



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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Secretary Kevin Carr  
Department of Corrections  
3099 East Washington Avenue  
Post Office Box 7925  
Madison, WI 53707-7925

Dear Secretary Carr:

¶ 1. Incarcerated persons or people under the Wisconsin Department of Corrections' (DOC) supervision through probation, parole, or extended supervision (collectively, "offenders") sometimes die before paying all of the restitution ordered in their judgments of conviction. You have adopted your predecessor's request for an opinion whether, under those circumstances, the deceased offender's sentencing court may enter a civil judgment for the amount of unpaid restitution in favor of the crime victim and whether DOC has the authority or duty to ask the court to enter such a judgment.

¶ 2. I conclude that sentencing courts may enter such judgments after an offender's death. Wisconsin law provides both that restitution be converted to a civil judgment after probation "terminat[es]" and that unpaid restitution be treated the same as a civil judgment after the end of incarceration, probation, parole, or extended supervision. Wis. Stat. § 973.20(1r). Supervision or incarceration "terminat[es]" if, among other reasons, the offender dies. And, since the sentencing court ordered restitution in the offender's judgment of conviction before his death, the entry of a civil judgment is merely a clerical act that can occur after the offender dies. I also conclude that DOC has no affirmative legal duty to ask sentencing courts to enter these civil judgments, but that DOC may choose—and that it would be advisable—to do so.

¶ 3. A crime victim's right to restitution is guaranteed by the state constitution: Wisconsin "shall ensure that crime victims have . . . the . . . privilege[ ] and protection[ ] . . . [of] restitution." Wis. Const. art. I, § 9m. The Wisconsin statutes codify this right. "Victims of crimes have the . . . right[ ] . . . [t]o restitution . . ."

Wis. Stat. § 950.04(1v)(q). “When imposing sentence or ordering probation for any crime . . . the court . . . shall order the defendant to make full or partial restitution under this section to any victim of a crime considered at sentencing . . . .” Wis. Stat. § 973.20(1r).

¶ 4. While the offender is incarcerated or on supervision, DOC has an active role in collecting restitution for the crime victim. An offender under supervision must deliver money due as restitution to DOC, and DOC must create an account for collecting that restitution and disbursing it to victims. Wis. Stat. § 973.20(11)(a)–(b). DOC may collect unpaid restitution directly from an incarcerated offender’s wages and gift money. Wis. Stat. §§ 301.31, 301.32(1), 303.01(8)(b). For offenders on probation, DOC must notify the sentencing court of an offender’s unpaid restitution 90 days before probation expires. Wis. Stat. § 973.09(3)(b). And “[i]f an inmate in a state prison or a person sentenced to a state prison has not paid, at the time of his or her death, restitution ordered under [Wis. Stat. § 973.20], [DOC] shall assess, collect, and disburse the amount owed from the inmate’s wages or other moneys.” Wis. Stat. § 973.20(11)(f).<sup>1</sup>

¶ 5. When an offender has not paid all ordered restitution by the time his supervision ends, the crime victim has an express statutory right either to a civil judgment or to have unpaid restitution treated the same as a judgment. For an offender who was on probation, a crime victim has a right “[t]o a judgment for unpaid restitution” upon the expiration of the offender’s probation. Wis. Stat. § 950.04(1v)(r) (cross-referencing Wis. Stat. § 973.09(3)(b) (probation restitution)). Likewise, when an offender’s period of probation, extended supervision, or parole “terminat[es],” a crime victim has a right to enforce unpaid restitution “in the same manner as a judgment in a civil action.” Wis. Stat. § 973.20(1r). This right applies even if the offender is never placed under supervision at all. *Id.* (unpaid restitution is enforceable as a civil judgment “if the defendant is not placed on probation, extended supervision, or parole”). Because the crime victim’s rights are equivalent to those of a judgment creditor, *Huml v. Vlazny*, 2006 WI 87, ¶ 28, 293 Wis. 2d 169, 716 N.W.2d 807, they continue after the offender’s death. *See generally* Wis. Stat. chs. 859 (probate claims), 877 (actions against heirs and legatees); Wis. Stat. § 815.14 (execution of judgment liens after debtor’s death).

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<sup>1</sup> Wisconsin Stat. § 973.20(11)(f) does not answer the question you ask because DOC might not be able to recover all the outstanding restitution from “the [deceased] inmate’s wages or other moneys” to which DOC has access. The issue still arises of whether the sentencing court may enter a civil judgment for the amount of any restitution that remains unpaid after DOC exercises its authority under this statute.

¶ 6. While, unlike Wis. Stat. § 950.04(1v)(r), section 973.20(1r) does not explicitly provide for the entry of a judgment when an offender’s supervision period terminates, it provides that any unpaid restitution obligation has the same effect as a civil judgment. The state supreme court has reasoned that section 973.20(1r) treats victims as having the rights of a judgment creditor, which indicates that unpaid restitution can and should be converted to a civil judgment under that provision. *Huml*, 293 Wis. 2d 169, ¶ 28. Likewise, the supreme court explained that, through section 973.20(1r), the Legislature “intended a restitution order to become a civil judgment” when supervision ends, which further supports this conclusion. *Id.* ¶ 33.<sup>2</sup>

¶ 7. The request for an opinion asks whether a sentencing court’s ability to enter a civil judgment for unpaid restitution changes if the offender dies after the court orders restitution but before it enters a civil judgment. I conclude that the sentencing court has authority to enter a civil judgment after the offender dies under these circumstances, for two reasons. First, the statutory language indicates that restitution shall have the effect of a civil judgment, no matter why the offender’s supervision terminates. Second, the court retains authority to enter the civil judgment, both because statutory language enables the court to do so and because the entry of a civil judgment is merely a clerical act.

¶ 8. As a matter of plain language interpretation, restitution orders should be entered as a civil judgment under Wis. Stat. § 973.20(1r) whenever supervision “terminat[es],” whatever the reason for the termination. “[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110. “If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.” *Id.* (citation omitted). “[T]he restitution statute should be interpreted broadly and liberally in order to allow

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<sup>2</sup> The request for an opinion asks whether a circuit court may only enter a civil judgment for unpaid restitution under the two specific provisions cross-referenced in Wis. Stat. § 950.04(1v)(r), which address juvenile restitution and restitution as a probation condition. I conclude that no sound reason exists to interpret Wis. Stat. § 950.04(1v)(r) as limiting crime victims’ right to judgments for unpaid restitution to only those situations. This reading would conflict with Wis. Stat. § 973.20(1r) and Wis. Const. art. I, § 9m, which guarantee crime victims’ right to restitution when all forms of supervision end, not just probation. *See State v. Gilbert*, 2012 WI 72, ¶ 43, 342 Wis. 2d 82, 816 N.W.2d 215 (“[I]t is this court’s duty to harmonize the statutes, not ignore one section, while enforcing another.”).

victims to recover their losses as a result of a defendant’s criminal conduct.” *State v. Gibson* 2012 WI App 103, ¶ 10, 344 Wis. 2d 220, 822 N.W.2d 500.

¶ 9. Unpaid restitution is “enforceable in the same manner as a judgment in a civil action” whenever DOC’s supervision over an offender “terminat[es].” Wis. Stat. § 973.20(1r). The statute does not limit the term “terminat[e]” to situations where the offender completes his period of supervision before dying. The ordinary meaning of “terminate” is “to bring to an end.” *Terminate*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/terminate> (last visited Mar. 6, 2020). Applying this ordinary definition, an offender’s death terminates his period of supervision because it brings it to an end. Under the plain language of section 973.20(1r), unpaid restitution thus becomes enforceable as a civil judgment when an offender dies while under supervision.<sup>3</sup>

¶ 10. The same is true when an offender who still owes restitution dies while in prison. Wisconsin Stat. § 973.20(1r) provides that unpaid restitution is enforceable as a civil judgment “if the defendant is not placed on probation, extended supervision, or parole.” When an offender dies in prison, he is “not placed on probation, extended supervision, or parole.” *Id.* This plain language thus supports enforcing unpaid restitution obligations as civil judgments against an offender who dies in prison, just as against one who dies while under supervision.

¶ 11. The statutory language also shows that the circuit court has the authority to enter a civil judgment after the offender’s death. Some pending causes of action “abate[ ]” when a litigant dies, depriving the court of authority to hear the case. *See, e.g., Socha v. Socha*, 183 Wis. 2d 390, 393, 515 N.W.2d 337 (Ct. App. 1994) (party’s death abates a divorce action, divesting the court of jurisdiction to hear the case). But even for causes of action where common law abatement would otherwise apply, the Legislature can supersede it by statute. In *Davis v. Rahkonen*, 112 Wis. 2d 385, 387–88, 332 N.W.2d 855 (Ct. App. 1983), for example, the court of appeals held that a statute providing that circuit courts “shall” grant judgments for attorney services applied even after a party to the action died. Although abatement would otherwise have terminated the action and precluded such judgments, the statutory language indicated that the Legislature intended to allow judgments after a party’s death. *Id.* Here, Wis. Stat. § 973.20(1r) uses the broad term “terminat[e]” to trigger a

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<sup>3</sup> The request for an opinion asks whether “a criminal sentence terminates immediately upon the death of a person in prison or on probation, extended supervision, or parole.” The narrower issue of how to interpret the term “terminat[e]” in Wis. Stat. § 973.20(1r) answers that question as it relates to civil judgments for unpaid restitution upon an offender’s death.

crime victim's right to a civil judgment, indicating that common law abatement does not apply and instead that a court may enter a civil judgment even if the offender dies while in prison or on supervision.

¶ 12. And even in an action that would otherwise abate upon a party's death, the circuit court may carry out acts that are merely clerical after the party's death. For example, if a court has orally announced a judgment before the action abated, the court may reduce the judgment to writing after the party's death. *Pettygrove v. Pettygrove*, 132 Wis. 2d 456, 461, 393 N.W.2d 116 (Ct. App. 1986). Entering a judgment is then a "clerical duty" needed only to "preserve the evidence of the judgment." *Barbian v. Lindner Bros. Trucking Co.*, 106 Wis. 2d 291, 298–99, 316 N.W.2d 371 (1982) (quoting *Comstock v. Boyle*, 134 Wis. 613, 617, 114 N.W. 1110 (1908)). Like the oral judgment in *Pettygrove*, an order for criminal restitution resides in a judgment of conviction that was entered while the offender lived. After the offender dies, the written civil judgment simply provides evidence of the pre-existing restitution judgment so that the crime victim can collect the amount owed. Thus, the sentencing court retains the power to enter a civil judgment after the offender dies, even if it no longer has the authority to make judicial decisions in the criminal case.<sup>4</sup>

¶ 13. The request for an opinion also asks whether DOC has the authority or affirmative legal duty to request that sentencing courts reduce unpaid restitution to a civil judgment after an offender's death. I conclude that, although DOC does not have an affirmative legal duty to do so, it may choose to make such requests.

¶ 14. The most relevant provision, Wis. Stat. § 973.09(3)(b), requires DOC to notify the sentencing court that unpaid restitution exists as probation nears its end, but it does not require DOC to provide such a notification under other circumstances, let alone request that unpaid restitution be reduced to a civil judgment. Government officials have no duty to act absent a "clear, specific legal right that is free from substantial doubt." *State ex rel. Lewandowski v. Callaway*, 118 Wis. 2d 165, 171, 346 N.W.2d 457 (1984). The Wisconsin Legislature could have expressly required DOC to ask sentencing courts to enter judgments for unpaid restitution when an offender dies, and the absence of any express provision indicates that no such duty exists.

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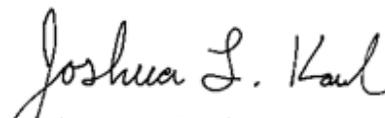
<sup>4</sup> Note, however, that a defendant's death does not deprive the court of appeals of jurisdiction over an ongoing criminal appeal. *See State v. McDonald*, 144 Wis. 2d 531, 536, 424 N.W.2d 411 (1988).

¶ 15. I conclude, however, that DOC may permissibly either notify the sentencing court that unpaid restitution exists upon an offender's death or ask the court to reduce unpaid restitution to a civil judgment. No statute bars DOC from doing so, and because asking a court to act accordingly would not require DOC to exercise its own statutory authority over the offender, such action would not implicate limits on DOC's authority. *Cf. Adams v. State Livestock Facilities Siting Review Bd.*, 2012 WI 85, ¶ 62, 342 Wis. 2d 444, 820 N.W.2d 404 (“[A]n administrative agency has ‘only those powers which are expressly conferred or which are necessarily implied by the statutes under which it operates.’” (citation omitted)).

¶ 16. DOC's ability to request civil restitution judgments furthers the sound public policy, embodied in both the state constitution and statutes, of ensuring that crime victims receive the restitution they are due. Indeed, a contrary result could undermine crime victims' right to restitution. Because relevant offenders were under DOC's authority upon their deaths due to their incarceration or supervision, DOC would be in the best position to notify the sentencing court of any unpaid restitution that should be reduced to a civil judgment. Leaving the task of obtaining civil restitution judgments to crime victims, district attorneys, or circuit courts risks some unpaid restitution going unnoticed, contrary to our state constitution's command that Wisconsin “shall ensure that crime victims have . . . the . . . privilege[ ] and protection[ ] . . . [of] restitution.” Wis. Const. art. I, § 9m. To avoid this troublesome result, it would be advisable for DOC to begin assisting circuit courts, district attorneys, and crime victims with this important task.

¶ 17. I conclude that sentencing courts may enter a civil judgment for unpaid restitution where an offender dies while incarcerated or under DOC supervision. While DOC is not obligated to ask the court to enter such a judgment, it may choose to do so.

Sincerely,



Joshua L. Kaul

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