agencies and professionals.
2. Clear definition and delineation of restitution roles.
3. Efficient and streamlined coordination of restitution tasks.
4. Routine flow of information and data.
5. Participation and accountability by all parties to the process.

We recommend the following:

- Make the payment of restitution the highest priority of all judicial fines and fees collected from offenders.
- Provide victims with recourse if restitution is not paid, including civil remedies levied by the Court such as garnishing wages, freezing bank accounts, and ordering the sale of assets. Provisions to withhold state payments like income tax returns, lottery winnings or vendor payments should also be considered.
- Prohibit the discharge of defendants (including juveniles) from probation or parole if restitution has not been paid in full.
- Empower the parole board to impose the payment of restitution as a condition of parole.
- Require restitution payments made by participants in the Court Diversion Program to be forwarded to the victim even if the participant does not complete the Diversion Program.
- Clarify that inmates are obligated to meet their restitution obliga-

¹ *Restitution*, Chapter 3 from Promising Victim-Related Probation and Parole Practices, Office for Victims of Crime, US Department of Justice, Washington, DC, (online Compendium - www.ojp.usdoj.gov/ovc/publications/infores/probparole/welcome.html) last updated April, 2001

There is no data kept in state government detailing the frequency of restitution orders. We don't know the amounts fully imposed or the payments due. We don't know how (and if) funds are collected, and to whom, and when, restitution is paid.

tions and develop incentives that encourage payment of restitution obligations by incarcerated offenders.

- Integrate information systems across the justice system to improve collection.
- Develop procedures that improve the Judiciary's capacity to: determine the ability of defendants to pay; fix restitution amount and its manner of payment; and report on the incidence of restitution being ordered, its amount and manner of payment.
- Increase judicial training about the mechanics of how the state collects and monitors restitution payments.
- Re-evaluate the use of an outside collection agency on a periodic basis.
- Report restitution payment defaults to credit reporting agencies.

In addition, the Legislature should consider these changes:

- Require all restitution to be paid at the time of sentencing.
- Allow the forfeiture of bond money to make restitution payments.
- Provide pay incentives to staff for successful collection of restitution.
- Withhold state-granted privileges such as driving, professional, hunting and/or fishing licenses after all civil remedies have been exhausted.
- Create and capitalize a Victims Fund, which would be used to fully compensate victims after the restitution order has been issued and then reimbursed over time by offenders.
- Create a centralized collection capacity for all fines and fees owed to the State.
- Create a victim-initiated civil action to force the payment of restitution.

Special Review of Vermont's Restitution System

Office of the State Auditor

Purpose

The Office of the State Auditor has conducted a review of the funds and procedures associated with restitution including management practices and internal controls systems. The review was initiated at the request of the Chair of the Senate Committee on Judiciary.

Authority

This review was conducted pursuant to the State Auditor's authority contained in 32 VSA §§163 and 167, and was performed in accordance with the Government Auditing Standards issued by the Comptroller General of the United States and as part of the State Auditor's annual audit of the State's General Purpose Financial Statements.

Scope and Methodology

The scope of the review included an evaluation of the operations and financial management of the seven entities (Office of Crime Victim Services, State's Attorneys, District Courts, Family Courts, Court Diversion Boards and the departments of Corrections and Social and Rehabilitation Services) charged with ordering, collecting, monitoring and disbursement of restitution, including compliance with relevant statutes, regulations, and internal procedures. It is for the period through June 30, 2001. The review focused primarily on restitution orders imposed on adult, rather than juvenile, offenders. The methodology included a review of relevant statutes, regulations, contracts, data collection and processing systems, internal memoranda, and correspondence, as well as meetings with staff of the administering agencies and relevant contractors, and other sources as detailed in the footnotes to this review.

A review differs substantially from an audit conducted in accordance with applicable professional standards. The purpose of an audit is to express an opinion. The purpose of a review is to identify findings and observations and to make recommendations so that the reviewed agency can better accomplish its mission and more fully comply with laws and regulations.

This review relied upon representations of, and information provided by staff of: the Office of Crime Victim Services; the Department of State's Attorneys and Sheriffs; State's Attorney offices in Caledonia, Grand Isle, Rutland, Washington and Windsor Counties; Office of the Court Administrator; District Courts; Department of Corrections; Court Diversion Boards, the Defender General and the Department of Social and Rehabilitation Services. If an audit had been performed, the findings and recommendations may or may not have differed.

Background - the Purpose of Restitution

Restitution is the process whereby victims of crime are fully or partially compensated by their offenders for financial losses. As the federal Office for Victims of Crime describes it, “restitution is not a punishment or an alternative to fines, sanctions, or interventions with the offender. It is a debt owed to the victim.”² The idea that offenders should repay their victims (or their estates) can be traced back to early forms of law. Over time, as governments took increasing responsibility for prosecuting crime, criminal codes focused on the offender and what the State may do to an offender as retribution. Restitution was often lost in the process. More recently, advocates for victims’ rights have helped to promote a more restorative system of justice that focuses on repairing the harm done to both victim and community.

From the victim’s perspective, restitution is repeatedly cited in research studies as one of the most significant factors impacting their satisfaction with the criminal justice process.

Victim restitution gained major recognition on the federal level in 1982 with the enactment of the Victim and Witness Protection Act (VWPA). This law required federal judges to order full restitution in criminal cases or state their reasons for not doing so on the record. Additionally, the President’s Task Force on Victims of Crime endorsed the need for restitution by noting:

“It is simply unfair that victims should have to liquidate their assets, mortgage their homes, or sacrifice their health or education or that of their children while the offender escapes responsibility for the financial hardship he has imposed ... if one of the two must go into debt, the offender should do so.”³

The Vermont Legislature has taken a number of steps since the early 1980s to recognize the concerns of victims of crime. A law passed in 1983 requires restitution to be “considered in every case in which a victim of a crime has suffered a material loss or has incurred medical expenses.”⁴ More recently, the Legislature has endorsed a variety of policies and initiatives supporting victims and a more restorative justice system. These initiatives include creating a Victims Compensation Board in 1989, establishing the Center for

² *New Directions from the Field: Victims' Rights and Services for the 21st Century*, Chapter 15 Restitution as reprinted in the Office for Victims of Crime Bulletin 16 of 19, US Department of Justice, Washington, DC. August, 1998, p. 1.

³ President’s Task Force Report on Victims of Crime, Final Report, Washington, DC. US Government Printing Office, December 1982, p. 79.

⁴ 13 VSA § 7043 (a).

Crime Victim Services in 1991, and finally in 1999, endorsing a restorative justice approach at the Department of Corrections (DOC) which embraced the systematic development of community reparative boards and associated departmental restructuring.

As the Department of Corrections notes in their Five Year Plan, the public wants five things from their justice system:

- Safety from violent predators;
- Treatment for offenders;
- Offenders to be accountable for their crimes;
- Reparation for the damage done including restitution to the community and the victim; and,
- Involvement in the process.

From the victim's perspective, restitution is repeatedly cited in research studies as one of the most significant factors impacting their satisfaction with the criminal justice process.

Background - the Restitution Process

While the idea of offenders paying restitution to victims is fairly straightforward and simple, the actual process of making restitution happen within a justice system can be extremely complicated. In Vermont, as in other states, it involves a variety of agencies and more than 80 different regional offices, each of which has a broad array of responsibilities, including many that demand a higher priority than restitution.

Successful restitution systems involve five distinct functions:

1. Determination of victim eligibility and amount owed;
2. Issuance of the restitution order;
3. Collection of payments;
4. Monitoring and enforcement of collection; and,
5. Disbursement to victim.

The process by which this is accomplished in Vermont is described below.

How Eligibility and Amount are Determined

Once a crime has been committed, reported to law enforcement (either local or State Police) and investigated to identify the alleged perpetrator(s), the case is referred to the State's Attorney for prosecution in the county where the crime occurred. Each of the 14 State's Attorneys also oversee the Victim's Advocate(s) serving the county. Victim's Advocates are charged with informing victims about the criminal justice process, how it will affect them and their rights at various stages of the process.

Victims are eligible for restitution for any uninsured material loss or medical expense. Insurance companies cannot collect restitution per Vermont statutes. The voluntary Victim Impact Statement and supporting documentation details the extent of a victim's losses and how the crime impacted them financially, emotionally and psychologically. It is used to help determine the amount of restitution that should be requested, to identify the amount of financial compensation that might be requested from

Statewide, restitution was ordered in about one out of every five cases. During this period, the frequency of ordering restitution ranged from a low of 7.4 percent in Rutland County to a high of 27.7 percent in Franklin County.

the Victims Compensation Program⁵ and to inform the judge of the impact of the crime. The victim's failure to provide this information in a timely fashion can result in restitution not being ordered.

The strong working relationships in most counties between the State's Attorney and Victim's Advocates ensure that a strong case is presented whenever a victim is eligible for restitution.

How Restitution is Ordered

In Vermont, the criminal justice system an alleged offender faces varies, depending on the county where the crime occurred and his or her age and prior record. The State's Attorney in each county makes the determination on whether a minor shall be tried as an adult in District Court, or as a juvenile in Family Court. The State's Attorney also decides which first-time offenders may be referred to the Court Diversion Program.

Each of these criminal justice processes - District Court, Family Court and Court Diversion - may impose a condition of victim restitution on the offender. It may be in the form of a return of property or cash, or regular payments to either the victim or the Victims Compensation Fund.

Approximately 15 percent of alleged offenders participate in the Court Diversion Program. The independent nonprofit Court Diversion Boards contract with the Attorney General's office to provide services in their respective regions. The goals of Diversion are the payment of restitution to the victim and the community, accountability for one's actions, and prevention. When imposed, victim restitution becomes part of the contract an offender signs with the local Diversion review board. Oversight for collection, monitoring and repaying the victim is then handled by the county's Court Diversion agency.

If the judicial process takes place within the Court system, the offender either accepts a plea agreement or is found guilty at trial. If

⁵ If the victim has sustained injury or death as a result of a crime or attempted crime, he or she may be eligible to receive reimbursement from the Victims Compensation Fund administered by the Office of Crime Victim Services. Reimbursement may be made for crime-related medical costs, mental health counseling, funeral expenses, and loss of earnings which are not covered by insurance. (See 13 VSA § 5351 (7) for exact definition of victim.) In cases where the Victims Compensation Program has provided funds to a victim and restitution is later ordered, the restitution proceeds are sent to the Office of Crime Victims for the Compensation Fund rather than directly to the victim.

the victim has losses or medical expenses, restitution must be considered in the disposition or sentencing per 13 VSA § 7043(a).⁶ The judge must consider “the ability of the defendant to pay” when awarding restitution. If imposed, restitution is a condition of either the Juvenile Probation Certificate or the Probation Warrant. Restitution is often ordered as a “joint and severable” obligation when a number of offenders are responsible for the same crime. This means each offender has liability for the total amount until it is fully paid.

The number of court-ordered restitution cases varies substantially by county.⁷ Table 1 shows the frequency with which restitution was ordered by the District Court in calendar year 2000. Statewide, restitution was ordered in about one out of every five cases. The frequency of ordering restitution ranged from a low of 7.4 percent in Rutland County to a high of 27.7 percent in Franklin County during this period. Variations may be due to the nature of crimes committed, the number of cases resulting from criminal activities, the adequacy of a Victim’s Advocate’s case file, the State’s Attorney’s interest in pursuing restitution, the Judge’s interest in ordering restitution and/or the accuracy of the Court records regarding restitution.

The court is supposed to state, on the record, reasons for not ordering restitution.⁸

Table 1

**Incidence of Court-Ordered Restitution -
Adult Cases by County Court - Calendar Year 2000⁹**

County	# of Probation Orders	# times Restitution ordered	Frequency - Restitution orders
Franklin	979	271	27.7%
Chittenden	2484	640	25.8%
Essex	71	17	23.9%
Lamoille	479	104	21.7%
Addison	552	117	21.2%
Orleans	444	87	19.6%
Caledonia	486	88	18.1%
Grand Isle	71	11	15.5%
Windsor	670	96	14.3%
Orange	248	34	13.7%
Bennington	951	124	13.0%
Windham	850	110	12.9%
Washington	855	100	11.7%
Rutland	748	55	7.4%
TOTAL STATEWIDE	9,888	1,854	18.8%

⁶ “Restitution shall be considered in every case in which a victim of a crime has suffered a material loss or has incurred medical expenses.”

⁷ It should be noted that the number of cases involving restitution is not based upon a clearly delineated yes/no field pertaining to restitution. It is instead based upon examination of a text search of the Court’s caseload database. As a result, the data may vary substantially based upon the explicitness of District Court’s approach to recording restitution information. Furthermore, the number of cases are based on docket numbers. Docket numbers are assigned for each charge against a defendant. More than one charge may result from criminal activities involving the same offender and victim. The number of charges for similar activities may vary based upon the evidence available and approaches favored by different State’s Attorneys. A number of cases make reference back to other dockets.

⁸ 13 VSA §7043 (f)

⁹ Developed from data provided by the Court Administrator.

“This guy’s been thumbing his nose at the system because he knows he can get away with it. Does anyone care?”

- from a victim interview

How Restitution is Collected

Responsibility for collecting restitution (as well as fines and fees) rests with the Department of Corrections.¹⁰ Prior to 1997, probation officers or the district office received payments from offenders. A lack of internal controls at some offices led to some cases of shrinkage in collections during that time.

In 1997, the Legislature enacted 28 VSA §102(b)(12), which allowed the Commissioner of DOC to contract with private collection agencies for the collection of fines. As DOC later noted, “The DOC’s expertise is in the supervision and rehabilitation of criminal offenders, not in accounts receivable.”¹¹ DOC promulgated a Collection Agency Policy (208) and Directive (208.01) to implement the statute, which were approved through the rulemaking process. The Policy specifies “all payments will be made by check or money order to the collection agency.”

DOC began contracting with Gragil Associates, Inc., a billing and collection agency located in Massachusetts, concurrent with the statutory and rule changes. Gragil began to collect all overdue fees and fines for which Corrections had collection responsibilities in 1997. In 1999, Gragil became responsible for collecting all fines and fees. Gragil receives an administrative charge equal to 13.3% of all payments made since November 1, 1999 as compensation, except those received within the offender’s first 30 days of the obligation (the grace period). Gragil’s fee is deducted from any payment received, which can further delay full payment to the victim. While the fee charged is nominally 13.3%, the net fee earned by Gragil, due to the grace period and various reductions, is reported to be 9.1%.¹²

The percent of restitution owed that is being collected has declined from a high of slightly less than 30% of the previous year’s ending balance in FY 1988 to only 11.4% for FY 2001 (See Table 2). The uncollected balance owed to victims has been growing by an aver-

¹⁰ In addition to restitution, the Department of Corrections is responsible for collecting supervision fees (28 VSA § 102 (c) (14)), court-ordered fees to be paid for Victim Assistance and to the Victim’s Compensation Fund, a \$17.50 fee that accrues to the health department from all DUI cases, transportation fines and any General Fund obligations such as child support or fines owed to Fish and Wildlife by people on probation.

¹¹ From the Motion to Amend the December 8, 2000 Probation Order in State vs. Powers, Jason, Docket No. 435-7-97 Oscr filed on Dec. 18, 2000 by the Attorney General’s office.

¹² Telephone interview with Edward J. Gilbody, President, Gragil Associates, Inc., April 16, 2001.

age of \$583,000 per year during the past ten years, while collections have increased by an annual average of only \$39,000. Since 1987, the amount of restitution owed has increased every year.

Table 2

**Collection of Restitution by the Department of Corrections
Fiscal Year 1987-2001**

Fiscal Year	Restitution		% of previous year-end balance	Net Change (Balance)		Net Change (Collections)	
	Collected	Balance		amount	percent	amount	percent
1987	417,347	1,399,637	29.7%	(7,654)	(.5%)	27,975	7.2%
1988	442,312	1,612,764	31.6%	213,127	15.2%	24,965	6%
1989	476,568	1,795,725	29.5%	182,961	11.3%	34,255	7.7%
1990	500,656	2,342,631	27.9%	546,906	30.5%	24,088	5.1%
1991	467,819	2,555,790	20.0%	213,159	9.1%	(32,837)	(6.6%)
1992	529,036	3,045,501	20.7%	489,711	19.2%	61,217	13.1%
1993	642,486	4,233,325	21.1%	1,187,825	39%	113,450	21.4%
1994	610,860	4,476,962	14.4%	243,636	5.8%	(31,626)	(4.9%)
1995	644,568	4,815,391	14.4%	338,429	7.6%	33,708	5.5%
1996	710,023	5,201,537	14.7%	386,147	8%	65,456	10.2%
1997	698,510	5,249,477	13.4%	47,940	.92%	(11,513)	(1.6%)
1998	704,160	5,718,607	13.4%	469,131	8.9%	5,650	.8%
1999	660,235	6,364,583	11.5%	645,975	11.3%	(43,925)	(6.2%)
2000	752,930	7,547,733	11.8%	1,183,150	18.6%	92,694	14%
2001	858,473	8,386,598	11.4%	838,865	11.1%	105,543	14%

In Their Words

Victims Speak Out

In 1990, Maggie's business was just taking off financially. She and her partner decided to hire a full-time office manager to handle the day-to-day details while they focused on further growing the business' future.

Then, it became clear that money was missing from the company's bank accounts. After doing some investigating (and getting a tip from their office manager's spouse) it was discovered that

their first hire had embezzled \$28,000. After being found guilty and spending a month in jail, the defendant began paying back some of the money.

During the past few years, Maggie has been receiving regular payments, but there were plenty of times she didn't receive a monthly check. "When I didn't receive a check, I was the one who had to call her probation officer to find out was going on."

Shortly after Maggie began receiving regular monthly payments of \$130 a month

(up from a low of \$50 a month) her payments were cut to \$112 a month. The reason? The state was contracting with an out-of-state firm to handle its restitution payment system, with the reduced amount equaling the administrative fee charged by this company.

"When they told me this, I couldn't believe it. Why should my payments be reduced - I'm the victim here; I'm the one who's owed the money," she says. "This whole system does not pay enough attention to the victim, and that isn't right."

In Their Words

Victims Speak Out

Four years ago, Janice rounded a corner in her new car. Moments before, a man had crashed his car into a telephone pole; the pole was clipped in two and had fallen across the road. Janice's car became tangled in the wires and skidded off the road.

Janice survived with only bumps and bruises, but the damage to her car was extensive. The man was charged with leaving the scene of an accident and ordered to pay \$6,718.90 in restitution. The defendant agreed to monthly payments of \$100. At that point, Janice believed he would keep his word - especially since it was part of his probation.

This October will mark the fourth anniversary of the crash, and to this date Janice has received \$94.60 in restitution; a single payment made in December 2000. Janice returned to court in July 2000 in hopes of expediting payments, and agreed to reduce the restitution to \$3,500.

"This guy's been thumbing his nose at the system because he knows he can get away with it. Does anyone care?" she asks.

"I just would like to either receive regular payments, or be told that I'm not going to see anything. If it's not going to happen, then say so; I can then make a decision and move on with my life. Not knowing what is happening is just not right."

Restitution payments made in installments by juveniles are collected by the Department of Social and Rehabilitation Services. Our limited review of the juvenile system indicated no historical record of the total amounts due (see Table 3). Funds are to be sent to the SRS Business Manager who then deposits the money in SRS's restitution account and forwards checks to the victim.

Anecdotal reports indicate social workers are accepting cash, money orders and checks, with some sending funds directly to victims. To improve the enforcement of restitution orders and timely repayment of victims, SRS has made policy changes and created a Restitution Project that has a restitution worker in each of SRS's 12 district offices.

Table 3
Collection of Juvenile Restitution by SRS
Calendar Years 1993-2000

Calendar Year	Amount Collected
1993	6,977
1994	20,474
1995	13,736
1996	20,261
1997	14,241
1998	11,896
1999	19,394
2000	19,770
Jan-July 2001	13,807

Adult and juvenile participants in Court Diversion pay their caseworker. Restitution funds, as well as installment payments of charitable donations, are held in a separate restricted bank account in each Court Diversion office until the full amount of a participant's obligation is received. Once the full amount has been received, the funds are sent to the victim. In the event that a participant does not fulfill his or her diversion contract, all payments are returned to the participant.

Court Diversion programs report on restitution received in combination with donations received. There is no information about the balances owed by participants. In FY 2000, the twelve regions collected restitution and contributions totaling \$131,023, of which \$35,313 was from juveniles and \$95,710 was from adults. During the first nine months of FY

In Their Words

Victims Speak Out

For nearly a year, Mark and Sam placed their full trust in a key employee who called in their staff's payroll each week. She was bright, caught on quickly and worked hard.

Then, one day Mark noticed she had listed an additional six hours during a holiday vacation given to all employees. After an initial inquiry he began to dig further and discovered that she had falsely listed her work hours for months, costing the company nearly \$4,500.

After she was convicted of the crime and enrolled in the Court Diversion Program, Mark fully expected her to repay the money, as well as give an apology. That was 1992. He did get an immediate, written apology, but has received less than \$400 in restitution and has given up all hope.

"My expectation going in was we would get an apology, she would perform her community service, we would get paid and that she would be rehabilitated," says Mark. "On the financial end it was a colossal disaster."

Mark's business partner, Sam, was less optimistic going in but did expect to receive something back after nearly 10 years. "I knew she wouldn't be able to make large payments, but I did expect to get something on a regular basis over a number of years," he says. "The state needs to put a consequence to not paying back this money."

Mark agrees. "If a person doesn't want to pay they are simply not going to pay and nobody seems to be able to do anything about it."

2001, the offices collected \$51,770 in restitution.

The systems described above apply to most installment payments for restitution obligations. Ample evidence suggests, however, that lump-sum payments are being collected when a plea agreement is signed, at the conclusion of a trial, at a sentencing hearing or within a specified time after the court process has concluded. These funds - in the form of cash, checks, certified checks or money orders - are being paid directly to the victim or processed by the Victim's Advocate, the State's Attorney or the Court. Anecdotal reports suggest that some installment payments owed by adult offenders on probation are being made directly to the victim, rather than through the Department of Corrections, in order to avoid the collection fee.

How Payments are Monitored and Enforced

Monitoring and enforcement of payments is the responsibility of the Department of Corrections and its 12 regional Court and Reparative Service Units (CRSU) known colloquially as Probation Offices. The DOC has an additional seven Community Correctional Service Centers (CCSC), which house probation officers for higher risk offenders.

The DOC works in cooperation with Gragil Associates to monitor payments by offenders. Information about payments is entered in a proprietary software system called CollectNet®, which has been developed by GWA Information Systems. Gragil has purchased this technology and has furnished it to the Department of Corrections Central Office and each of the 12 CRSU units. There is one designated finance technician in each CRSU unit who enters offender information into CollectNet® at the same time data is entered into the Correction's offender database. Gragil Associates is responsible for entering all payment information.

At the end of each month Gragil sends each CRSU office reports providing: a reconciliation for each of the seven fees or fines collected; an activity report for each of the seven fines or fees detailing changes by offender; the outstanding balance for each offender assigned to that office; the outstanding balance for each offender, organized by probation officer, and a cash paid report. The activity report shows additions, deductions, Gragil's fee and the amount collected.

There is generally only one computer in each CRSU unit that has updated information available, despite Gragil's numerous monthly reports to each office. This means few probation officers have the information they need to monitor payments made by the 150 to 200 offenders under their supervision. In Barre, Bennington and Burlington some probation officers may need to contact another office just to obtain payment information, because the Community Correctional Service Center (probation office for higher risk offenders) is not located in the same facility as the CRSU.

Caseworkers at Court Diversion monitor restitution payments by their clients. Failure to meet contract requirements results in a return to the court system and a refund to the offender of all payments made prior to the infraction.

SRS caseworkers are involved in developing the disposition report for each offender and are therefore aware of individual obligations due from clients in their caseload. Currently, SRS does not have the ability to cumulatively count or systemically track payments and obligations. SRS has designed a new system for statewide accounting they expect to be available in the near future.

How Money is Disbursed to the Victim

Restitution collected at sentencing appears to be conveyed either directly to the victim or in a timely transaction via the State's Attorney or Victim's Advocate.

The receiving agency forwards restitution collected over time to the victim or the Victims Compensation Program, if the latter had already compensated the victim. At Corrections, collected restitution funds for each regional district are remitted to each CRSU office monthly. The CRSU Finance Technician then records the amount collected for each victim's account, reconciles the subsidiary restitution ledger cards, prepares a check and sends it to the victim. This process is still done using individualized, hand-written ledger cards in all districts except Burlington. Account balances and reconciliation for each unit's checking account are forwarded to DOC's central office. Funds are forwarded to Abandoned Property at the State Treasurer's Office when victims cannot be located.

Table 4

Payment of Restitution by DOC District Office, FY 2000

Office	Payments Made to Victims
Barre	67,537
Bennington	42,302
Brattleboro	40,967
Burlington	146,558
Chelsea	15,632
Middlebury	34,126
Morrisville	26,041
Newport	50,229
Rutland	61,109
St Albans	63,459
St. Johnsbury	72,844
White River	58,320
TOTAL	679,124

Compliance Findings and Recommendations

Finding 1

Restitution is not effectively nor efficiently collected. Victims are not being compensated in a timely manner.

Discussion

Quantitative and anecdotal evidence indicates that victims and the Victims Compensation Program are not receiving the full amounts of restitution ordered in a timely fashion.

A victim will receive funds in a relatively timely fashion if he or she is entitled to receive funds from the Victims Compensation Program. For all other victims, the earliest restitution is likely to occur at judicial sentencing, or after a Court Diversion contract has been negotiated.

The process of restitution is inherently slow. The victim suffers the financial loss at the time of the crime, yet our justice system is designed to be a thorough and deliberate process that can take months, even years to settle a dispute. Many victims never receive payments, while others receive them over an unreasonably long period of time.

A victim will receive funds in a relatively timely fashion if he or she is entitled to receive funds from the Victims Compensation Program. For all other victims, the earliest restitution is likely to occur at judicial sentencing, or after a Court Diversion contract has been negotiated. Anecdotal information indicates that restitution payments are received in a more timely fashion from offenders participating in a diversion program.

Responsibility for collecting the vast majority of restitution rests with the Department of Corrections (DOC). The uncollected balance owed to victims has been growing by an average of \$583,000 per year during the past ten years, while collections have increased by an annual average of only \$39,000. The percent of restitution owed that is being collected has declined from a high of just under 30% of the previous year's ending balance in FY 1988 to 11.4% for FY 2001.

The following charts and tables show that only a small percentage of the amount owed for restitution is being collected. Since 1987, the amount of restitution owed has increased every year. The percentage of restitution owed that has been collected has declined steadily through the same period although there have been occasional one-year improvements. While the total amount owed during the 15-year period increased by a factor of six, collected amounts have grown by a factor of only two. Amounts sent to the Victims Compensation Program have reimbursed only 7.2% of the close to \$2.5 million provided to victims since 1997.

Chart 1

**Restitution Collection by Department of Corrections
Fiscal Year 1987-2001**

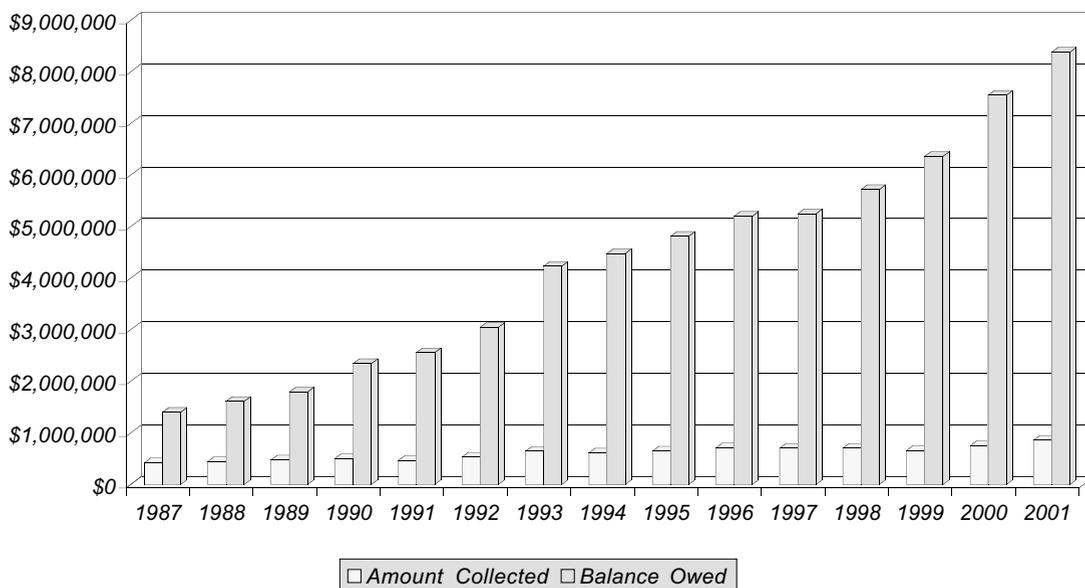


Table 5

**Victims Compensation Program - Claims, Payments and Receipts
FY 1997-2001**

FY	Claims Paid		Restitution Payments Received	% repaid
	#	\$		
1997	454	422,191	30,988	7.3%
1998	457	460,239	47,030	10.2%
1999	469	553,919	39,180	7.1%
2000	532	586,129	33,530	5.7%
2001 to 4/01 (10 months)	435	475,286	30,319	6.4%
TOTAL		2,497,764	181,047	7.2%

Collections vary greatly from office to office within the Department of Corrections (see Table 6). At 8.5%, Barre and Burlington have the lowest collection performance (based on money collected from their caseload) while Chelsea and Newport each exceed 24%. While one large obligation (or payment) can greatly skew the balance in a particular region, the variation in amounts added, deducted and collected may be an indicator of different approaches within the DOC office and/or the District Court.

Table 6

**Collection of Restitution by DOC District Office
Fiscal Year 2000**

Office	Beginning Balance	Additions	Deductions	Collected	% of beginning balance
Barre	866,952	201,884	123,917	73,971	8.5%
Bennington	510,147	147,144	81,861	62,981	12.3%
Brattleboro	291,904	171,438	54,257	42,927	14.7%
Burlington	1,783,795	1,380,612	567,989	150,745	8.5%
Chelsea	79,268	48,297	5,498	19,663	24.8%
Middlebury	209,513	82,376	48,476	35,565	17.0%
Morrisville	198,778	107,329	27,064	27,649	13.9%
Newport	295,756	125,265	55,253	72,839	24.6%
Rutland	524,357	229,914	47,181	65,240	12.4%
St Albans	620,336	307,514	64,711	79,786	12.9%
St. Johnsbury	716,033	197,723	60,332	70,269	9.8%
White River	267,743	122,349	49,226	51,295	19.2%
TOTALS	6,364,582	3,121,845	1,185,765	752,930	11.8%

Research and anecdotal evidence suggest a challenge to collecting restitution in Vermont is the belief, within the culture of correctional and the criminal justice systems, that offenders are indigent and cannot afford payment. By law, judges must determine an offender’s ability to pay at the time of sentencing. An offender can request a court hearing to reduce the restitution award, if the repayment schedule proves financially difficult. There is no evidence to suggest that offenders are being asked to pay more than they can afford.

Collection records clearly show the Department of Corrections was doing a better job (in regards to percentage of amount owed collected) prior to engaging a collections company. Transition difficulties, including the reluctance of acceptance by corrections staff, may account for some of this. But, the current system provides no incentives for faster collection to offenders, their probation officers or the collection company. There are a number of specific factors that negatively impact the collection of restitution, in addition to these general concerns. These are further detailed in findings 1a - 1h.

Recommendations

Change policies and practices to support the enforcement of restitution orders. This includes making the necessary investments to ensure that collection information is readily available to probation officers, SRS and Diversion Board staff. Include management of restitution collections as a component of job performance.

Create incentives for full and prompt payment of restitution.

Report restitution payment defaults to credit reporting agencies. This is permitted in Oregon.

Require that all restitution be paid at the time of sentencing.

Implement a fund for paying victims comparable to the worker’s compensation system. A state-funded Victim Restitution Fund would pay victims once restitution has been ordered and then be reimbursed from offender payments. While this could create a drain on state funds, it might provide the needed focus to monitor and increase collections. A portion of the monies for such a fund could come from instituting an additional fee for offenders charged with various crimes.

Withhold state-granted privileges such as driving, professional, hunting and/or fishing licenses if restitution is not paid after a reasonable period of time, and all civil remedies have been exhausted.

Allow for the forfeiture of bond money as a means of satisfying restitution obligations.

Create a centralized collection capacity for all fines and fees owed to the State. Maryland’s Department of Budget and Management has a Central Collection Unit (CCU) that is responsible for collecting all delinquent debts (except taxes) including restitution payments, student loans, overdue fees, court fines and other obligations for over 400 different agencies. This Unit has the authority to intercept Maryland State Income Tax refunds and lottery winnings and offset vendor payments in order to satisfy any obligations owed to the State. It also reports debt obligations to the Credit Bureau. The CCU receives a 17% collection fee on all obligations collected and has a Performance Incentive Pay Plan for its employees. When necessary, the CCU will establish payment plans of up to 18 months.

Offer personal budgeting courses and employment services program for offenders. Tarrant County, Texas has recognized that probationers with a steady source of income and stable address are more likely to meet their obligations. To that end, they offer programs in budgeting and employment services.

Finding 1a

Restitution is a lower priority obligation among the variety of fines and fee payments received from offenders.

Discussion

The Department of Corrections, which holds responsibility for collecting the vast majority of restitution obligations, has interpreted language in the statute authorizing the collection of supervision fees (28 VSA 102 (c) (14)¹³) to mean that all fees collected by the Department take precedence over the collection of restitution and other fines. It is difficult to ascertain its intent without reviewing the legislative history of this statute. It may have been to require that all fees contributing to the operating

¹³ This statute reads as follows: “To collect a fee in the amount of \$30.00 per month as a supervisory fee from each person under the supervision of the department who is on probation, furlough, supervised community service, or parole, except that offenders on reparative probation and offenders who cannot pay or can demonstrate other good cause may be exempted from such fee. Supervisory fees collected by the department shall be credited to a special supervision and victim restitution fund established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5, for this purpose and shall be used by the department for expenditures relating to probation, furlough, supervised community service and parole programs and to reimburse victims of crime. *In every fiscal year, operational expenses shall take precedence over victim restitution.* The commissioner shall adopt rules governing the collection of supervisory fees, including the maximum period of time offenders are subject to supervision fees.” (emphasis added.)

If victims do not receive the restitution payments that have been ordered, they have little to no ability to collect the money.

expenses of government be collected prior to paying restitution to victims as DOC is now doing. Alternately, the intent of the statute may have been to refer only to the collection of supervision fees, which should then be used for operating expenses prior to victim restitution.¹⁴

Current Corrections Department Policy (426) which have been adopted through the Administrative Rules Process and DOC Administrative Procedures (4.4.1) define the priority of payment as follows, unless specified otherwise by the court:

1. Supervision Fees
2. Victim Assistance Fees - \$17.50/offender surcharge
3. Victims Compensation Fees - ordered by court
4. DUI/Health Department Fee - \$17.50 (offender fee)
5. Victim Restitution
6. Agency of Transportation fines - highway fines
7. General Fund fines - includes fines imposed by the Department of Fish & Wildlife, child support obligations, etc.

DOC Procedures (4.4.2) also specify that when an offender is charged with a new case during probation, the collection priority is to collect fees on all cases, then restitution.

Recommendation

The Legislature should clarify the language in 28 VSA 102 (c)(14) and direct the Department of Corrections to revise their administrative procedures so that restitution is repaid prior to all other judicial fines and fees, if the intent is for restitution to be a priority payment for offenders.

¹⁴ While the Statute allows for Supervision fees to be directed towards victim restitution, the amount collected is quite small relative to the potential. As of December 15, 2000, there were 11,962 offenders in Vermont communities on legal status of Furlough, Intermediate Sanctions, Parole or Probation. If they all paid \$30/month, the amount collected would be \$4,306,320. In contrast, the supervision fees "Expended" in FY 2000 equaled \$169,354 or only 3.9% of the potential fees that might be collected. Source: FY 2002 Budget, Corrections Department, Forms 5 and 9.

Finding 1b

Victims and the Victims Compensation Program do not have adequate recourse when restitution payments are not received.

Discussion

Victims have little to no ability to collect the money if they do not receive the restitution payments ordered. They can file an affidavit with the State's Attorney asserting non-compliance. The State's Attorney then decides whether to initiate a proceeding for revocation of probation.¹⁵ If revocation is ordered, the offender is "punished" but there is still no restitution paid to the victim.

Currently, 41 states provide some form of civil remedies for victims of crimes where restitution has been ordered. Some allow a lien to be placed on real property. Others allow wages to be garnished, assets attached or bank accounts frozen once an offender has defaulted on a payment. Laws in some states provide for specific methods of enforcing restitution orders as civil judgements. All restitution orders are entered as civil judgements in Iowa, so either the victim and/or the state's compensation program can pursue remedies. In addition, Iowa allows the income tax refunds of delinquent offenders to be seized in order to satisfy restitution orders. Delaware allows up to one-third of an offender's earnings to be assigned to victim restitution. Minnesota and Washington allow bank accounts to be frozen. In Colorado, probation officers are trained to examine the financial situation and ownership of non-necessity items of offenders who owe restitution. Probation officers can then ask the judge to order the offender to sell certain assets (e.g. television, entertainment systems, etc.) and forward the amount to the victim.

Recommendation

The State should implement mechanisms that provide victims with alternatives if restitution is not paid. This should include offering Court ordered remedies such as garnishing wages, freezing bank accounts and ordering the sale of assets. Provisions to withhold state payments such as income tax returns, lottery winning or vendor payments should also be considered.

Finding 1c

The obligation to pay restitution is being discharged by both the Departments of Corrections and Social and Rehabilitation Services.

Discussion

It appears that there is no legal requirement that offenders must satisfactorily pay restitution in order to be discharged from probation or parole. Department of Corrections personnel are able to post "deductions" to restitution obligations for a variety of reasons. In FY 2000, the amount of "deductions" exceeded the amount of restitution collected by more than \$430,000. A review of payment records indicates that deductions happen for a variety of legitimate reasons including transfers of offenders between districts, court-ordered reductions in the obligation, incorrect original postings and repayment made by the offender directly to the victim.

¹⁵ 28 VSA § 253 (c).

Deductions are also made in instances that raise compliance questions. These include:

- When the victim does not wish to receive the restitution. Corrections procedures require that the victim provide written documentation advising the Department of this decision. The remaining restitution owed is then deducted from the offender's obligations.
- When the offender violates a probation order and is remanded to a correctional facility. When this occurs, "the probation case is closed and... obligations to probation conditions (including restitution) are null and void."¹⁶ DOC Procedures (6.2.2) specify that in the event of a violation of probation, the Office Manager will zero out the balance due "unless the court specifically directs that serving the remainder of sentence DOES NOT free client of payment obligation(s). This appears to be in conflict with 13 VSA § 7043 (e) that states "Unless otherwise specifically ordered by the court, an order for restitution as a condition of probation or supervised community sentence *shall remain in effect if the defendant violates probation or supervised community sentence and is sentenced to imprisonment.*" (emphasis added).
- When the offender violates parole. If this occurs in a case where the Court originally ordered restitution, the Parole Board may reinstate a condition of restitution. The Parole Board cannot, however, impose a restitution condition if it was not part of the original sentencing.
- When the offender is missing. In those cases where the cost of returning an offender to the state is not warranted due to the remaining time on a sentence, restitution is ended.¹⁷
- When the victim cannot be located. If funds have been collected for a victim, they are forwarded to Abandoned Property. However, DOC's Administrative Procedures (4.4.4) directs Probation Officers to seek direction from the court. The Officer will often recommend that the offender be relieved of any restitution obligation.

According to SRS, restitution orders imposed by the Family Court on juvenile offenders are automatically discharged when the child turns 18.¹⁸ Since juvenile proceedings are confidential, there is no easily developed mechanism to transfer the obligation to another agency once the juvenile offender reaches the age of 18. Criminal cases involving juvenile offenders who are 16 or older may be adjudicated in the District Court. If this occurs and restitution is ordered, the offender faces the same collections obligations and procedures as adult offenders.

Recommendations

The Legislature should amend 13 VSA § 7043 to prohibit the discharge of defendants from probation or parole if restitution has not been paid in full.

Offenders who violate probation should not be relieved of their restitution obligations per 13 VSA § 7043 (e). DOC should have procedures and systems in place that ensure that a restitution obligation follows an offender regardless of his or her status.

¹⁶ Letter to Elizabeth M. Ready, State Auditor, from David Peebles, Director, Community and Restorative Justice, Department of Corrections, dated April 26, 2001, p. 2-3.

¹⁷ Letter to Elizabeth M. Ready, State Auditor, from David Peebles, Director, Community and Restorative Justice, Department of Corrections, dated April 26, 2001, p. 2.

¹⁸ 33 VSA § 5504 details the limits of juvenile court jurisdiction.

Current rules governing the Diversion Board require them to return payments received from participants - if the participant is unsuccessful in completing his or her contract. This appears to reward bad behavior and further penalize the victim expecting restitution.

Implement mechanisms and/or procedures that ensure payment from juvenile offenders. Options used by other states include laws holding parents or guardians liable for restitution orders, enforcement of the order until it is paid and allowing orders to be converted to civil judgments.

The Legislature may want to consider allowing the Parole Board to not only reinstate, but also impose restitution as a condition of parole.

When victims cannot be located, the funds should be forwarded to the Victim's Compensation Fund.

Finding 1d

The Court Diversion programs receive restitution payments which are owed to victims, but are returned to the offender if he or she does not fulfill the requirements of their contract.

Discussion

Court Diversion is an alternative approach for first-time offenders designed to encourage accountability, victim restitution and prevention. While the program is administered by Attorney General's office, each regional Diversion Board is an independent nonprofit organization. Rules for each Board regarding the handling of fines and fees are promulgated by the Attorney General's office.

The decision to send an offender to diversion is made by the State's Attorney. Participants meet with Review Boards to develop and agree upon a Diversion Contract. If a participant successfully completes the diversion program and meets specific statutory criteria,¹⁹ his or her court records may be sealed. If a participant is unsuccessful, he or she returns to the court system.

Current rules governing the Diversion Board require them to return payments received from participants if the participant is unsuccessful in completing his or her contract. This appears to reward bad behavior and further penalize the victim expecting restitution.

¹⁹ 3 VSA § 164 (e).

Many DOC staff have concerns about the difficulty of reconciling the desire to encourage good behavior by an offender with payment in hand, and the department directive that staff are not to handle payments.

Recommendation

Require restitution payments made by participants in the Court Diversion Program to be forwarded to the victim even when the participant does not complete the Diversion Program. This might be achieved by adding a provision in the Diversion Contract which allows payments already received to remain in escrow until the court hearing where restitution may be added as a condition.

Finding 1e

The use of an outside collection agency for all fines and fees limits the forms of payment, and adds an administrative charge. At inception, it required substantial uploading of debtor information, delayed collections and was not universally accepted or supported by DOC staff.

Discussion

The decision by the Department of Corrections to transfer collection on all fees and fines to an outside collection agency has moved collection away from individual probation officers in local offices. It is accompanied by a 13.3% administrative charge added to all amounts outstanding after 30 days. Offenders who make restitution payments to SRS (i.e. juveniles) or the Court Diversion programs have no additional administrative charge.

Many DOC staff have been less than enthusiastic about the decision to contract with a collections agency for collection management. Some staff are concerned about the national trend of increased privatization of correctional services. Some disapprove of the administrative charge. Others cite the difficulty reconciling the desire to encourage good behavior when an offender wants to pay restitution immediately after a court proceeding, and the DOC directive that CRSU staff are not to handle payments. Representatives at Gragil note that staff in some offices are still accepting and forwarding payments while others are delinquent in entering new accounts, thereby prolonging the 30-day grace period on administrative charges. Still others are encouraging direct payment of victims by offenders as a way of avoiding the administrative charge.

DOC Policy and the use of a collection agency means that adult offenders cannot make their payments at the probation office and that payments must be in the form of checks or money orders.

The lack of interagency information systems makes it impossible to reconcile the accuracy of court-ordered adjustments. It is impossible to ascertain whether offenders are being released from probation without meeting their restitution conditions.

While this form of payment insures good internal control, offenders are currently denied the opportunity to make payments using cash, credit cards or automated payment systems. A case currently before the Vermont Supreme Court may alter the forms of acceptable payment.²⁰

Recommendations

The effectiveness of using an outside collection agency should be re-evaluated on a periodic basis.

Incentives for faster repayment should be adopted. This might include discounts for prompt payment and/or additional fees for late payments by offenders as well as incentives for prompt collection by Gragil Associates.

Alternative means of payment including credit cards and automated payments should be encouraged.

Finding 1f

The Department of Corrections does not have sufficient internal controls and monitoring processes in place to be able to reconcile or delineate the reasons for deductions and additions being made to restitution obligations.

Discussion

The DOC staff enter deductions (and additions) for a variety of reasons. Although CollectNet® can easily be adapted to provide the necessary reports, it is currently impossible to ascertain whether deductions and additions are due to transfers, court-ordered adjustments, the addition of new obligations, inappropriately-posted reductions and/or someone giving an offender a break. The lack of differentiation makes it impossible to reconcile transfers across the system. It also eliminates the ability to create reports that spotlight inappropriate or inaccurate postings.

This lack of interagency information systems makes it impossible to reconcile the accuracy of court-ordered adjustments. It is impossible to ascertain whether offenders are being released from probation without meeting their restitution conditions.

²⁰ On December 8, 2000, the Orleans District Court (Honorable Howard E. Van Benthuyzen presiding) issued a modified probation order in State v. Jason Powers (Docket No. 435-7-97 Oser) that requires the Department of Corrections to accept cash. Since accepting cash is a violation of DOC Policy 208 and Directive 208.01, the DOC, acting through the Attorney General, filed a motion to amend this order and provide for payment to the collection agency. The motion to amend was denied, which has been appealed to the Vermont Supreme Court. (Docket No. 2001-094) A Fall 2001 hearing date is expected.

Recommendations

The Department of Corrections should immediately adopt an improved procedure for accounting for additions and deletions due to transfers, the addition of “new” business and court-ordered adjustments. All other additions and deletions should be subject to an oversight process that provides for adequate internal control.

The Court Administrator should include specific and quantifiable information about restitution when making improvements to the District Court’s information systems.

Finding 1g

The process used by the Department of Corrections to post, track, monitor and disburse restitution and other obligations is inefficient, costly and unnecessarily slow in getting funds to victims and the State. It also does not provide for a segregation of accounting duties.

Discussion

Gragil Associates sends a monthly lump-sum payment (less its administrative charge) to each CRSU office for all payments received from offenders assigned to that district. These funds, which averaged, in total, more than \$160,000 each month for the first four months of 2001, sit in non-interest bearing accounts at each of the 12 district offices around the state. The person in each district office responsible for entering CollectNet® data then reconciles Gragil’s payment information with the office’s internal records.

Restitution funds collected are posted on individual offender ledger cards and checks are issued for all amounts over a specified minimum.²¹ Balances owed to the state are forwarded to the State Treasurer. In most offices, the same person who receives the funds also posts to victim accounts, cuts and signs checks and reconciles the account. Checks get to victims anywhere from 15 to 50 days after the offender pays restitution.

In every district office but Burlington, restitution accounts are managed using non-automated systems. The process is clearly tedious, time-consuming and unnecessarily repetitive. One finance technician estimates that she spends half of her time on restitution-related matters. If this can be extrapolated across the district, one could assume that DOC employs about six full-time equivalents to manage repayments to victims. This means employees pay less attention to other DOC needs and priorities. The Burlington office has automated its system using QuickBooks®.

Each CRSU office has a non-interest bearing account that receives the monthly restitution payment from Gragil. Statewide, these accounts together had an average balance of more than \$515,000 including two districts with bank balances significantly in excess of the \$100,000 balance insured by FDIC. In some districts, the account balance at the end of April 2001 exceeded both the annual amount received as well as the annual amount paid to victims.

²¹ \$10 per DOC Procedure 7.

All of the conditions described above were present as of April of 2001, despite the contracted engagement by DOC of a CPA since April, 2000 to “provide for better internal controls [and] improved systems.”²²

Table 7

Restitution Account Balances By DOC District

Office	Checking Account balance @ 4/30/01	Account Balance as % of FY 2000 \$ collected	Paid to Victims in FY 2000	Account Balance as % of FY 2000 payments
Barre	\$130,583	177%	\$67,537	193%
Bennington	51,034	81%	42,302	121%
Brattleboro	15,943	37%	40,967	39%
Burlington	174,216	116%	146,558	119%
Chelsea	3,299	17%	15,632	21%
Middlebury	12,179	34%	34,126	36%
Morrisville	5,590	20%	26,041	21%
Newport	46,708	64%	50,229	93%
Rutland	32,981	51%	61,109	54%
St Albans	15,833	20%	63,459	25%
St. Johnsbury	19,141	27%	72,844	26%
White River	7,545	15%	58,320	13%
TOTAL	515,052		679,124	

Recommendations

Explore sending victim payments directly from Gragil Associates or another single source. Both Gragil Associates and DOC have indicated the potential for CollectNet® to be modified so that payments to victims could be sent directly from Gragil. If Gragil continues to service these accounts, this should be considered. The DOC should centralize the processing of payments to victims at one location if this cannot be accomplished.

The system for paying victims should be automated as soon as possible, regardless of how DOC addresses victim payments.

Restitution funds should be retained in interest bearing accounts.

The Department of Corrections should enter into agreements with banks to provide insurance protection for any account deposits in excess of \$100,000.

The Department of Corrections should initiate policies and procedures to minimize the amount of funds sitting in restitution payment checking accounts. At a minimum, DOC should implement procedures to transfer unclaimed funds to the Victim Compensation Fund, limit the maximum account balance, and implement oversight procedures to make sure victims are being paid in a timely fashion.

²² Summary of contract in Contract #0946356 between AHS/Corrections and John Boehm.

Information about restitution, particularly in regards to the time elapsed from when the victim experienced the loss until repayment, is unavailable. Interviews with victims and victim advocates indicate that it can take years to receive full restitution.

Finding 1h

The processes followed for seeking collections services and the contracts executed with Gragil Associates, Inc. raise a number of compliance questions.

Discussion

In the fall of 1996, the Department of Corrections issued a request for proposals (RFP) for collection services for all overdue accounts.²³ The objective of the RFP was “to increase the effectiveness and efficiency of statewide collection efforts.” In addition to furnishing collection services, DOC sought to obtain an “integrated collection software package that provides current status database for all current and overdue accounts.” Five companies responded to this RFP. The original contract with Gragil Associates, Inc. was executed in January 1997 for a two-year period at a maximum amount of \$200,000.

The contract was amended in January of 1999 as follows:

- Maximum amount was increased from \$200,000 to \$455,000;
- The term was extended from January, 31 1999 to January 31, 2001;
- The contract intention changed from being for collection of all overdue payments (more than 60 days delinquent) to being the billing and collection arm for all fines and fees;
- Procedural specification revisions to reflect work previously completed and procedural alterations resulting from moving all collection operations to Gragil were added. These changes were relatively minor. One provision of the amendment required Gragil to send monthly remittance to each CRSU site rather than one check being sent to the Central DOC office.

The amendment was **not** signed by the Secretary of Administration as required by Bulletin No. 3.5.

A new RFP was issued in October of 1999 for collection services for the period from January 1, 2000 to January 30, 2002 despite the fact that DOC had a signed contract for collection services through January 31, 2001. Gragil was the only bidder on the second RFP. The reason for only one bidder was due to the requirement that the DOC have access to the software if the contract is not renewed, according to corrections staff.

²³ Contract # 0946616, original bid EBB #9854.

From January 31 through June of this year, Gragil Associates, Inc. had been operating without a contract. A draft contract has been under discussion since at least December 2000 and was finally executed on June 28, 2001. The delay was due primarily to the desire by DOC to wait for passage of a statutory amendment which clarifies the collection company's authority to deduct its fees from any payments collected. While this had been the practice prior to this approval, the Department of Finance and Management disputed its legality claiming it was in conflict with the so-called "netting" provisions in 32 VSA §502(a).²⁴

In its 2001 fee bill (Act 65), the 2001 Legislature added language to clarify that DOC's practice was acceptable.²⁵ As a result, the new contract has a price of only \$8,000 since Gragil's administrative charges are actually paid by offenders and not the State.²⁶ As a result of the contract, Gragil will actually earn between \$150,000 and \$200,000 per year. While Gragil deserves to earn compensation for their work in managing the 7,700-plus accounts (restitution, fines and fees) in the Corrections system, it is somewhat disingenuous to suggest that this contract is worth only \$8,000.

It is currently unclear who actually owns the information in the CollectNet® database. The State has access to the information and the current contract specifies that if the contract expires or is not renewed, the "software becomes available to VTDOC." Gragil's familiarity with CollectNet® and the DOC infrastructure makes competitive bidding for future contracts somewhat unrealistic.

Recommendation

The Department of Corrections should follow all of the state contracting procedures as outlined in Bulletin 3.5 as if all earnings resulting from the Contract were paid by the State.

Finding 2

There is a lack of interagency information systems serving the judicial and criminal justice systems regarding restitution. The information systems that do exist provide little to no information about the ordering of restitution, nor do they provide sufficient information to monitor and encourage collection.

Discussion

Information about restitution, particularly in regards to the time elapsed from when the victim experienced the loss until repayment, is unavailable. Interviews with victims and victim advocates indicate that it can take years to receive full restitution. It is estimated that nearly 5,000 victims are currently

²⁴ The statutory language reads as follows:

“Executive branch. The gross amount of money received in their official capacities by every administrative department, board, officer or employee, from whatever source, shall be paid forthwith into the state treasury, or deposited according to the direction of the state treasurer in such bank to the credit of such treasurer as he shall designate, *without any deduction on account of salaries, fees, costs, charges, expenses, claim or demand of any description whatsoever, unless otherwise provided.* Such moneys shall be credited to such funds as are now or may hereafter be designated for the deposit thereof. Money so paid and all moneys belonging to or for the use of the state shall not be expended or applied by any department, board, officer or employee, except in accordance with the provisions of § 462 of this title.” (emphasis added)

²⁵ Section 10 of Act 65. The original language and changes to 28 V.S.A. § 102(b) (12) are as follows:

“To enter into contracts with private collection agencies for the collection of supervisory fees imposed by this title and fines, penalties and restitution imposed under Title 13. The commissioner may agree to pay collection agencies a fixed rate for services rendered or a percentage of the amount collected which shall ~~*not be deducted from*~~ *be added to* any amounts ~~*but*~~ *and* may be recovered as an administrative cost of collection. Any such fixed rate or percentage may be deducted directly by the collection agency on a pro rata basis from any portion of the money so collected.”

²⁶ This amount is to reimburse the Contractor for the costs of notification letters, postage and licensure fees.

The State's Attorneys and Sheriffs are in the process of developing a system-wide database to monitor their caseload. Previously, they had been "on the information back road."

owed some form of restitution. There is no data kept in state government detailing the frequency of restitution orders. We don't know the amounts imposed. We don't know the amounts fully imposed or the payments due. We also don't know how (and if) funds are collected and to whom and when restitution is paid. Neither offenders nor victims can easily ascertain the balance of the amounts owed from the court, corrections, prosecutors or victim advocacy agencies.

Successful collection of restitution requires an interagency approach with effective communication. It calls for clear delineation of roles and routine flows of information about both the details and the process. The federal Office of Victims of Crime recognizes that a lack of integrated and automated systems is a significant impediment to collecting restitution. "When data regarding orders, payment or nonpayment, and related information are not readily available and shared, restitution orders fall through the cracks of the justice system."²⁷

This lack of information about restitution reflects the absence of integrated information systems across Vermont's judicial system. Computerized information management systems, where they do exist, are not connected with one another and none of them, except CollectNet®, record specific information related to restitution in a consistent fashion. This makes it impossible to define or analyze the following:

- The relationships, or timeframe, between restitution being ordered, collected and repaid to victims;
- Whether restitution conditions are being satisfied prior to release from probation;
- The percentage of the Corrections caseload where restitution is the only condition; and,
- How many probation violations result from the non-payment of restitution.

The State's Attorneys and Sheriffs are in the process of developing a system-wide database to monitor their caseload. Previously, they had been "on the information back road."²⁸ Record keeping at each of the 14 county offices has been based upon the preferences and technological interests of that region's State's Attorney.

²⁷ *New Directions from the Field: Victims' Rights and Services for the 21st Century*, Chapter 15 Restitution as reprinted in the Office for Victims of Crime Bulletin 16 of 19, US Department of Justice, Washington, DC. August, 1998, p. 5.

²⁸ Interview with Robin Orr, who at the time was Executive Director, Vermont Department of State's Attorneys and Sheriffs, March 21, 2001.

“The relentless advance of the capacity to account, sort, and disseminate data will enhance the ability of litigants, lawyers, the media, and individual members of the public to monitor judicial performance by standards that may not coincide with the judiciary’s criteria for evaluation.”

- Chief Justice Jeffrey L. Amestoy, Vermont Supreme Court

The Office of Court Administrator has a fairly comprehensive database. However, each District Court appears to have different protocols, if any, for assigning docket numbers and recording restitution information. A simple query of the court database does not accurately indicate if restitution should have been considered, if it was ordered, or the amount and terms of payments owed. It is unclear whether or not the Courts maintain any record of restitution payments made to the victim during the judicial process. Finally, there is no ability to correlate the incidence of restitution orders with any collections information.

DOC has a sophisticated accounts receivable software system, but they are not using it to its full capacity. The information provided by CollectNet® assures financial accountability for funds received. DOC fails to differentiate between changes classified as “additions” and “deductions” which makes it difficult to assess the amounts, or reasons for amounts, owed being added, transferred, written off or reduced. This lack of financial accountability provides no way to effectively analyze how payments are modified after they are initially ordered.

Court Diversion monitors obligations using both manual and computerized systems. They do not yet have a statewide computerized reporting system. Additionally, many Court Diversion offices do not differentiate between restitution payments and charitable donations received.

The SRS business office tracks the original amount due and balances owed for all restitution orders they have received using a spreadsheet. They do not appear to have a statewide monitoring system.

All of the entities dealing with restitution recognize the benefit in the effective use of technology. Each agency is moving forward to address its own information technology needs. Our review of the restitution system highlights the fact that interagency information needs are not being effectively addressed when each entity in the judicial system separately and independently considers its own technology needs.

Colorado has developed cross-agency systems that link law enforcement, prosecution, courts, adult corrections and juvenile corrections into one integrated justice system. This means offenders can be tracked from arrest to incarceration.

There are numerous instances where standardized practices could greatly improve the collection of restitution.

The Judiciary may be the most advanced in considering these issues. The 1998 report of the Vermont Judiciary Technology Committee details the challenges and opportunities presented by the use of technology. Technology was clearly part of the deliberations of the Commission on the Future of Vermont's Justice System. As Chief Justice of the Vermont Supreme Court, Jeffrey L. Amestoy noted in the Introduction to the Commission's Report in September of 1999: "The extraordinary rapidity of technological change, where a technology is antiquated before it is understood, provides little foundation for accurate projections of the impact of technology on the judicial system. But the relentless advance of the capacity to account, sort, and disseminate data will enhance the ability of litigants, lawyers, the media, and individual members of the public to monitor judicial performance by standards that may not coincide with the judiciary's criteria for evaluation."

Recommendation

Plan and develop integrated information systems within the entire judicial system in order to improve collection, communication and efficiencies. These systems should provide the ability to efficiently track and quantify information related to restitution as well as other judicial procedures.

The Legislature should give top priority to improvements that strategically integrate systems across criminal justice agencies as they consider much-needed technology upgrades.

Vermont should have a Chief Information Officer with the authority to independently assess, and plan, the development of interagency information systems to enhance government services.

Finding 2a

Interagency communication and procedures that could enhance restitution are not readily identified, implemented or adopted.

Discussion

The lack of interagency communication may be due to the fact that there is no single entity charged with the responsibility of overseeing restitution. Vermont is not unique in this regard. Most states face similar communication challenges. Nonetheless, there are numerous instances where standardized practices could greatly improve the collection of restitution.

Examples abound. There is no standardized form for transmitting a

victim's name and address from a Victim's Advocate to the appropriate CRSU Finance Technician who forwards restitution payments. If the information is not in an offender's file, valuable time is spent tracking it down. The standardized State District Court Probation Warrant lacks a pre-printed restitution condition emphasizing the need to specify the amount and terms of payment.

Court orders often create collection challenges when they specify "joint and severable" restitution obligations. When more than one offender is charged with the commission of the same crime (e.g. larceny), the court may order restitution for which all of the offenders are jointly responsible. While this is meant to assure the victim that he or she will receive restitution, it creates accounting challenges as well as a monitoring nightmare for the probation staff responsible for enforcing the condition.

Court orders may also order an offender to make payment to the Victims Compensation Fund. Yet, the Office of Crime Victims receives no notice that payments have been ordered and has no way of monitoring if the payments are received.

Communication is further confounded because many judges still think restitution is collected at the CRSU despite DOC's 1997 policy transferring collection responsibilities to an outside agency. As a result, judges may order an offender to go downstairs (or down the street) to pay off their obligation. When the offender arrives at the CRSU with cash or a money order, he or she is told that the CRSU cannot receive payments - instead they must be sent to Gragil. While some offices provide a pre-addressed (and occasionally pre-stamped) envelope, the offender is left with, at best, a confusing perception of the importance of collecting restitution and at worst, a sense of "why bother paying at all?" In some instances, the wording on some restitution orders does not allow for the additional administrative charge to be added to an offender's obligation, thereby denying the victim a portion of what is owed to them.

Recommendation

Increased training for all judicial personnel involved in restitution. The training should focus on the findings in this report and information about the mechanics of how the state collects and monitors restitution payments.

Finding 2b

The Departments of Corrections is not effectively monitoring or evaluating the collection of restitution.

Discussion

Collections theory emphasizes the importance of staying in touch with debtors and ongoing effective monitoring. When payments are monitored, and action is taken in response to delinquencies, there is a higher compliance rate, according to a study by the American Bar Association.²⁹ Whether it is due to a lack of information, a lower priority of concern or the belief that offenders cannot afford to make restitution payments, probation officers and their supervisors are not effectively monitoring collection. Probation officers blame this on the difficulty of obtaining up-to-date information from the one com-

²⁹ *Restitution*, Chapter 3 from Promising Victim-Related Probation and Parole Practices, Office for Victims of Crime, US Department of Justice, Washington, DC, (online Compendium - <http://www.ojp.usdoj.gov/ovc/publications/infores/probparole/welcome.html>) last updated April, 2001. Actual study is Smith, Barbara E., Robert C. Davis and Susan W. Hillenbrand, Improving Enforcement of Court-Ordered Restitution, Chicago, Ill. : American Bar Association, c1989.

puter per district that contains the relevant information. Obviously, it is impossible for probation officers or SRS case workers to effectively monitor the payment records of their caseload without accurate information about payments. Furthermore, supervisors do not have sufficient information to evaluate the ability of their employees to collect payments owed.

While one computer per office is clearly a stumbling block, CollectNet® can provide regular reports on a daily, weekly or monthly basis detailing the repayment status of any offender grouped by probation officer or district. CollectNet® can also provide “non-payment” information if a payment schedule has been adopted. Gragil Associates has indicated that they can also provide (at an additional cost), read-only information for authorized users via the Internet. In order to use this information effectively, the DOC office must enter the name of the probation officer for each offender. District offices have not diligently kept this information current on the CollectNet® system. (For example, a review of the March 2001 offenders in the Rutland district showed 102 out of 163 offenders making payments were unassigned to a probation officer. Likewise, a similar review of April 2001 payments in Orange County showed 98 out of 165 offenders were unassigned to a probation officer.)

Lack of monitoring, particularly in a population that may not have the highest regard for debts to society, quickly results in a lack of payment. The system effectively falls apart when there are no repercussions for lack of payments.

Recommendation

The Department of Corrections, Diversion Boards and SRS will need increased investments and policy changes if they are to enforce the day-to-day collection of restitution orders. This includes making certain that collection information is readily available to probation officers, SRS and Diversion Board staff. The management of restitution collections should be a component of job performance.

Finding 3

The Courts have no systems in place to help them carry out their statutory obligations to consider restitution. This places an additional burden on the Department of Corrections and often delays payments.

Discussion

Vermont statutes specify the following Court responsibilities in regards to restitution:

1. Restitution shall be considered in every case in which a victim of a crime has suffered a material loss or has incurred medical expenses. 13 VSA § 7043 (a)
2. In awarding restitution, the court shall consider the ability of the defendant to pay. 13 VSA § 7043 (c)
3. When restitution is not ordered, the court shall set forth on the record its reasons for not ordering restitution. 13 VSA § 7043(f)
4. When restitution or reparations is a condition of the sentence, the court shall fix the amount thereof, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance. 28 VSA §252(b)(6)

A review of Court records found a lack of any systematic approach to these restitution obligations.³⁰

Conversations with personnel at various State’s Attorney offices indicate that restitution is being considered whenever a Victim’s Advocate request it. However, there appear to be no formal systems or procedures in place to address the Court’s statutorily mandated obligations.

An analysis of court data from calendar year 2000 suggests that the court specifically set the amount and terms of payment in fewer than 18% of restitution orders. While this may be a reflection on the poor quality of the data, anecdotal information from probation officers corroborates the problem. The standardized State District Court Probation Warrant lacks a pre-printed restitution condition emphasizing the need to specify the amount and terms of payment, despite statutory responsibility and a Vermont Supreme Court decision emphasizing this requirement on the Court.³¹ This decision mandates that probation officers must return to the court for the specific “manner of performance” to be a legally binding part of the restitution order. The Court’s disregard of these responsibilities is so prevalent that the Corrections Department has a standardized form letter for communicating with the court when this information is missing from an offender’s file (Appendix I of Restitution Directive #502.04). Clearly, this is not the most effective use of either the Court or Corrections personnel.

*When considering
“ability to pay”
most judges appear
to rely entirely on the
representations
of the
defense attorney.*

Most judges appear to rely entirely on the representations of the defense attorney when considering a person’s “ability to pay.” The court does not currently have any process, nor does it request any type of financial statement, to determine ability to pay beyond that statement. One Judge appears to be unique in his consistent effort to question defendants professing a lack of resources about any assets they own. Another District Court appears to rely on negotiated amounts agreed upon in a plea agreement.

Our review of the cases heard during a month-long period in three different counties found no written record that would explain why restitution was not ordered. While the reasons may be inferred, they do not appear to be “on the record.”

Recommendation

Support the development and implementation of improved systems and procedures that improve the capacity of judges and the courts to meet their obligations as mandated by statute.

The Court should create methods designed to determine the ability of defendants to pay; fix the amount and manner of payment, and report on the incidence of restitution being ordered, its amount, and manner of payment.

³⁰ Data sampling occurred in Caledonia, Rutland and Washington counties.

³¹ State of Vermont v. Tammie Guinard. (98-153) filed 2/11/99.

Finding 4

Restitution is not a high priority for any of the agencies responsible for its imposition, collection, monitoring or disbursement, although it is valued and important. System inefficiencies and the lack of prioritization are the biggest stumbling blocks to achieving a more effective restitution system. The failures of Vermont's restitution system are NOT due to a lack of interest or commitment on the part of the many state employees charged with implementing portions of the restitution system.

Discussion

Restitution, as a concept, is highly touted by the seven state agencies or programs that have responsibilities associated with its implementation. It is also appreciated by the employees in dozens of district offices charged with its assessment, collection and repayment to victims. Nonetheless, restitution is not (nor should it necessarily become) the highest priority of each organization's mission.

The federal Office of Crime Victims outlines five critical goals for a successful interagency approach to restitution:

1. Effective communication and coordination among criminal justice agencies and professionals;
2. Clear definition and delineation of restitution roles;
3. Efficient and streamlined coordination of restitution tasks;
4. Routine flow of information and data;
5. Participation and accountability by all parties to the process.

System breakdowns and the lack of prioritization lead to all of the findings detailed above.

If restitution is to be an effective part of Vermont's justice system, the Legislature may need to make one agency accountable for insuring its effectiveness.

Recommendation

The Legislature should examine the appropriateness of agencies without financial missions being responsible for collections obligations. It may be far more effective for a centralized entity with adequate collections capabilities (and appropriate privacy safeguards) to have the responsibility of collecting all receivables imposed by state agencies and the judicial system. This could be similar to Maryland's Central Collection Unit described previously.

Appendices

Appendix A



RECEIVED
VERMONT
STATE AUDITOR

Agency of Human Services
DEPARTMENT OF CORRECTIONS
103 South Main Street
Waterbury, VT 05671-1001

AUG 15 2001

August 13, 2001

Ms Elizabeth M. Ready
State Auditor
132 State Street
Montpelier, VT 05633-5101

Re: August 6, 2001
DRAFT, Review of the Vermont's Victim Restitution System

Dear Ms. Ready:

Thank you for allowing my staff the opportunity to review the above referenced draft report.

I am advised this has been a very constructive process, which fairly and thoughtfully deals with the significant issues inherent in our present system of collections.

Several general comments which I ask you to consider are as follows:

1. The collection chart on page 11 is somewhat misleading as it measures collections against outstanding debt which will always show a decline in effectiveness as the older accounts (bad debt) remain in the totals. The decrease in 2000 was the best in the past four years and I hope this marks a trend to come.
2. Page 22 references, ".....One finance technician estimates that she spends 1/4 of her time on restitution-related matters. If this can be extrapolated across the district, one could assume that DOC employs about six full-time equivalents to manage repayments to victims".

Although I understand the mathematical logic in the above, logic would also follow that if the Department of Corrections got rid of collections altogether, the DOC could give up six full-time positions. This is a dangerous supposition. Out of the 12 CRSU sites, only three have full-time financial technician positions. It is also my understanding that Bennington CRSU will be obtaining a full-time financial tech this fiscal year. Of these four sites,

1003 only one tech (Burlington) devotes her time to collections, collectnet, and related duties, tasks and issues. This is a necessity due to the size of the caseloads at the BUCRSU and BUCCSC sites. In the other three sites (WRJ, Brattleboro, and soon Bennington) the financial techs also assist site managers in managing their respective budgets which includes processing all bills, tracking, budget reviews, etc. for both the CRSU and CCSC at their geographic sites. In the other eight CRSUs (nine if you include Bennington for now) the "collectnet" person is responsible for all other administrative support duties at their worksite such as answering phones, ordering supplies, typing, maintenance of offenders database, processing bills for payment, aiding their CRSU managers with their budgets, etc. The department's administrative staff is very thin and any reduction in support would be ill advised.

3. Page 25, references,

"...it is somewhat disingenuous that this contract is worth only \$8000.00"

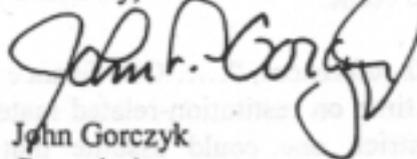
and further,

"The Department of Corrections should follow all of the states contracting procedures as outlined in Bulletin 3.5 as if all earnings resulting from the contract were paid by the state."

Please be advised that the Department of Corrections was instructed by the Department of Finance and Management specifically NOT to include any "earnings" as contract value. As you realize, Finance and Management oversees Bulletin 3.5 compliance.

The Department of Corrections looks forward to any changes that will improve services to victims, especially in the area of restitution collection. I believe my staff has been quite candid as to their sense of necessary improvement.

Sincerely,



John Gorczyk
Commissioner

c: David Peebles, Director of Community and Restorative Justice

Appendix B

LEE SUSKIN, Esq.
Court Administrator
lee@supreme.crt.state.vt.us

TELEPHONE: (802) 828-3278
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SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR
109 State Street
Montpelier, VT 05609-0701



August 15, 2001 **AUG 17 2001**

Elizabeth M. Ready, Vermont State Auditor
Office of the State Auditor
132 State Street
Montpelier, VT 05633-5101

Dear Ms. Ready:

I am writing at your request to confirm our understanding that your review of the Vermont Victim's Restitution System was made for the purpose of issuing a report on the Courts' procedures and compliance with relevant laws, regulations, management practices and internal control systems.

In connection with your review and your test of compliance, we confirm to the best of our knowledge and belief, the following representations made to you during your review.

1. The Courts have made available to you all information, materials, records and related data requested by you.
2. Additionally, the Courts have identified and provided all information, materials, records and related data which are relevant to your request.
3. Judge McCaffrey and I have reviewed your draft findings and recommendations.

We appreciate the opportunity to respond more fully at a future date to the issues and concerns raised specific to the responsibilities of the Judiciary and to our interrelationships with agencies having direct responsibility for the collection of restitution.

Sincerely,

A handwritten signature in cursive script that reads "Lee Suskin".

Lee Suskin

dal
cc: Hon. Francis B. McCaffrey, Administrative Judge

Appendix C



August 24, 2001

VERMONT CENTER FOR CRIME VICTIM SERVICES

103 South Main Street
Waterbury, Vermont 05671-2001
1-800-750-1213
1-800-845-4874 TTY
<http://www.ccvv.state.vt.us>



AUG 27 2001

Elizabeth M. Ready
State Auditor
132 State Street
Montpelier, VT 05633-5101

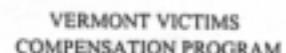
Dear Elizabeth,

Thank-you for conducting a review of the state's restitution system for victims of crime. I would like to take this opportunity to share my perspective on some of the findings and recommendations made in the report.

One of the most compelling findings is the fact that the percentage of restitution being collected in VT has actually declined from 30% in 1987 to a dismal 10% in 2000. Clearly the system of collecting restituting is not working under its present structure and changes must be made to bring that statistic up to a number much closer to 100%. This finding also calls into question whether the Department of Corrections should continue it's contract with the current collection company since your review found that Corrections was actually doing a better job collecting restitution prior to engaging the collection company. It is also disturbing that the collection company is allowed to deduct its fee from any restitution payment collected which often results in the victim paying the fee.

Another finding in your report which is very difficult for victims of crime to understand is why the Diversion Program would return all restitution paid by the offender to the offender (instead of the victim) when the offender fails to fulfill his or her diversion contract. The offender is being rewarded instead of penalized for not fulfilling the diversion contract.

It is clear from your report that restitution is not a high priority for the state. The Center is committed to working with the other state agencies involved to develop and implement a new system for collecting restitution. Your findings and recommendations provide the state with the blueprint needed to redesign the system. The Center is also interested in pursuing the recommendations that require legislative action such as the ability to garnish wages and withhold driving and hunting licenses. However, of all the recommendations in your report, the one that best serves victims of crime is to create and

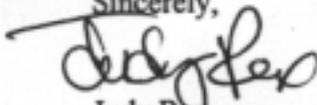


capitalize a Victims Fund to compensate victims of crime immediately following the issuance of a restitution order. I truly believe this would put more pressure on the state to hold the offender accountable since failure to collect the restitution would result in financial penalty to the state.

In closing, I appreciate the thoroughness of the report and find the recommendations to be extremely useful. I am confident that as a state we can create a new restitution system that is truly victim-centered. It is long overdue and Vermont crime victims deserve no less.

Thank-you for this opportunity to review and respond to the report.

Sincerely,

A handwritten signature in black ink, appearing to read "Judy Rex", written in a cursive style.

Judy Rex

Executive Director

VT Center for Crime Victim Services

Appendix D



State of Vermont

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
AGENCY OF HUMAN SERVICES



Osgood Building
103 South Main Street
Waterbury, Vermont
05671-2401

Elizabeth M. Ready
State Auditor
132 State Street
Montpelier, VT 05633-5101

AUG 15 2001

August 14, 2001

Dear Ms. Ready:

I would like to take this opportunity to thank you for copying me on your recent letter to Commissioner Gorczyk regarding the draft of the Restitution Report entitled State Auditor's Review of the Victim Restitution System.

After reviewing the draft, I would like to offer the following comments.

On page 1, in the *Findings* section, the draft states that "Restitution is not being effectively nor efficiently collected. Victims are not being compensated in a timely manner." While these are hard facts that we need to face, SRS, as part of a larger restorative practices initiative, has taken several steps to make improvements in this area.

- A Restitution Project is one of three initiatives being implemented under the Restorative Juvenile Probation Project funded by JAIBG;
- There is a Restitution Project staffed by a Restitution Worker in all 12 districts of the state;
- A new SRS policy has been written and is in the process of being approved whereby restitution will be paid to the restitution worker in the form of a blank money order, the restitution worker fills in the name of the victim, makes a copy of the money order and places it in the juvenile offender's file and then sends the money order directly to the victim. Payments are forwarded to the victims as they are received, rather than waiting for restitution to be paid in full.

- A procedure is being developed to enable SRS to keep track of the amount of restitution that has been collected and forwarded on to victims.
- Judges are ordering financial caps on restitution prior to cases being referred to juvenile restorative panels where coordinators work with victims and offenders in actually setting the amount of restitution that will be paid to the victims.

When a youth attends a juvenile restorative panel, s/he has the opportunity to meet a victim face-to-face (in cases where victims choose to participate in the process) and to hear what a victim feels will 'make him/her whole' (through letters, audio tapes and/or surrogate victims). The youth also has the added support and supervision of a juvenile restorative panel coordinator to monitor his/her progress.

The panel does offer some level of recourse to victims who are not receiving restitution payments on a consistent basis. A victim can contact the local juvenile restorative panel coordinator and the coordinator can bring the youth in front of the panel for review, can report the delinquency of payment to the SRS Social Worker and/or can suggest that the case be returned to court for non-compliance with the agreement. Panel coordinators track the payment of restitution, forwarding a completion form to the SRS Social Worker when a youth has met the requirements of the juvenile restorative panel.

With regards to the *Recommendations* outlined on page 3 of the draft, please note that SRS is in the midst of policy changes to support the enforcement of restitution orders and timely repayment to victims. As part of our restorative practices and to encourage collection of restitution monies, our panel coordinators recognize and celebrate the completion of restitution orders with youth that have met their restitution/community service requirements.

On page 4, the second section highlights *options worthy of legislative consideration*. I would ask that consideration be given to the unique circumstances of the juvenile offender's ability to earn income and to arrange necessary transportation (to school, work, community service sites, service agencies) when considering the following:

- requiring that all restitution be paid at the time of sentencing;
- withholding state-granted privileges such as driving when driving may be needed for youth to get to school, work, community service sites and to various service agencies offices.

On page 7, the process of *determination of eligibility and amount* is described for the adult system. I wanted to take this opportunity to add some information

regarding this process in the juvenile system with the implementation of the new restorative practice initiatives. Victims are contacted by SRS and asked for input (a victim's impact statement) which is incorporated into the SRS Social Worker's Disposition Report. Victims are also contacted by the panel coordinators or their designees and asked to give information regarding the harm that was done to them and what they feel they will need to 'be made whole'. At that time, victims are invited to attend the panel, to meet the offender face-to-face and to participate in the process of preparing an agreement between the youth and the panel.

Page 8 of the draft addresses the *Issuance of the Restitution Order*. Our current process requires that the court issue the restitution orders, with the judge setting a cap on the financial responsibilities of the offender. If appropriate, the case is then referred to the juvenile restorative panel where the panel, victim and youth can be creative in determining the amount of restitution the offender will actually pay.

Information appears on page 12 of the draft regarding *the monitoring and enforcement of payment of restitution*. As part of the Community Support and Supervision Initiative, SRS has streetcheckers/tracker in all 12 districts to assist with monitoring youth as they complete their juvenile probation requirements. In each district there is also a restitution worker (in many of the districts the streetchecker and the restitution worker are one and the same person).

The restitution worker monitors a youth's compliance with his/her restitution order, checking in on a regular basis to see that s/he is compliant with the agreed upon payment schedule. Restitution Workers can request that youth attend a 'check-in' with the juvenile restorative panel, meet with the SRS Social worker and/or request that the Social Worker violate the youth's probation and return the youth to court for non-compliance with the restitution order.

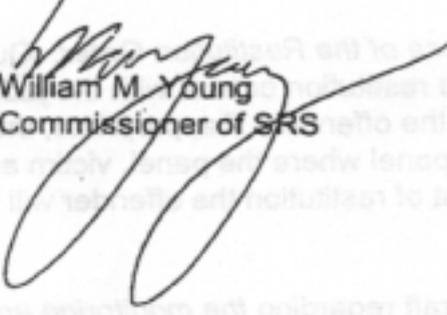
In response to the *Recommendations* section on pages 16 and 17, I would like to offer a comment on the recommendation that consideration be given to the creation of a centralized collection capacity for all fines and fees owed to the state. While this recommendation might not even apply to restitution monies (as under restorative practices, restitution is owed to the victim and not to the state), I feel SRS youth benefit from making connections with positive adults (Streetcheckers, Restitution Workers), meeting the victims face-to-face and participating in the panel process, opportunities they might not have if payments were made to a central collection site.

Page 30 under the *Recommendations* heading, *Findings 3b* states that neither the Department of Corrections nor of Social and Rehabilitation Services is effectively monitoring or evaluating the collections of restitution. While SRS continues to struggle with an effective system for monitoring the collection of monies, we have hired the Florida Atlantic University under the supervision and

guidance of Dr. Gordon Bazemore to conduct comprehensive individual and cluster evaluations of our restorative practice initiatives to include Restitution. The evaluation will include 500 cases from the past 2 years. The final results are not yet available but will be sometime in the next several weeks.

In closing, I would like to thank you once again for copying the draft of the restitution report to me, giving me the opportunity to respond to the contents.

Sincerely,


William M. Young
Commissioner of SRS



State of Vermont

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
AGENCY OF HUMAN SERVICES

Elizabeth M. Ready
State Auditor
132 State Street
Montpelier, VT 05633-5101

Osgood Building
103 South Main Street
Waterbury, Vermont
05671-2401

August 21, 2001

Dear Ms. Ready:

This is a follow up to Commissioner Young's letter of August 14, written in response to your draft report on the review of the Vermont's Victim Restitution System. Upon reviewing the draft report, I found some areas that I believe could benefit by additional comments, as follows:

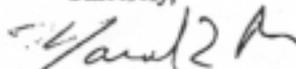
The final sentence on page 3 states the following: "Both (SRS and Court Diversion) offices were unable to report to the State Auditor any information about obligations owed although both provided information about payments received." The SRS business office does keep track of the original amount due and the balance owed for all restitution orders we have received. Attached is a copy of the first page of that schedule, with the names of the children blacked out.

On page 11, the final paragraph states that: "Funds are supposed to be sent to the SRS Business Manager who then sends the money to the State to send to the victim." In actuality, funds are sent to my office, are deposited in the restitution account, and checks are subsequently written to the respective victims by my office.

Page 12 contains a schedule of juvenile restitution collections by calendar year (figure 3). The amounts contained therein do not comport with the amounts that our records show. The difference in the amount in figure 3 and the amount for the same period according to my records is approximately \$78,000.

I hope this information is helpful to you.

Sincerely,


Marcel L. Rocheleau
Business Manager



Cc William M. Young

AUG 21 2001

Appendix E

50 CENTER STREET
CARBINE BUILDING

Vermont



PO BOX 761
RUTLAND, VERMONT 05701
(802)775-2479

Court Diversion

August 14, 2001

ADIRONDACK COUNTY
P.O. Box 881
Middlebury, VT 05753
Tel: 788-1888

BENNINGTON COUNTY
439 Main Street
Bennington, VT 05201
Tel: 467-1595

CALDWELL-ESSEX COUNTY
24 Dagley Street
St. Johnsbury, VT 05819
Tel: 748-8732

CHITTENDEN COUNTY
P.O. Box 1526
Burlington, VT 05402
Tel: 864-1585

FRANKLIN COUNTY
45 Kingman Street
St. Albans, VT 05478

GRAND-ISLE
P.O. Box 173
Grand Isle, VT 05458
Tel: 372-4955

LAMOILLE COUNTY
P.O. Box 148
Hyde Park, VT 05655
Tel: 888-5871

ORANGE COUNTY
P.O. Box 58
Tolson, VT 05028
Tel: 885-3172

ORLEANS COUNTY
343 Main Street
Newport, VT 05855

RUTLAND COUNTY
P.O. Box 761
Rutland, VT 05702
Tel: 775-2479

WASHINGTON COUNTY
P.O. Box 1026
Montpelier, VT 05601
Tel: 224-0536

WINDHAM COUNTY
P.O. Box 6008
Brattleboro, VT 05302
Tel: 257-0361

WINDSOR COUNTY
P.O. Box 474
White River Jct., VT 05081
Tel: 245-5078

Elizabeth M. Ready, State Auditor
Office of the State Auditor
State of Vermont
132 State Street
Montpelier, VT 05633-5101

Re: VACDP Response to State Auditors Review of the Victim
Restitution System

Dear Ms. Ready:

Thank you for the opportunity to provide comments and responses to the
Victim Restitution System Review for the Senate Committee on Judiciary.

The Vermont Association of Court Diversion Programs (VACDP) has
provided victim restitution services for the past 21 years. Over time our
internal system has adopted many procedures to determine the victim's loss,
collect payments from offenders and disperse restitution in a timely manner.

Victim restitution is one of three goals of the Diversion philosophy. Offender
accountability and prevention are equally high in priority.

In FY 2001, Vermont Court Diversion programs offered services to 5512 first
time offenders. Efficiently collecting and dispersing \$100,694.56 to Vermont
crime victims. VACDP does not use an independent collection agency and
processes each case through the protocol implemented by the Attorney
General.

In order to better address the needs, issues and concerns of crime victims,
VACDP has developed a Victim Restitution Protocol for caseworkers (See
enclosure - from Rutland County). This protocol was developed with the
assistance of the victim's advocate to insure that victims are informed of the
process, their rights are protected and they are not further traumatized by the
justice system.

VACDP has also revised its Victim Impact Statement form to request further
information regarding the loss suffered by the victim. This document now
offers alternatives such as meeting with the volunteer review board with or
with out the offender present, sending a substitute to the meeting to express



their concerns and fears, providing a written statement to be read at the review board meeting by a representative from the community, and/or the opportunity to participate in a victim impact panel. (See enclosure). Caseworkers have increased their efforts to obtain victim participation and satisfaction through increased contact and follow-up.

New this year to many Diversion programs is the Victim Satisfaction Survey that has been designed to obtain information to improve our response to the needs of victims and learn of areas that need improvement. (See enclosure).

Vermont Court Diversion provides an alternative sentencing option to first-time offenders. A participant who successfully completes the program will have their charge dismissed and not have a criminal conviction record. It is a **voluntary** program and participants may choose to return to court at any part of the Diversion process.

Two obstacles that Diversion programs face are the inability to send partial restitution payments to victims. Currently the practice requires the offender to pay the amount owed in full and successfully complete the program before funds can be distributed. Because, if the offender does not successfully complete the Diversion contract conditions and only paid a portion of the amount owed, those funds are required to be returned to the offender. Once the case is returned to court, the client convicted and put on probation, it is then the responsibility of the Dept of Corrections to collect the amounts determined by the judge. If a victim were to accept partial payment or a portion of the total restitution, this would prevent the opportunity for a civil suit in the future.

This creates another concern for the auditor's office because until the case is closed, the obligation (the amount owed to the victim) is only voluntary.

The second obstacle stems from the ruling from Lyle v. Webb, which prohibits diversion clients from reimbursing insurance companies for damages covered by the victims policy and requires them to pay the victims deductible. Many volunteer review board members have expressed their concern at the un-fairness of the ruling and in many cases would like the offender to pay for the total loss suffered by the victim.

All Court Diversion programs are recipients of the BARJ (Balanced and Restorative Justice) Grants through SRS to provide restitution services to convicted juvenile offenders and their victims. The grant activities require convicted delinquents in SRS control to present their payment plan schedules for review and compliance monitoring by Diversion program staff. Failure results in a violation of probation hearing and possible increased sanctions.

To ensure the continuity of the **juvenile** justice system and that the severity of sanctions increase each time a **youth** comes to the attention of law enforcement for

delinquent or criminal behavior, many Diversion agencies are offering pre-charge intervention programs utilizing victim/offender mediation or Family Group Conferencing for juveniles referred directly by police.

This provides three chances to be held accountable for delinquent/criminal behavior in a community based, outpatient program. It also sends a message that youth will be held accountable for their behavior and those victims can have input and an impact on the offenders' activities to restore not just the specific victim but the community too.

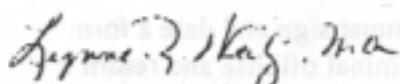
Vermont Court Diversion programs do not charge a fee for collecting or dispersing restitution amounts nor do programs increase fines for late payments. In the event that a victim can not be located after restitution is collected, the amount may be forwarded to either a local victims' compensation fund or to the State Victim's compensation fund.

In cases where there is not an identified victim and the crime is against the community, i.e., possession of marijuana, review boards may require an offender to make restitution to the community in the form of a donation to a non-profit community based program or prevention fund. These dollars are collected and dispersed through the same protocol as traditional restitution.

If technology were available (at a reasonable cost) for all Diversion programs to track, record and disperse restitution funds, VACDP would be able to provide specific amounts owed, the numbers of victims restored, collection rates and funds dispersed.

I hope you find this information regarding the Vermont Association of Court Diversion Programs helpful in your review of the Vermont Victim Restitution System. Please let me know if I can answer any questions or provide you with additional information,

Sincerely,



Lynne R. Weitz, MA
VACDP Coordinator

Appendix F

JANE WOODRUFF
EXECUTIVE DIRECTOR

PAMELA JAMES
BUSINESS MANAGER



STATE OF VERMONT
OFFICE OF THE EXECUTIVE DIRECTOR
DEPARTMENT OF STATE'S ATTORNEYS
VERMONT SHERIFFS' DEPARTMENTS

12 BALDWIN STREET
DRAWER 33
MONTPELIER, VT 05633-6401

PHONE: (802) 828-2891
FAX: (802) 828-2881



AUG 28 2001

August 28, 2001

Elizabeth Ready, State Auditor
132 State Street
Montpelier, VT 05633-5101

Re: Restitution Audit

Dear Ms. Ready:

On behalf of the Department of State's Attorneys, I would like to make the following comments about the restitution audit your office performed and the resulting report.

To begin with, the Department is committed to pursuing restitution for victims of crime. As your report points out, restitution is not effectively or efficiently collected. Our Department finds this troubling because it revictimizes the victims of crime.

As a Department we would welcome any changes to the collection of restitution that would make the victim whole for monetary damages at an earlier time than currently happens. If statutory change is needed our Department would be willing to be an active participant in that process.

Thank you for this opportunity to review your draft report as well as the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Jane Woodruff".

Jane Woodruff, Esq.
Executive Director