



REPORT OF THE WISCONSIN CRIME VICTIMS RIGHTS BOARD

July 2023

Introduction

The Crime Victims Rights Board (the “Board”) has authority to issue reports and recommendations concerning the securing and provision of crime victims’ rights and services. Wis. Stat. § 950.09(3). This report is issued in response to two complaints reviewed by the Board, in which the Board found that the Wisconsin Department of Corrections (“DOC”) violated the victims’ right “[t]o full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution.” Wis. Const. art. I, § 9m (2)(m).

Factual Background

The Board reviewed two complaints against the Department of Corrections (DOC) alleging that the department did not provide assistance with collecting restitution from offenders while they were under the supervision of the Division of Community Corrections. Complainants in both cases were victims of crimes for which a sentencing court ordered restitution. The amount of restitution ordered by the court in one case was \$55.00 and in the other was over \$25,000. In both cases, the offenders were later discharged from probation still owing restitution. The complainants alleged that they were denied full restitution and assistance collecting restitution in violation of Wis. Const. art. I, § 9m(2)(m).

In each case, the Board found probable cause to investigate the claims against DOC. Investigations were conducted which included a thorough review of the circumstances in each case including court records, DOC records related to the offenders’ supervision and payment histories, and DOC’s responses to the Board including responses to interrogatories. The Board reviewed the actions taken by DOC related to restitution and information submitted by DOC to the Board about the allegations.

The circumstances of each case were quite different. This report does not seek to provide an exhaustive explanation of the Board’s case-specific findings. However, to provide some context of its analyses, the Board provides the following information:

- DOC noted and didn’t object to an offender’s “cash only” employment within an industry explicitly prohibited by the court. Cash wages prevented a full accounting of actual wages available for restitution or garnishment.
- The monthly payment suggested by DOC during probation in one case was set so low it would never equal the total amount the court ordered to be paid within the period ordered. The record contains no evidence that asset investigation or any substantive analysis by DOC was the basis for determining the low monthly payment amount. DOC did not attempt to inform the court that the amount ordered was not achievable or request that the order be amended.
- DOC supervision notes indicated minimal interaction during the term of probation and/or minimal focus on restitution obligations during interactions.
- When an offender is discharged from DOC supervision, the DOC accounting practice is to zero out the restitution debt in its records and begin collecting supervision fees owed to DOC by the offender. In both cases, DOC noted that at the end of supervision it informed the court of unpaid restitution, as required by Wis. Stat. §973.09(3)(b) which triggered the process for converting unpaid restitution to a civil judgment. The Board did not interpret DOC’s mandatory act of informing the court that restitution remained unpaid, by itself, to constitute “assistance” with collection.
- DOC referred supervision fee debt to the state Tax Rebate Intercept Program to collect supervision fees owed to DOC while an offender on probation still owed restitution. (Attempting to collect the supervision fees does not align with the statutory hierarchy for collecting court-ordered monies, which prioritizes restitution to victims above state agency debt.¹)
- One of the cases under review spanned periods before and after the constitutional right to assistance collecting restitution was enacted. DOC did not make any notable effort to change its restitution collection efforts after the enactment of this constitutional right. In fact, DOC noted during the review that its statutory obligation is to “passively receive payments” if an offender makes a restitution payment.

¹ As of July 2016 (the enactment of 2015 Wis. Act 355), DOC may not collect any supervision reimbursement fees owed to the department by an offender until all restitution payments due from any court order have been paid. See Wis. Stat. § 304.074(3m).

The Board found that DOC violated the complainants' constitutional right to assistance with the collection of restitution, using the following methodology applied to the findings of fact in each case:

1. The complainant is a crime victim as defined in Wis. Stat. § 950.02(4)(a).
2. The circuit court ordered the defendant to pay restitution to the complainant.²
3. DOC had authority to assist in the collection of restitution. *See Koschkee v. Taylor*, 2019 WI 76, ¶ 20, 387 Wis. 2d 552, 929 N.W.2d 600 (an agency's powers, duties, and authority are fixed and circumscribed by the legislature); and
4. DOC did not provide restitution collection assistance. Restitution collection assistance means providing a victim with assistance collecting restitution throughout the criminal or juvenile justice process until the person has paid the full restitution owed to the victim.

Relevant Law

Constitutional Right to Assistance Collecting Restitution:

Wis. Const. art. I, § 9m(2): In order to preserve and protect victims' rights to justice and due process throughout the criminal and juvenile justice process, victims shall be entitled to all of the following rights, which shall vest at the time of victimization and be protected by law in a manner no less vigorous than the protections afforded to the accused: . . .

(m) To full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution.

Statutory Right to Restitution:

Wis. Stat. § 950.04(lv): Victims of crimes have the following rights. . . .

(q) To restitution, as provided under ss. 938.245(2)(a) 5., 938.32(1t), 938.34(5), 938.345, 943.212, 943.23(6), 943.245, 943.51 and 973.20.

(r) To a judgment for unpaid restitution, as provided under ss. 895.035(2m) and 973.09(3)(b).

² The Board did not conclude that the right to restitution collection assistance is limited to a circuit court having ordered restitution. The right may extend to an agreement. *See, e.g.*, Wis. Stat. §§ 938.245(2)(a)5.; 971.41(3)(b) (restitution in a deferred prosecution agreement or program). In the cases under review the circuit court ordered restitution, so the right to restitution collection assistance under an agreement was beyond the scope of the decisions.

An [Appendix](#) to this report (see attached or follow link) provides additional relevant law related to the following:

- Considerations of the Court when Ordering Restitution
- The Court May Provide Clarity by Specifying when Restitution Is Due
- Restitution Is a Condition of Probation
- Doc May Not Collect Supervision Fees when Restitution Is Unpaid
- Actions When Restitution Is Unpaid 90 Days Prior To Probation Expiration
- Engaging the Department of Revenue to Assist with Collection

Discussion

Victims of crime in Wisconsin have a constitutional and statutory right to restitution to pay for expenses incurred as a direct result of the criminal conduct committed against them. Restitution is sometimes negotiated prior to conviction; for example, as part of a deferred prosecution agreement. More often, restitution is determined and ordered by a court after conviction. While the responsibility to pay always rests with the offender subject to the court order, public agencies have administrative duties related to restitution. As of May 4, 2020, victims have a constitutional right to “full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution.”³

The constitutional right to be provided with assistance collecting restitution is included with other constitutional victim rights which vest at the time of victimization, and which are to be protected by law “in a manner no less vigorous than the protections afforded to the accused.”⁴ The right to assistance collecting restitution is not further defined in the constitution nor enumerated in statute. However, logic dictates that the duty rests with whichever public agency or official has authority to help with collection, which may change over time, as described below:

Collection in Non-DOC Cases

Restitution may be collected by county agencies when the offender is not under the authority of the DOC. For example, in non-probation cases, restitution is ordered to be paid to the county clerk’s office, which forwards those payments to victims. When restitution is agreed to as a condition of a deferred prosecution agreement, payment might be made directly to the victim(s) and monitored by the district attorney for compliance with the agreement.

³ See Wis. Const. art. I, § 9m(2)(m), ratified by voters on April 7, 2020, and certified on May 4, 2020.

⁴ See Wis. Const. art. I, § 9m(2).

Collection During DOC Supervision

If an offender is incarcerated, DOC is authorized to pay restitution using inmate account money and money the inmate possessed when admitted to prison. See Wis. Stat. § 301.32(1) and § 302.13. If an offender is on probation, parole or serving a period of extended supervision, payments are collected by probation/parole agents and sent to the DOC cashier who mails them directly to the victim. When restitution payments are delinquent, DOC has the option to certify the debt to the State Department of Revenue (DOR). Certification is not mandatory but it may provide an opportunity for a victim to recover unpaid restitution.⁵ However, under current law, restitution debt cannot be referred to DOR until it is past due which in some cases may be after DOC supervision ends.⁶

90 days before discharge, DOC must notify the sentencing court, any person to whom unpaid restitution is owed and the district attorney of the status of the ordered restitution payments. If payment has not been made, the court must hold a probation review hearing before the end of supervision, except when a probationer voluntarily waives the hearing “with the knowledge that waiver may result in an extension of the probation period or in a revocation of probation.” Wis. Stat. § 973.09(3)(b). A court may extend probation under certain conditions. If the court does not extend probation, it must issue a judgment for the unpaid restitution and direct the clerk of circuit court to file and enter the judgment.

Collection After Discharge from DOC

If restitution remains unpaid after discharge from DOC supervision, the restitution order is enforceable as a civil judgment in favor of the victim owed restitution. OAG–02–20, ¶¶ 6–9 (Mar. 10, 2020). A court may enter a civil judgment even after the termination of a sentence because “the written civil judgment simply provides evidence of the pre-existing restitution judgment so that the crime victim can collect the amount owed.” OAG–02–20, ¶ 12.

Enforcement/Collection of a Civil Judgment

Since July of 2016, DOC and county clerks of court are authorized to certify unpaid restitution to the Department of Revenue to assist victims with collection.⁷ Counties might

⁵ 2015 Wis. Act 355 added court-ordered restitution debt to categories of debt that could be collected by the Department of Revenue (DOR) if a clerk of court or DOC certify the debt to DOR. There are two collection options that can be pursued: 1. Tax Return Intercept Program (“TRIP”) in which DOR intercepts any tax refund issued to the offender and the refund is transferred to the crime victim to whom restitution is owed. 2. Certification to the State Debt Collection Initiative/Program in which the entire restitution debt is turned over to DOR for collection using the same tools used to collect unpaid taxes which can include asset investigation, instituting appropriate payment plans, tax refund intercepts, wage attachment orders and bank levies. Wis. Stat. § 973.20(10)(b).

⁶ If the court has not provided a specific deadline, or specified installments, the restitution might not be considered due until end of the period of supervision. See Wis. Stat. § 973.20(10). In those cases, a DOR referral might not be accepted earlier, even if an offender can pay but refuses.

⁷ See footnote 5.

also engage a collection agency to recover restitution and other costs. DOC and clerks are authorized to collect a restitution surcharge of 5 percent of the total restitution, costs, fees, fines, and surcharges for administrative expenses⁸ and are required by statute to apply payments according to a hierarchy that prioritizes restitution.⁹ When DOC or clerks do not help victims collect restitution, a victim's only recourse is to attempt collection by initiating civil court actions on their own.

Court-Ordered Restitution

State law sets forth the process for determining and ordering restitution. When a court determines the amount of restitution an offender owes a victim, it not only considers the losses of the victim but must also consider the financial resources of the defendant; the present and future earning ability of the defendant; the needs and earning ability of the defendant's dependents; and any other factors which the court deems appropriate.¹⁰

It is the sentencing court's role to determine and set the amount of restitution and the general parameters within which it will be paid during a period of probation. The court may require that restitution be paid right away or within a specified time or in specific installments. The court cannot set the payment period to be later than the end of any term of probation, parole or extended supervision. Legally, the restitution as reflected in the judgment of conviction becomes a court order akin to any other legally binding directive that may emanate from the judiciary. Victims are entitled to rely upon these judgments as they would any other legal declaration.

The Wisconsin Supreme Court has longstanding guidance to the lower courts and litigants on the issue of probation and unpaid restitution. The law has been clear on the importance of restitution for nearly 45 years.¹¹ While many factors may impact the ability of an offender to pay restitution, the court order is dispositive as to the offender's obligations.

It is unacceptable for DOC to implement plans and policies contrary to that order. Agents should not commence supervision of a defendant by writing rules incapable, from their inception, of satisfying the restitution component of a sentence, and which will inevitably

⁸ Wis. Stat. § 973.20(11)(a) reads, in part: "The court shall impose on the defendant a restitution surcharge under ch. [814](#) equal to 5 percent of the total amount of any restitution, costs, attorney fees, court fees, fines, and surcharges ordered under s. [973.05\(1\)](#) and imposed under ch. [814](#), which shall be paid to the department or the clerk of court for administrative expenses under this section."

⁹ See Wis. Stat. § 973.20(12)(b) and (c). Payments shall be applied first to satisfy the ordered restitution in full. An exception exists if a defendant is subject to more than one order and the financial obligations under any order total \$50 or less.

¹⁰ See Wis. Stat. § 973.20(13)(a)

¹¹ See *Huggett v. State*, 83 Wis.2d 790, 266 N.W.2d 403 (1978); *State v. Jackson*, 128 Wis.2d 356, 364-65 n. 5, 382 N.W.2d 429, 433 n. 5 (1986); *State v. Davis*, 127 Wis.2d 486, 499, 381 N.W.2d 333, 339 (1986).

result in a restitution shortfall at the end of supervision. If the agent were to discover at any point in time that a court's restitution order was no longer reasonable due to an offender's change of circumstances, the Board would expect DOC to inform the court that its order has become unenforceable as written and to provide proof of such. It would then be for the court to set a hearing on the matter to consider whether to amend its earlier judgment. [Such a hearing should include an opportunity for the victim to engage the court, as well.] Absent such an action, a victim should be able to expect that the court's order guides collection efforts of the state.

Civil Judgments for Restitution

In both cases reviewed by the Board, much was made of the fact that unpaid restitution would result in a civil judgment against the offender. This was in DOC case notes, it was promised to victims who called DOC asking why restitution was not being collected, and it was included in responses from DOC to the Board.

Civil judgments for restitution are not a substitute for assisting with collection. Technically, unpaid restitution is already enforceable the same as a civil judgment. Further, enforcing a civil judgment—that is, collecting what is ordered—is far from a sure thing and is onerous for crime victims. The conversion to a civil judgment is helpful but DOC may have an exaggerated sense of how helpful it really is. The incentives and sanctions built into DOC supervision rules could motivate restitution payment much more effectively. There was a sense in the Board's review that payment of restitution had less urgency due to the knowledge that at the end of supervision, unpaid restitution would be converted to a civil judgment, as if that would result in the recovery of restitution. To the contrary, trying to collect on a civil judgment will for most crime victims be a hollow exercise that results in more frustration and stress.

The issuance of a civil judgment, by itself, does not sufficiently provide a victim with assistance collecting restitution. To the contrary, it shifts collection from the agency to the victim.

Non-payment of Restitution Harms the Victim, the State and the Offender

Restitution debt is not ordinary debt. Non-payment may put a victim in financial jeopardy unable to recover the losses caused by the crime. Bills and other financial strain directly caused by the crime do not go away when offenders fail to pay. Non-payment also inflicts psychological harm because it is a glaring violation of the court's order which was a very personal order to make amends to the victim, specifically. It is reasonable that victims expect the state to enforce the order and to act in accordance with the order. The notion that the order can be ignored (or must be enforced by the victim him or herself) is a betrayal that intrudes upon whatever sense of justice may have been achieved by the offender's conviction. It is an

assault on a crime victim's dignity that he or she must work so hard to recover expenses that only exist because of the offender's wrongdoing. The state must assist victims with collection to minimize this harm. The 2020 constitutional language makes clear the state's role is not limited to administrative functions that conclude with an order or civil judgment for restitution.

Expenses related to a crime are sometimes paid through the state Crime Victim Compensation Program and ordered to be reimbursed to that program by the offender. Non-payment of restitution impacts the balance of that fund and the ability of the program to serve additional victims.

Lastly, restitution serves a rehabilitative function. As with serving the other terms of a sentence, payment of restitution is a necessary step toward reintegrating into lawful society. Reintegration supports rehabilitation. Nonpayment of restitution hinders both: the offender is not held accountable and employment and credit issues arise, including the imposition of a 10-year lien on property until restitution is paid in full.

Conclusion

DOC should review its practices and policies related to collecting court-ordered restitution. Not only should they ensure they do not circumvent the constitutional right at issue in these cases, but they should also seek to institute policies to proactively assist victims in recovering restitution. This body is aware that DOC Community Corrections' practices vary throughout the state. There are probation agents who make extraordinary efforts to assist victims by making restitution payment a priority during supervision. The Board commends those agents for their work and for understanding that when offenders are discharged owing restitution, it hurts victims and an opportunity is lost. Collection becomes burdensome for victims and the civil judgment that is filed may impede the offender's successful transition back into the community.

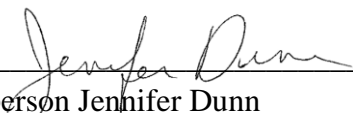
The failings in the cases at hand demonstrate that DOC's practices do not always align with public statements and policies that stress the importance of restitution. Leadership at the highest levels must set expectations and give attention to practices that impact compliance with victim rights. DOC uses coupon booklets, designated check-in intervals, internal oversight, and engagement with DOR to ensure supervision fees are discussed and collected.¹² When an offender's supervision fee balance reaches \$200, there is an automatic referral to

¹² See <https://doc.helpdocsonline.com/financial-obligations> which DOC verified was accurate during the Board's review. See also <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/GeneralInformation.aspx> which gives offenders instruction about supervision fee procedures.

TRIP.¹³ It does not appear the same robust policy guidelines exist in relation to restitution obligations during supervision. After discharge, DOC continues to pursue the balance of unpaid supervision fees through TRIP. If there are not concurrent efforts to recover restitution, it is very possible that the state will recover its debt before the victim does.

The Board encourages stakeholders and policy makers to seriously consider what else the state can do to make the right to restitution and assistance collecting restitution meaningful. Public policy has moved in the direction of doing more for victims by putting restitution collection higher in the collection hierarchy, allowing restitution debt to be certified to DOR, and most recently, by giving victims a constitutional right to assistance with collection. However, as the Board's reviews illustrate, many of those tools are not used or are easily circumvented under current statutes and policies. The state must do more to help crime victims recover the restitution they are owed.

Dated this 12th day of July, 2023.



Chairperson Jennifer Dunn
Crime Victims Rights Board

¹³ See <https://doc.helpdocsonline.com/financial-obligations> (DOC Electronic Case Reference Manual, Collection of Supervision Fees): "DOC utilizes Department of Revenue's Tax Refund Intercept Program (TRIP) for collection of unpaid supervision fee balances for active clients when their supervision fee balance reaches \$200 and all balances for discharged clients. In November, an annual letter is sent to the client notifying them that their supervision fee balance has been referred to DOR TRIP for collection."

APPENDIX: Additional Relevant Law

- [Considerations of the Court when Ordering Restitution](#)
- [The Court May Provide Clarity by Specifying when Restitution Is Due](#)
- [Restitution Is a Condition of Probation](#)
- [DOC May Not Collect Supervision Fees when Restitution Is Unpaid](#)
- [When Restitution Is Unpaid 90 Days Prior to Probation Expiration](#)
- [Engaging the Department of Revenue to Assist with Collection](#)

Considerations of the Court when Ordering Restitution:

Wis. Stat. § 973.20(13)(a): The court, in determining whether to order restitution and the amount thereof, shall consider all of the following:

1. The amount of loss suffered by any victim as a result of a crime considered at sentencing.
2. The financial resources of the defendant.
3. The present and future earning ability of the defendant.
4. The needs and earning ability of the defendant's dependents.
5. Any other factors which the court deems appropriate.

The Court May Provide Clarity by Specifying When Restitution Is Due:

Wis. Stat. § 973.20(10)(a): The court may require that restitution be paid immediately, within a specified period or in specified installments. If the defendant is placed on probation or sentenced to imprisonment, the end of a specified period shall not be later than the end of any period of probation, extended supervision or parole. If the defendant is sentenced to the intensive sanctions program, the end of a specified period shall not be later than the end of the sentence under s. [973.032 \(3\) \(a\)](#).

Restitution Is a Condition of Probation:

Wis. Stat. § 973.20(1r): . . .Restitution ordered under this section is a condition of probation, extended supervision, or parole served by the defendant for a crime for which the defendant was convicted. After the termination of probation, extended supervision, or parole, or if the defendant is not placed on probation, extended supervision, or parole, restitution ordered under this section is enforceable in the same manner as a judgment in a civil action by the victim named in the order to receive restitution or enforced under ch. [785](#).

DOC May Not Collect Supervision Fees When Restitution Is Unpaid:

Wis. Stat. § 304.074(3m): The department may not collect a fee charged under this section until all restitution payments due pursuant to any order under s. 973.20 from the probationer, parolee, or person on extended supervision have been paid.

When Restitution Is Unpaid 90 Days Prior to Probation Expiration:

Wis. Stat. § 973.09(3)(b): The department [of Corrections] shall notify the sentencing court, any person to whom unpaid restitution is owed and the district attorney of the status of the ordered restitution payments unpaid at least 90 days before the probation expiration date. If payment as ordered has not been made, the court shall hold a probation review hearing prior to the expiration date, unless the hearing is voluntarily waived by the probationer with the knowledge that waiver may result in an extension of the probation period or in a revocation of probation. If the court does not extend probation, it shall issue a judgment for the unpaid restitution and direct the clerk of circuit court to file and enter the judgment in the judgment and lien docket, without fee, unless it finds that the victim has already recovered a judgment against the probationer for the damages covered by the restitution order.

Engaging the Department of Revenue to Assist with Collection:

Wis. Stat. § 973.20(10)(b): The department [of Corrections] or the clerk of court may certify an amount owed under par. [\(a\)](#) to the department of revenue if any of the following apply:

1. The court required that restitution be paid immediately and more than 30 days have passed since the order was entered.
2. The court required that restitution be paid within a specified period and more than 30 days have passed since the expiration of that period.
3. The court required that restitution be paid in specified installments and the defendant is delinquent in making any of those payments.