

*JFA Associates*

*Conducting Justice and Corrections Research for Effective Policy Making*

# **Report to the Arkansas DCC pursuant to Act 570**

## **A Study of the Arkansas Victim Restitution System and the Relationship to Other Financial Obligations**

**Prepared by JFA Associates**

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The Governor’s Working Group on Sentencing and Corrections paved the way for this study by challenging each other and the technical assistance providers to understand the victim restitution process and the impacts of the potential reforms that might result from the Working Group’s efforts on victims of crime. The members of the Working Group insisted on additional steps and their efforts result in the process culminating in this report.

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## Introduction

In June 2011, Governor Mike Beebe signed Act 570, The Public Safety Improvement Act, which made sweeping changes in the Arkansas criminal justice system. Act 570 had no specific language or tasks assigned to change the current practice of victim restitution collection or reporting. Rather, the Governor's Working Group on Sentencing and Corrections closely examined the issue of victim restitution and concluded that more needed to be done just to understand how the current process of collecting restitution was working. It recommended and Act 570 included a provision requiring the Department of Community Correction (DCC) to "...conduct or commission a thorough examination of the financial obligations incurred by offenders in the Arkansas criminal justice system and the manner in which these obligations are imposed and collected."<sup>1</sup>

### The Study Process

The DCC commissioned JFA Institute to conduct an external study of the victim restitution process as well as an examination of other court-ordered financial obligations and their impact on restitution payments. JFA began its examination of the financial obligations process in late summer of 2011 and found limited organized, automated information to describe the current state of the restitution process. In order to get an understanding of how much restitution is ordered, how much is collected, how it is collected and what barriers exist to collecting it, a survey was conducted by JFA asking specific questions to understand the process. It was difficult to determine who collected victim restitution in each county and therefore the survey was sent, electronically and through U.S. Post, to all of the county clerks in the state with direction to forward the survey to the entity responsible for collecting restitution. Each survey request was backed by the Director of the DCC explaining the importance of the information being sought and requesting assistance in ensuring the completion and return of the survey.

Because of the important role probation and parole officers play in the collection of victim restitution, a survey of all officers in the field was also conducted. DCC assisted in this effort by distributing the survey electronically and prioritizing its completion with the DCC staff. This survey sought to understand how probation and parole officers handle victim restitution in the course of supervising their clients, whether they are aware of the financial obligations imposed and how responsive their clients are to collection efforts.

An additional survey was conducted of all elected prosecuting attorneys in Arkansas. In Arkansas, prosecuting attorneys are on the front lines of the victim restitution process. Within each prosecuting attorney's office there is a victim-witness coordinator. This employee's main job is to ensure the victim's losses are documented and that the restitution owed is advanced through the justice process and becomes part of the disposition of the case. The Prosecutor

Coordinator assisted in the distribution and completion of the survey to each prosecuting attorney's office in the state.

During and following the surveys, the legal parameters of victim restitution in Arkansas and in other states were examined. The examination was broadened to include the statutory requirements for child support and a review of some of the laws that require fines. As is the case in many states, Arkansas' criminal offense penalties include a fine in lieu of or in addition to a term of imprisonment or probation. Previous studies of victim restitution and the issues involved in the collection of financial obligations from offenders were examined as were the laws and practices of several states regarding financial obligation collection processes.

In order to get an understanding of the practical implications of ordering and collecting victim restitution as well as other financial obligations, several interviews were conducted with those who collect restitution locally, people who work with victims as well as offenders, people who make policy decisions about the collection of financial obligations, those who benefit from certain non-restitution, financial obligations such as fines and fees. This feedback, in turn, led to a second round of interviews with DCC officials as well as officers in the field. Interviews were also conducted with officials from the Office of Child Support Enforcement, the Administrative Office of the Courts, the Prosecutors' Coordinator's Office and the Public Defenders' Office.

An examination of how other states conduct the collection of victim restitution included examining systems in Alabama, Iowa, Florida, South Carolina, Vermont, Texas, California, Oregon, Arizona, Colorado, New York, and Wisconsin. Best practices and research at the national level were reviewed to understand the principles of effective collection systems as well as the key entities necessary to ensure that victims receive what they are owed.

## **Background**

Arkansas, like most states, has committed to more effective management of offenders returning to the community. Recent policy changes, most prominently in Act 570, have implemented research-supported practices intended to better prepare offenders for lawful life back in the community. Research has shown that in order to reduce recidivism, the corrections system must focus resources on changing offender behavior and providing services in the community that assist them in achieving stability. Thus, the importance of these resources and this level of support is a public safety imperative.

However, many offenders have left behind victims of their criminal activity and these victims have tangible monetary losses. Often victims of crime, whether violent or non-violent, suffer losses that range from material possessions and physical injury to long-term psychological trauma. In each case, there is a monetary cost such as replacing stolen or destroyed property,

receiving medical treatment for injury, lost wages due to missed work days or paying for counseling to deal with the mental pain associated with victimization.

These monetary losses can be significant. According to the Office of Victims of Crime, the federal agency charged with assisting and supporting victims of crime:

- In 2002, there were more than 23 million crimes in the United States which had at least one victim.<sup>2</sup> These crimes included violent crime as well as non-violent crimes such as burglary and theft.
- Crimes against individuals create approximately \$105 billion annually in medical expenses, lost earnings and services for victims.<sup>3</sup>
- Over a 3-year period, approximately \$18 billion was spent on medical and mental health care for victims of crime.<sup>4</sup>
- Crimes of violence created more than \$57 billion in non-service expenses for which victims ended up paying \$44 billion. Employers paid nearly \$5 billion for these crimes due to health insurance bills, missed work days and disability insurance.<sup>5</sup>

Victim restitution is intended to reimburse financial losses or out-of-pocket expenses incurred by victims of crime. Victim restitution is often seen as “a debt owed to the victim” and less so as an alternative to more punitive sanctions.<sup>6</sup> However, it has been argued that restitution offers a therapeutic component to offenders and an opportunity to empathize with their victims, serving the interests of both the victim and the offender. In this manner it can be considered a part of the offender’s acceptance of responsibility and therefore a component of the disposition of the case with an impact on the penalty imposed by the court.<sup>7</sup> In addition, the interests of the state are served by this process, as it is used to lessen the financial burdens of victim compensation programs as well as prison overcrowding.

The historical underpinnings of victim restitution actually date back thousands of years but found prominence with the victim rights movement over the last few decades. Soon after the federal enactment of the Victim and Witness Protection Act in the early 1980’s every state in the nation had some form of victim restitution included in their statutes. A federal model for victim restitution was developed and many states adopted the model with some variations. Some states include all crimes in their mandatory restitution statutes, while others include only property or violent crimes. One-third of all states require mandatory restitution be ordered by the court unless compelling circumstances exist.<sup>8</sup> If restitution is not ordered or only partially ordered, 25 percent of states require documentation explaining decision. In addition, persons eligible for restitution vary from state to state; eligible parties sometimes include family members of victims, third party entities and private agencies.<sup>9</sup>

Despite its legislative popularity, however, the victim restitution process has been plagued with problems and “remains one of the most under-enforced victims’ rights in the criminal justice system”<sup>10</sup>. Some barriers include an overgeneralization of offenders as impoverished and unable to pay, the reality that some offenders may be unable or unwilling to pay. This creates an overall skepticism of restitution programs, and differing attitudes regarding the feasibility and punitive benefits of restitution. Other obstacles include a general lack of prioritization and

communication among courts and corrections agencies and conflicting priorities, practices and policies between agencies designated to carry out the restitution collection process.

Efforts to improve collection of victim restitution across the country and provide some measure of support for victims with monetary losses have had limited success. The reality is that victim restitution competes with several other financial obligations that are placed on offenders. While crime creates costs to victims, counties and states, crime also enables political opportunities to shift the costs of the criminal justice system to offenders. Despite the political benefits of placing the costs on the perpetrators, offenders are often in the worst position to assume such financial responsibility. While their criminal conduct may warrant such a burden, the fact is offenders have very few means when they leave the criminal justice system to pay these obligations and their prospects of immediate and lawful employment to satisfy their debt is equally limited. Analyses of various state findings tell the stark story<sup>11</sup>:

- An examination of court-ordered obligations in 11 states found that an average of \$178 million per state in court costs, fines, fees and restitution remained uncollected.
- Court administrators in one state studied reported that only 23% of fines were successfully collected.

People released from prisons and jails have very limited resources and low prospects for becoming financially independent in the near future due to their past behavior, their personal circumstances and current legal and social barriers.

- Nearly 2/3<sup>rds</sup> of people detained in jails report an average annual income of less than \$12,000.
- Education testing<sup>12</sup> in the Massachusetts prison system found that:
  - 36% of inmates tested below the 6<sup>th</sup> grade level
  - 59% tested below the 9<sup>th</sup> grade level
- 81% of Massachusetts prison inmates had a history of substance abuse<sup>13</sup>
- Rates of mental illness in the incarcerated population are between two and four times greater than in the general population<sup>14</sup>
- Employers rarely consider hiring an ex-offender<sup>15</sup>:
  - 93% will not hire someone with a felony property crime
  - 77% will not hire someone with a felony drug crime

Generally, people released from prison and jails have a substantial amount of debt, at least in relation to their ability to meet these financial obligations.

- In Ohio, 58% of those released owe supervision fees, 17% owe court costs or fines and 32% have child support obligations
- In Texas, 39% of those released owed supervision fees, 6% owe court costs or fines and 16% have child support obligations.
- A study of people released in Colorado found that released offenders owed an average of \$16,000 in child support.
- In Arkansas, a survey of probation and parole officers<sup>16</sup> found that

- every offender on their case load owes supervision fees,
- more than 75 percent owe a fine amount due to the criminal offense,
- between 25 percent and 50 percent of offenders on their caseloads owe child support and
- between 25 percent and 50 percent owe victim restitution

More than 1.5 million children have at least one parent in prison or jail. This phenomenon results in a high rate of child support obligations for people leaving incarceration. Many state systems including Arkansas, delay payment of child support while a person is incarcerated but expect the person to begin meeting child support responsibilities upon release.

- In Arkansas, as much as 25 percent of the 120,000 cases opened in the Office of Child Support Enforcement involve non-custodial parents involved in the criminal justice system.<sup>17</sup>

Overall, research found that enforcing victim restitution statutes is a complex process. Putting legislation into practice is always difficult but for victim restitution policies, conflicting priorities and an indebted population with limited means makes collecting victim restitution very difficult to carry out. Other obstacles include<sup>18</sup>:

- Restitution orders that are not carried out by paroling agencies either at the time of the parole decision or during parole supervision,
- Poor coordination between agencies involved in the restitution process,
- Lack of an automated system to track and monitor restitution orders and collections.

The victim's perception of the criminal justice system is often formed by his or her experience with the victim restitution process. An American Bar Association study<sup>19</sup> found that when victims were dissatisfied with the criminal justice system it was primarily because of their limited input as to the amount of victim restitution and the information they received throughout the process. An earlier study<sup>20</sup>, found that 61 percent of victims surveyed viewed restitution as the fairest form of punishment. However, 51 percent of victim respondents were dissatisfied with the restitution process, primarily because of the amount either ordered or collected.

Despite these complexities, states have not been deterred from implementing new and innovative ideas in efforts to improve the system. Successful programs begin with choosing the appropriate program model, followed by gaining commitment from the courts and key agencies. It is important that these agencies and courts be willing to communicate openly and that all responsible parties and their roles are clearly defined.<sup>21</sup>

Another important aspect of successful restitution programs is the consideration of feasibility of repayment by offenders, with unreasonable amounts as one of the largest obstacles to



successful compliance.<sup>22</sup> Tailoring restitution amounts and payment plans that do not overwhelm the offender have been shown to alleviate low compliance rates. The research indicates that programs with a decentralized approach to managing the restitution process were less successful in their efforts. Thus, if a more systemic restitution process were adopted, with uniform standards and policies, restitution orders would be viewed as equal in importance and not merely an add-on for a more punitive sanction.<sup>23</sup>

Other research findings from the Office of Victim of Crime research include:

- Offenders with less punitive sanctions (i.e. unsupervised probation) were more likely than those with more punitive sanctions (i.e. active sentence) to fulfill the entire restitution order.
- Programs that take an offender's ability to pay into account when setting up payment plans achieved a compliance rate 16% higher, with 71% compliance, than plans that did not take offender repayment ability into account.
- Programs that put a great deal of effort into enforcement were more successful, as were programs that began monitoring as soon as the restitution order was given.

Typically, an offenders' probation officer is responsible for designing the payment plan and for sending out payments according to a pre-determined schedule. If the offender is in prison, the monies may be taken from prison earnings which then require the involvement of inmates' case workers as well. Probation officers, as well as victims, are allowed to request hearings if restitution is not paid as planned and offenders can often face revocation for the remainder of their sentence.<sup>24</sup> Alternative outcomes to non-payment may include extending probation until payment is made, suspending offenders' drivers' licenses, canceling restitution amount for remainder of probation, or ordering civil proceedings for collection.

Appendix A of this report is provides a summary of victim restitution monitoring and collections systems for six jurisdictions around the country. The reader is urged to utilize this section to compare Arkansas' success, issues and challenges surrounding victim restitution with other locations.

## Analysis of Arkansas system - Findings

Victim restitution is usually perceived as being one of the most important components of the criminal justice process. Much is made about the importance of making the victim whole, at least with regard to material losses. However, the other financial obligations that encumber and offender are vital to other aspects of the criminal justice system and often conflict with the primacy of victim restitution.

As with many states, Arkansas has significantly increased the financial obligations of people convicted of crimes over the past several years. Currently, offenders' financial obligations can include victim restitution, court costs, fines connected to various offenses including drug violations, sex offenses, property crimes and motor vehicle violations. These financial obligations are a source of funding for state and local government. These funds support both activities and personnel and the government has come to rely on these funds to maintain necessary services. However, Arkansas' system of funding vital services, collecting victim restitution and child support and preparing offenders to live within the conditions of release and the laws of the state is in a state of agitation. There is little coordination or communication among the various agencies, limited data exchange and conflicting priorities.

The collection of victim restitution has been decentralized such that it is collected locally except for five counties where the DCC continues to collect and distribute restitution. Restitution is ordered by individual courts in response to a finding that the victim is owed restitution and the defendant is wholly responsible or partially responsible. The findings from the surveys and interviews, discussed below, indicate that victim restitution is a priority, usually either first or second, and the distribution of collected victim restitution is the first priority of most collectors, whether state or local. Yet, there are few standards for collecting and distributing victim restitution and no systemic data collection protocol for tracking or reporting court orders or collection rates.

Fines, fees and court costs support myriad agencies throughout the state. The Administration of Justice Fund (Fund), created in 1995 in an effort to centralize filing fees and court costs<sup>25</sup>, collects and distributes many of the financial obligations assigned to offenders. The financial obligations that the Fund is responsible for collecting has grown substantially since its creation. It now manages two programs, the Uniform Filing Fees and Court Cost Program and the Miscellaneous Fee/Fine Collection Program, and they consist of 22 different fund collections and deposits. Included in the Miscellaneous Fee/Fine Collections Program are 23 different fines which are distributed to 11 separate agencies. Funds from the Uniform Filing Fees and Court Costs Program support the following agencies and programs:

University of Arkansas Legal Education and  
UA-Fayetteville and UA-Little Rock

Public Health Fund

Highway Safety Special Fund

State Police Retirement Fund

AR State Police Fund

Crime Victims Reparation fund

Prosecutor Coordinator

AR Code Revision Fund

Crime Information System

Justice Building Construction

Municipal Judge/Clerk Education Fund

Judicial Retirement

AR Public Defender Commission

Court Reporter Fund

Justice Building Fund

County Alcohol and Drug Program

State Administration of Justice Fund

Public Defender Ombudsman

AOC Dependency-Neglect Representatives

AOC Education Specialist

State Crime Lab

Arkansas District Judges Council

Public Legal Aide Fund

AOC County Reimbursement for Jurors

AOC Drug Coordinator

District Judges Pilot Program

AOC Security

Due, at least in part, to the growth of these expenditures the Fund was found to be depleted during the past two years. While a surplus in excess of \$21 million existed at the beginning of the last decade, the increased pressure on the Fund to support various accounts, some having nothing to do with the administration of justice, resulted in a deficit of several million dollars last year.<sup>26</sup>

Changes to the collection of child support have lead to significant improvements in the amount of support collected and distributed. The changes in the system included data collection and information sharing that put information into the hands of those charged with collecting restitution. The system also set uniform, graduated enforcement mechanisms to encourage payments. Recently, the Office of Child Support Enforcement established a relationship with the DCC and the Department of Corrections to identify offenders that owe child support and develop a communication plan so that probation and parole officers know which clients owe child support and how they can support prompt payments.

## Arkansas law

### Victim restitution

The laws related to court-ordered financial obligations provide a window into the complexity and practical implications of offender-based financial responsibility. Arkansas law lays out fairly modest requirements for imposing and collecting victim restitution. On the other hand, Arkansas law makes clear that child support is a priority. The law sets very directed requirements for collecting, tracking and enforcement child support orders. In addition to these financial obligations, the Arkansas criminal code authorizes fines as a penalty for violating many offenses and in most criminal cases the court is authorized to impose fees associated with various system related costs.

Victim restitution is mentioned in several sections of the Arkansas code but the authority for imposing and collecting restitution and the terms in which it is imposed is found in §5-4-205<sup>27</sup>. The law includes the following:

- Someone who is found guilty of an offense may be ordered to pay restitution;
- The court may order restitution but if it does not or orders only partial restitution, it shall state the reasons for not doing so;
- The sentencing authority has sole responsibility for determining actual economic loss to a victim(s);
- Restitution may include:
  - Cost of necessary medical or related professional services or devices;
  - Cost of necessary physical or occupational therapy;
  - Lost income up to \$50,000
  - Cost of necessary funeral and related services
- Defines a victim as:
  - Any person, partnership, corporation or governmental entity or agency that suffers property damage or loss, monetary expense or physical injury or death
  - A victim's next of kin if the victim died as a result of the offense
  - A victim's estate if the victim is deceased
- Allows for restitution to be paid immediately, within a specific period of time or in installments;
- Allows the court, in determining the method of payment, to take the defendant's financial resources into account as well as the burden the payment of restitution might have on other obligations the defendant has and the rehabilitative effect of payment of restitution;

- Requires that a victim restitution order be a condition of probation, parole or any other conditional release;
- Allows probation to be revoked for non-payment of restitution if defendant has not made a good faith effort to make payment;
- Prioritizes restitution payment when multiple beneficiaries are involved; and
- Establishes the DCC as the agency responsible for supervising and disbursing victim restitution funds only if a judgment has been ordered.
- Requires a judgment to be issued in order for DCC to enforce, collect and distribute restitution funds.

Several statutes also invoke restitution as an element of the penalty for violating an offense that created some kind of financial loss on a victim as defined in §5-4-205. For instance, §5-54-210 allows restitution to be ordered to reimburse the state to cover clean-up costs associated with the crime. In §5-36-305, the court is authorized to order that restitution be paid by a person convicted of Theft of Wireless Services and there are several laws that allow the court to order restitution related to crimes such as fraud. An offender cannot have his record expunged pursuant to §16-90-901 until all court-ordered victim restitution has been paid. In §16-90-307, any circuit judge is authorized to establish a victim restitution fund to use to compensate victims of crime. The fund is administered by the judge or he or she may designate the administrative duties to the prosecuting attorney or the probation agency. The state has also established a fund known as the Crime Victims Reparations Fund which is discussed below.

### Victim rights

Arkansas has made significant statutory progress in responding to the needs of victims throughout the criminal justice system. In 1998, the Arkansas Crime Victims' Rights law became effective and is codified in §16-90-1101. As in all states with victims' rights laws, Arkansas law defines who is a victim; protects victim information; limits what an employer may do if an employee is a victim of a crime and needs supportive services or needs to be involved in the justice process; and authorizes the victim's involvement in the court process as well as the parole process.<sup>28</sup> Victims of crime have support from the prosecutors' offices throughout the state and through victim assistance coordinators, who are located in prosecutors' offices, during the criminal justice process and after imposition of the sentence.

Victim impact statements are required, at the victim's discretion, in all cases where there is a victim. The court must allow victims of crime to prepare and present a statement as to the impact of the crime. The court must consider the victim's statement and these statements are also presented at parole hearings that may occur during the offender's sentence. The impact statement may include any financial costs and the prosecutor and judge will often rely on the statement in determining the amount of restitution owed.

Arkansas also has an automated notification system that keeps victims updated on vital information. The Victim Information and Notification Everyday or VINE system was part of the Crime Victims Rights law and is administered by the Arkansas Crime Information Center. It provides telephone communication to victims who register to be notified when the person involved in the crime has a court date or is released.

### Crime Victims Reparations Act

In 1987, Arkansas established the Arkansas Crime Victims Reparations Board in §16-90-705 to administer the Crime Victims Reparations Fund. This program provides a way to compensate victims and their dependents who have suffered personal injury or death as a result of a violent crime. The state, pursuant to §16-90-950, has set up a revolving fund to support the reparations fund where funds can be deposited from various sources.

This program has been and continues to be misunderstood as an element of the victim restitution process. Eligibility for compensation from the reparations fund is limited to victims of violent crime, the dependent of a homicide victim or a person authorized to be acting on behalf of either the victim or a dependent of a homicide victim. The compensation can assist in:

- Medical and dental costs,
- Repair and or replacement of medical devices such as eyeglasses or dentures,
- Mental health expenses,
- Work loss,
- Funeral expenses,
- Loss of support for dependents of homicide victims, and
- Crime scene clean-up costs

The fund cannot be used to cover property losses, pain and suffering or attorney's fees. The decision to award compensation is made by the Reparations Board which is supported by staff from the Attorney General's office. In its 2008 Annual Report, the Attorney General reported awarding \$3,307,027 in reparations for claims submitted by 1783 crime victims.<sup>29</sup>

An additional provision of the reparations law, §16-90-719, allows victims to seek non-monetary assistance for stolen or damaged property with a cost in excess of \$500. A victim can file a claim with the Reparations Board and the Board can authorize an offender serving community service to provide labor repairing or cleaning up property.

### Child support

The payment of child support orders is codified in §25-8-107 which establishes the Office of Child Support Enforcement (OCSE) within the Department of Finance and Administration. The collection of child support in Arkansas is a combined federal and state effort. Arkansas has adopted federal guidelines to assist in collecting child support and through §25-8-107 has established contracting provisions in each judicial district's prosecuting attorneys' office that helps fund, through fees, the child support enforcement account. The Child Support Enforcement Fund, established in §19-5-105, supports the operation of the OCSE unit and receives funds through various federal, state and local avenues.

Arkansas law also establishes the provisions for enforcing child support orders in §9-14-206. This law designates OCSE as a law enforcement agency enabling a child support officer to serve civil and criminal process, to return lawful warrants including warrants of arrest, and to enforce child support orders in the state. In §19-14-209, OCSE is required to provide information to consumer reporting agencies. Upon written request, OCSE must provide the name of a noncustodial parent owing overdue child support and the amount of overdue support owed.

## **Survey Results**

### **Victim Restitution Collector Survey<sup>30</sup>**

In order to get an understanding of how collectors of victim restitution perceive the restitution process and their thoughts on gaps and improvement, a survey was conducted and sent to all 75 counties. At the time the survey was conducted, there was no information indicating which agency collected restitution in each county. As a result, the survey was sent to each county clerk based on information available through the Association of Arkansas Counties. A letter from DCC Director David Eberhard accompanied each survey and explained the importance of the information to be gleaned from the survey. The letter asked that the clerk forward the survey to the person or agency responsible for collecting victim restitution. The survey and letter was sent via U.S. Mail to each county clerk as well as electronically via web passed program.

The responses were disappointing. Less than 35% (25 counties responded) of the counties provided responses to the survey and only six of the 25 counties were able to complete the survey. The initial survey distribution resulted in less than 10 responses. The survey was resent through both through U.S. Mail and electronically. This last distribution resulted in a total of 25 responses.

Given the relatively poor response rate and the lack of data about basic details such as amounts of victim restitution ordered and collected, little can be drawn from this survey. One finding is apparent and that is that victim restitution does not appear to be anyone's priority.

The overall findings are summarized below.

### **Responsibility and personnel**

These questions sought information about who collects victim restitution and other financial obligations, how much staff time is dedicated toward this effort, how they are collected, tracked and stored.

Collections are conducted by:

- Sheriff
- Circuit clerk
- Prosecutor
- DCC in five counties

Most positions where collections are done have allocated ½ FTE or more. Unknown is how much time is spent by those charged with conducting collections on collection responsibilities.

Most restitution orders and payments are electronically stored and available through the agency that collects them. A few counties store orders electronically but do not store payments and a few counties have only paper files or do not track orders or payments because they do not have an electronic system. Very few respondents indicated that collection orders beyond the most recent year were available.

Most respondents stated that victim restitution is considered a condition of supervision.

Tracking orders and payments to determine enforcement action is haphazard. There is no systematic plan for tracking payments. Some counties rely on the agency that collects restitution, some rely on the prosecutors (if the prosecutor is not the collector), some rely on the victim to notify them that payment is not being made but most of the respondents appear to rely on DCC and probation officers to communicate with the collection agency about whether an offender is paying or at least contact the collector to determine whether the offender is current on collections.

When DCC is the tracking agency most respondents do not believe DCC is effective at tracking payments. Many say they have very limited communication with DCC or the probation officer and claim the offender is often discharged from probation successfully without restitution being paid. However where DCC is the tracking agency, this information is tracked via the DCC eOMIS system and this information is made readily available. DCC officers provide notice at least 30 days prior to a probation discharge, if there is an outstanding victim restitution to be paid. It should also be noted that only the courts have the authority to revoke an offender's probation as a result of not making a good faith effort to pay restitution, not DCC.

## **Collections**

These questions sought to understand how much in victim restitution and other financial obligations has been ordered and collected in each of the past three years and how counties prioritize the collection of various financial obligations.

Very few agencies provided any information on amounts of restitution ordered or collected. The few that did provide limited information most only provided one year or indicated just the



amount ordered and no indication of what was collected. The few respondents that provided one year of data for both figures showed a wide disparity between the amount ordered and the amount collected. Additional discussion of the victim restitution orders and collections data is discussed later in the report.

In DCC counties, the data on orders and collections indicates a collection rate slightly above 50 percent.

Most respondents did not have formal policies regarding prioritizing financial obligations. This question asked where victim restitution ranked, for collection purposes, among other financial obligations. Of those that did have formal policies, the collection of victim restitution was usually among the top two most important obligations to collect. Most counties had informal policies. In most cases, formal and informal, victim restitution is a high priority, often either 1<sup>st</sup> or 2<sup>nd</sup> among financial obligations incurred by offenders.

### **Effectiveness and improvement**

These questions sought to understand whether, in the collector's view, the victim restitution process worked effectively and if so what worked. The collector was asked to provide recommendations to improve the collection process.

Most counties believe the process they employ works effectively. The respondents that do not find their process effective believe that its ineffectiveness is due primarily to a lack of accountability from offenders or lax supervision.

Some respondents indicated that limited communication with DCC and probation staff leads to offenders discharging probation without having paid restitution. Others felt that the lack of sufficient staff time to conduct collections and the lack of tracking capacity also contributed to ineffective collection practices. To improve collections most recommendations urged taking all steps necessary to encourage payment including revoking a person's probation as the response to no-payment. However, it should be noted that under state statute DCC has no authority to revoke probations, only to recommend a revocation to the court. Respondents indicated that offenders did not take the threat of revocation seriously because few revocations occurred as a result of non-payment. The lack of legitimate consequences led most respondents to conclude that payment of victim restitution was not a priority and it limited their effectiveness to collect restitution. As stated previously, under state statute revocations can only result if there is a lack of good faith effort to pay the restitution amount.

This section of the survey asked for reactions to creating a statewide database to track victim restitution orders and collections. Most respondents believed this would be a good idea. This is especially attractive to the counties that do not use an electronic data base or have the capacity to manage and track victim restitution orders and collections in a systemic way.

Recommendations also included staffing support and better communication requirements with probation and parole officers. The counties that did not have a position slotted for collecting restitution recommended resources to improve staffing.

The survey also asked whether respondents would be interested in an annual report published by the state that provided information on victim restitution orders and collections. There is some interest in an annual report although it was not widespread.

## **Conclusions**

The survey of victim restitution collectors was disappointing because of the lack of participation and the paucity of data available. However, it did reveal some concerns that bear further attention. Of obvious concern is the fact that so few surveys were returned and of those that were, very few had data indicating the amount of orders and payments. Additionally, the fact that some counties have no systematic way of tracking this vital component of the criminal justice system is a significant problem for both victims and for the credibility of the system.

The survey provided an opportunity for respondents to add comments and these comments, while minimal, suggested that the lack of uniform guidelines for gathering information, the insufficient financial support for a position to track orders and collections and the lack of an electronic tracking system pose significant problems for counties to understand the amount of victim restitution ordered and collected. A number of comments indicated that communication between key agencies in the process was insufficient to ensure effective collection of victim restitution.

## **Probation and Parole Officer Survey<sup>31</sup>**

A survey was conducted of the officers that supervise parolees and probationers in the community to understand their role in the tracking and collection of victim restitution and other financial obligations. The 17-question survey resulted in 135 completed responses. The survey sought information in two areas; the officers' perspective on the offenders' financial obligations and ability to pay and officers' understanding of their role in collecting victim restitution. A detailed summary of the survey results is found in Appendix B.

Overall, officers in the field believed they had a role in ensuring that offenders paid restitution (102-10) and that restitution payment was a condition of supervision (91-21). But an overwhelming number of officers claimed they were not trained to conduct collections (100-13) and very few officers used an official manual or guide to increase collection rates (83-29). In contrasting these responses to DCC policy it is clear there is some confusion as to what a restitution collection entails. All DCC officers are trained in general collection process and it is assumed restitution is an extension of that.

A little more than half of the officers had recommend violating an offender for non-payment of restitution (59-51) and of those who violated offenders most were unsure whether the court had returned the person to incarceration due to the violation. Of those who tracked the violation outcome, most violations did not result in the offender's return to incarceration.

Most officers stated that they notified the agency or person responsible for collecting restitution when the offender was close to discharging the supervision period.

The survey asked officers about the percentage of their caseloads that have some kind of financial obligation. Regarding the types of financial obligations offenders have during supervision:

- Between 25% and 50% of the offenders owed victim restitution;
- Between 25% and 50% of offenders owed child support
- 75% or more owed a fee other than a supervision fee
- 50% or more owed a fine related to the criminal penalty
- More than half of the offenders owed at least two financial obligations
- At least 25% of offenders under supervision discharged the sentence still owing victim restitution, and
- Less than 50% of offenders had the ability to pay the financial obligations they owed during the period of supervision.

Worth mentioning is that a measurable number of officers did not know which financial obligations were owed or how much was owed by the people on their caseloads. While the numbers are not high, the fact that more than 10 percent were unaware of whom on their caseloads owed child support, victim restitution or a fee presents a problem with enforcing compliance with this condition. Additionally, more than 20 percent of officers did not believe that victim restitution was part of the supervision conditions. Arkansas law makes clear in §5-4-205(f)(1) that victim restitution is a condition of probation and probation may be revoked for willful non-payment of restitution.

### **Prosecuting Attorney Survey<sup>32</sup>**

A survey was sent to prosecuting attorneys throughout the state<sup>33</sup> to get their impressions of the victim restitution process and how the court handles restitution orders. Two surveys were developed, one for prosecuting attorneys who are responsible for the collection of restitution in their judicial circuits and one for those who do not have that responsibility. Survey responses were received from several jurisdictions.

For the prosecuting attorneys who are not responsible for collecting restitution, their collective impressions were largely positive. In response to a question about whether the court, if it does not order restitution or the full amount requested, details the reasons for this decision on the record, all respondents indicated the court either ordered full restitution in all cases or complied with the statutory requirement of stating the basis for denying full restitution on the record. The respondents also indicated that they generally believed the restitution collection

process worked as well as can be expected. However, the responses indicated little interaction with the victim restitution process after the defendant's case is adjudicated and that the prosecuting attorney's office is only aware of restitution non-compliance when someone such as the clerk or the sheriff contacts them.

The surveys for the prosecuting attorneys with responsibility for collecting victim restitution were decidedly different. Their general impression was that the collection process was not effective in getting restitution to victims and that the process was disjointed with little communication between key parties. The responses focused on the lack of enforcement and the limited use of incarceration when offenders do not pay victim restitution in a timely manner. They also expressed concern that probation officers do not communicate effectively with the prosecutor's office to determine when a probationer has not satisfied victim restitution orders and that a probationer is frequently discharged while owing restitution. It should be noted that DCC does notify the releasing authority, the courts, there is an outstanding restitution amount prior to an offender's discharge.

### **Stakeholder Interviews**

Interviews were conducted with several people involved in the victim restitution process or some aspect of the criminal justice system that impacts the criminal justice system. These discussions were intended to dig deeper into the system, beyond survey responses, to gain a more substantive understanding of the mechanics of the system, how the collection of victim restitution is conducted. Most of the discussions confirmed what had been learned through the surveys; that victim restitution is generally perceived as important but does not have a champion; an agency whose primary responsibility is the collection and distribution of victim restitution, and is therefore not a systemic priority.

### **Collectors**

For those whose primary responsibility is collecting and distributing victim restitution, the current system is largely failing victims. The following is a summary of one particular interview:

Collections are the responsibility of the prosecuting attorney's office and two staff members manage the collection of fees, child support and victim restitution. The process for collection is supposed to work as follows:

During the court process the victim-witness coordinator meets with the victim and begins to determine whether restitution is relevant in the case. Questions like – did the victim receive injuries caused by the offender which cost her money or time from work? Did the victim lose property as a result of the offender's conduct? are asked so that the issue of restitution can be determined

and become an element of the justice process. The victim is asked to complete a Financial Impact Statement in all cases where there is a possibility of restitution. The victim has a certain period in which to return the form and once it is returned and there is a basis for restitution, it is filed with the clerk of the court. As part of the record of the case, the issue of the amount of restitution and how payment will be made is discussed by the prosecutor and the defense attorney and any agreement is finalized by the judge at the disposition of the case. Once the case is settled, the information is sent to the court clerk who notifies the collector. The collector sets up an account with the vital information relevant to the amount of restitution ordered, any payment plan agreed to, the contact information of the victim and where payments are to be mailed. If the offender is placed on probation, the probation officer is expected to contact the collector to inquire about restitution payments. The collector will either set up a payment plan for the offender to make payments or ensure payments made elsewhere are delivered to the collector's office in a timely manner. The collector will send whatever is collected to the victim usually a day after the payment is made.

If the Financial Impact Statement is not returned but restitution is clearly part of the case, the arrangement agreed to between the prosecutor and the defense attorney becomes the basis for restitution collection steps by the collector in the prosecuting attorney's office. The final agreement is filed with the clerk of the court and communicated to the collector who creates an account for the collection process to begin.

Unfortunately, this process is not what normally happens. Problems develop when the fiscal impact statement is not returned and there is little information about the amount ordered, specifics about a payment plan or the location of the victim to whom collections will be sent. The collector reported spending approximately 30 to 50 percent of their time trying to fill out basic information regarding the financial costs of the offense to the victim and the location of the victim.

There are also cases in which a restitution order is not communicated to the collector and the collector is only made aware of restitution when the offender walks in to make a payment or the probation officer informs the collector that their client will be coming in to make a payment. In these cases, the collector rarely has information on where the victim is located in order to send payments. She begins to track the victim down by accessing case-based information from the court database. She often does not get information from the clerk regarding restitution payments and in these cases she must track down the information.

While in theory there is communication between the probation officer and the collector, the collector reports very little contact with the officer. The collector is rarely contacted by the officer to determine whether the probationer owes restitution and it's even less likely that the officer will contact the collector to see whether unpaid restitution exists before the probationer discharges the period of supervision. In short, the collector does not believe that victim restitution is treated as if it were a condition of supervision.

An additional area of victim restitution presents a problem for the collector. When the victim is a large retail establishment – Wal-Mart, Home Depot – the collector reports little cooperation from the victim with the process. The collector rarely receives information on the value of the property lost or damaged and follow-up efforts to obtain this information are often unsuccessful.

Another collector from a prosecutor's office explained that there should be a clearly defined payment plan that sets out reasonable monthly payments with the expectation that the victim restitution amount will be paid off by the time probation is discharged.

She has found that after a payment plan is developed and explained to the probationer, for those cases that miss the first month's payment, a letter is immediately sent to them reminding them of the obligation and that they are expected to become current with the plan immediately. She indicated that just a letter to the probationer after a missed payment is often enough to get them back on track. In those cases where a couple months go by without a payment subsequent reminder letters will be sent. If the probationer misses three payments they are notified that their driver's license will be suspended if they do not become current immediately. If the fourth month comes with no payment than the license is suspended and cannot be reinstated until the probationer is current with payments. She stated that this is by far the most effective method of ensuring prompt payment.

## **DCC**

Officials at the DCC were interviewed and throughout the study willingly provided information, access to staff and distributed the probation and parole officer survey. While DCC has the statutory authority to collect victim restitution across the state, it only collects victim restitution in five counties – Pulaski, Prairie, Perry, White and Garland. In all other counties a local entity, usually the circuit clerk, prosecuting attorney or sheriff, collects victim restitution.

Collections by DCC are centralized and a restitution unit has been established to track, collect and distribute victim restitution payments. All victim restitution orders are tracked electronically and the system is updated daily to reflect collections in real time. All collections are put into the system every night and the following day payments are distributed to the victims.

DCC also collects supervision fees that are attached to the supervision of probationers and parolees. These fees are the first priority with victim restitution orders the second priority for DCC in the five counties in which they collect victim restitution. The reason for this prioritization is because of the importance of supervision fees in maintaining sufficient DCC staff to enable effective supervision practices. Currently 134 Drug Court positions are funded by supervision fees. Act 570 increased the supervision fee by \$10 with most of the additional fee directed to the implementation of evidence-based supervision practices which was also a requirement of the new law. Thus, DCC needs to prioritize the collection of supervision fees in order to carry out the mandates of Act 570.

While probation and parole officers are not formally trained in practices related to ensuring collections of victim restitution, they are trained in Motivational Interviewing which uses communications and interaction techniques. Additionally, the development and implementation of the sanctions grid that is used by officers to respond to conduct which may violate a supervision condition focuses officer attention on the collection of victim restitution. Included in the sanction grid is the failure to pay restitution which could result in the offender having to attend financial management class, increased reporting requirements, or the violation being referred to the sanction review committee. In this manner, DCC sees these tools as improving the officer's monitoring and management of the offender's financial obligations.

### **Probation Officers**

DCC made probation officers and a probation supervisor available to be interviewed for this study. The discussion with the officers provided valuable insight into the complexity of collecting victim restitution and responding to non-payment problems in light of the financial circumstances of the probationer.

Probation officers face a difficult task in the management of offenders with financial obligations. Most offenders come out of the criminal justice process or prison or jail owing money to someone. Collecting financial obligations is a significant issue because of the importance of the obligation. Each financial obligation is attached to an important receiver. Child support pays necessary funds to the offender's children, supervision fees pay the salaries of DCC staff and programming and treatment that reduce recidivism, court costs pay for court personnel and so on. And officers are expected to make the collection of supervision fees a priority over the collection of other fees or obligations including victim restitution.

Probation officers report that victim restitution as well as other financial obligations are very difficult to collect because most offenders have few resources. Offenders on their caseload have little or no money, minimal positive support from family or friends, having burned most of their bridges, limited job prospects and weak employment history, few marketable skills, a

history of substance abuse and a criminal record. These factors, according to officers, mean the likelihood of satisfying financial obligations is very low. In short, according to one officer, the government is trying to make ends meet, make victims whole and pay salaries on the backs of people who can't support themselves.

With the recent passage of Act 570, probation officers are more focused on managing the people on their caseloads toward stability. This means focusing on getting probationers treatment, counseling, employment skills and jobs, reconnecting with family and other steps toward rehabilitation more than ever before. These efforts take more time and skill than past supervision practice and require officers to not only interact with offenders but also establish relationships with those who can provide these interventions. While officers are still responsible for monitoring substance abuse through periodic testing, ensuring probationers have not re-offended and conducting interviews with offenders, they now have to establish relationships with employers, treatment providers, mental health clinicians, and other agencies such as Public Health, Social Services, and Child Support Enforcement. While the monitoring of financial obligations is a priority for officers, they must also conduct myriad tasks designed to support probationers and improve their chances of success while on supervision and beyond.

Officers reported that even for those offenders who want to pay victim restitution, they are often confronted with conflicting responsibilities such as paying child support. At the same time they are attempting to become self-sufficient; paying rent, food, and medication. Officers are, in turn, conflicted over how to obtain victim restitution payments from a person who might lose their apartment or could not pay for medication if they met their restitution obligation.

For probationers who have recently been released from prison, the likelihood of paying any amount of restitution is remote. Officers reported that this population has almost no chance of paying the multitude of financial obligations that they are saddled with upon release from prison or jail.

Enforcement of victim restitution orders presents an even more difficult set of issues for officers. Most officers reported that judges will not revoke a probationer for not paying victim restitution. This makes the possibility of a revocation an empty threat. At the same time officers are sympathetic to judges who see a revocation as unhelpful. As one officer put it, "why throw a guy in jail for not paying restitution when you know it's even less likely to result in payment. The victim wants payment and jail is not going to do it."<sup>34</sup> Judges must also abide by the law that a probationer cannot be revoked for failing to comply with an order of restitution unless there is a finding that the probationer has not made a good faith effort to comply with the order.



The officers mentioned that they saw the collection of hot checks through the prosecuting attorneys' offices as a higher priority than the collection of other types of restitution.

Officers concluded that victim restitution is an important element of the justice system but most people on probation are not in a position to pay what they owe. There is little recognition of this dynamic with the current fee-focused policies that come out of the legislature. People on probation have few resources and struggle just to maintain stability. Pressure to pay financial obligations can often create a sense of futility in a probationer that may dissuade the person from searching for a job, staying clean of substances and avoiding anti-social associates.

Recommendations from officers were less mechanical than from others who participated in this process. Primarily because of their direct interaction with offenders, the officers were concerned with the conflict between the reality of getting ex-offenders to pay their financial obligations and the interests of the system in holding offenders accountable. They recommended a clear and uniform statement of priorities for paying financial obligations, patience from the other system stakeholders to allow ex-offenders to become stable and employed and honesty with the victim about whether they should expect much in the way of compensation from the offender.

### **Public Defenders**

Attorneys who represent defendants, especially indigent defendants, are often confronted with the complexity of victim restitution claims as part of the case against their client. For the legal advocate who is focused on the offender's conduct and defense as well as the prosecutor's evidence against the defendant the issues of victim restitution seem out of place from the determination of guilt or innocence. The determination of the amount of victim restitution, what percentage might be covered by insurance, the degree of responsibility of the defendant when others are involved in the criminal conduct pose unfamiliar complications to the defense. Public defenders reported that the nature of conflicting accounts of personal or property loss and costs are difficult to handle and are elements of defense work that they are not well-equipped to address. Because of these issues, cases without an agreement between victim and offender often lengthen the justice process.

The current process allows for a settlement to be reached in a somewhat informal manner. Defendant and victim can negotiate an agreement on victim restitution amounts but payment must be made immediately. If counsel for both parties sign off on the agreement and the defendant can pay the restitution amount before leaving court then the case can be disposed of that day. This situation is not common and only happens where there is clear fault and costs. Unknown costs such as longer term medical expenses, lost wages due to missing work, etc., and any insurance payments that might reduce the amount owed by the defendant would not be

appropriate for this kind of quick disposition. Additionally, according to the public defenders, their clients are rarely in a position to pay restitution that day in order to dispose of the case. They have already been declared indigent.

The defense attorneys echoed the probation officers view that there appears to be different process for the collection of hot check restitution and that of all other restitution. They indicated that most if not all prosecuting attorneys collect hot checks themselves and place a high priority on enforcement. They suggested that the collection rates for hot check restitution is far greater than for other types of restitution.

Similar to probation officers, public defenders viewed the mounting financial obligations and conflicting priorities as diminishing the likelihood that victim restitution would be paid. The burdens of multiple financial obligations combined with the need to obtain and maintain legitimate employment to support themselves and their families and move beyond their criminal past made the payment of victim restitution nearly impossible.

Specific recommendations included making restitution a purely civil process, means-testing defendants to determine the appropriate amount of restitution that can be paid and communicating with victims that the restitution for their losses or expenses is unlikely, especially if the offender is sent to prison.

### **Administrative Office of the Courts**

A representative from the Administrative Office of the Courts (AOC) provided insight into the various court-related fees associated with the criminal justice process that often carry forward to the offender after the case is disposed. He stated that over the past 20 years Arkansas has embarked on substantial reform of how it manages financial obligations. As recently as the early 1990s, municipalities had the authority to set and impose any number of fees on offenders in order to support a local measure. This led to diverse court-ordered financial obligations across the state. In 1995, Act 1256 was signed into law and required, among other reforms, the appointment of a single identified collector of court-ordered fees and the collection of all related data and that it be sent to the AOC. The statutory changes sought to eliminate the practice of county-based financial orders and to systematize what could be ordered by courts and to develop uniform costs and fees.<sup>35</sup> These laws were seen as progress toward a coordinated way of ordering and collecting of court-ordered fees while enabling the collection of relevant data.

In addition to centralizing the funding of courts and making it a state responsibility the changes also created a fund where some of the fees would be placed in order to pay for necessary court responsibilities. Over the years the Administration of Justice Fund grew and supported significant personnel. In FY 2010, annual collections totaled more than \$48 million.<sup>36</sup> However,

for various reasons, the fund eventually could not support the components of the court system that had come to rely on it. The result was a depletion of the fund and the possible loss of many jobs. This threatened the court's ability to administer the justice system. Renewed efforts to enhance the collection of court costs have made their collection a priority in order to support the infrastructure that is now dependent on them.

### **Office of Child Support Enforcement**

Officials from the Office of Child Support Enforcement (OCSE) were interviewed and provided evidence suggesting that reforming the organization and focus of enforcement practices can result in significant returns. OCSE gets involved in enforcing a child support order when the court informs them that a non-custodial parent has not complied with a child support order and the court has ordered an enforcement action or when the Department of Human Services has discovered that an applicant for services who is also a custodial parent has not received child support in the amount the person is owed. In both cases a clear communication channel ensures prompt action by OCSE along with an exchange of information that allows OCSE to initiate enforcement steps immediately.

OCSE has several enforcement options at its disposal. These include:

- Wage attachment – OCSE sends a letter to the employer requiring the employer to withhold (similar to tax withholding) a certain amount from the non-custodial parent's paycheck. The withheld amount is then sent to the collections clearinghouse which establishes an account and sends a check to the custodial parent within 2 days
- License suspension – driver's license, fishing or hunting licenses may be suspended by OCSE.
- Tax off-set
- Civil contempt
- Prosecution for non-support

The federal government supports OCSE with resources to carry out enforcement actions. Federal law, under the Welfare Reform Act in 1996, made significant reforms to child support enforcement because it linked welfare needs and non-payment of child support. Arkansas adopted federal guidelines for collections and require that some of the fees collected be returned to the federal government in return for nearly \$40 million to support the child support system. This greatly altered the system of collection and resulted in significant progress in the amounts collected. In the early 1990s, before the major changes in law, Arkansas collected about \$30 million in child support annually with a collection rate of about 40 percent. Today, Arkansas collects approximately \$300 million in child support with a 64 percent collection rate. And OCSE collects some amount of child support in more than 80 percent of its cases.

In an effort to further improve child support collections from people involved in the criminal justice system, OCSE recently entered into an agreement with the Department of Correction and DCC to establish information exchange on which people in prison or on probation or parole owe child support. If OCSE finds that a person on the enforcement case load is in prison, it will suspend the enforcement action until the person is discharged from the Department. If the person is on parole or probation and has not been paying child support, OCSE will speak with the probation or parole officer about payments. OCSE expects that the probation officer will make collection of the child support a top priority.

## Victim Restitution Orders and Collections Data

Information regarding the amount of victim restitution ordered and collected is limited at best. Due to the decentralized approach to collections and no uniform criteria for tracking collections, determining statewide amounts of victim restitution ordered and collected is nearly impossible. The surveys were not able to extract sufficient information to determine orders and collections in counties that are not collected by DCC. In the DCC counties – White, Prairie, Pulaski, Garland and Perry – data from 2009 to 2011 was provided and presented a clear picture of what is ordered and what is collected. It should be noted that money ordered may not have been due during the 3 year period. Unfortunately, the data did not allow for disaggregation of funds ordered vs. collected by time due. The data showed:

- In Prairie and White counties, over the 3-year period of time \$383,000 in victim restitution was ordered and \$217,000 was collected.
- In Garland County, over the 3-year period of time \$801,000 was ordered and \$304,000 was collected.
- In Pulaski and Perry counties, over the same period \$2.3 million in victim restitution was ordered and nearly \$1.4 million was collected.

Victim restitution collections conducted by DCC					
Circuit	Year	Ordered	Collected	Total Ordered	Total Collected
17 <sup>th</sup> – Prairie, White	2009	\$59,466.02	\$53,745.06	\$383,095.18	\$217,233.69
	2010	\$203,392.09	\$75,396.13		
	2011	\$120,237.07	\$88,092.50		
18 <sup>th</sup> – Garland	2009	\$347,564.73	\$80,507.27	\$801,232.91	\$304,217.55
	2010	\$254,253.26	\$113,430.31		
	2011	\$199,414.95	\$110,279.97		
6 <sup>th</sup> – Pulaski, Perry	2009	\$890,009.72	\$447,491.45	\$2,344,375.48	\$1,393,245.43
	2010	\$782,412.14	\$507,918.56		
	2011	\$671,953.62	\$437,835.42		
Total				\$3,528,703.57	\$1,914,696.67

As indicated earlier, the survey that was sent to each county resulted in a fairly low response rate and even less information regarding how much victim restitution is ordered in a given year or collected. The survey asked for three years of data on orders and collections and only DCC was able to provide these data. The majority of other collectors (sheriffs, circuit clerks and prosecuting attorneys) who responded were unable to provide even a single year's data for both categories. Of those that did provide some information, most provided an estimate of victim restitution that was collected.

Victim restitution collections conducted by local agent					
Circuit	Year	Ordered	Collected	Total Ordered	Total Collected
Stone County	2009	?	\$32,000	?	\$132,000
	2010	?	\$84,000		
	2011 (to 9/1/11)	?	\$16,000		
Washington County	2008	?	\$2,500	?	\$11,504
	2010	?	\$4,457		
	2011	?	\$4,547		
Lonoke County	?	?	\$177,036.51 (includes child support?)	?	\$177,036.51 (includes child support)
Madison County	?	?	\$48,792.01	?	\$48,792.01
Benton County	?	\$800,000	\$500,000	\$800,000	\$500,000
Sebastian County	?	?	\$2,350 in Danville \$7,278 in Dardonelle	?	\$9,628 in two cities

Most counties that responded indicated that tracking these data items was either not their responsibility or they did not have the capacity to track such information. Comments regarding the data questions include:

- We aren't computerized with collections. We have no idea!
- Information not available
- We don't collect this
- Not known

Conclusions drawn from the lack of data are limited because so many counties reported no information. However, the lack of data from those that did provide some information indicates that many if not most counties and judicial circuits do not know how much victim restitution is ordered and how much is collected. They are unable to determine whether what they are doing with regard to victim restitution is working or whether victims are being served by their efforts. These findings raise significant questions about the decentralized approach Arkansas has taken to track and collect victim restitution and whether victim restitution is indeed the priority it is perceived to be.

## Recommendations

Seemingly, Arkansas has a long way to go in order to ensure victims receive the restitution amounts that have been ordered. The current system is marked by a lack of ownership and poor communication and data collection. However, these limitations can be minimized. Arkansas has leadership in many areas of criminal justice policy that is focused on better outcomes. Arkansas has reformed its child support system to dramatically improve the collection of child support. Arkansas has a well-established data collection and analysis system in corrections that provides outcomes that are used to guide decision-making and determine whether what is being done is working.

If Arkansas is serious about improving the victim restitution process there are two options to moving forward. It can conduct major reform, similar to the process that resulted in Act 570 that vastly changed the criminal justice system. This would take time and resources and significant local-state collaboration.

One possibility that could combine the developing capacity at the state level with some of the effective practices in place locally would place primary responsibility for ensuring systemic victim restitution collection in the hands of DCC. DCC is uniquely positioned to take on this role and, in fact, is the only logical agency to make restitution the statewide priority it should be. There are also local systems in place where restitution collection is a fiscal and operations priority. DCC can be resourced and empowered to enter into agreements with these local leaders and to take on the collection responsibility in areas of the state that do not have an infrastructure capable of ensuring consistent restitution payments.

DCC has the data collection capacity, the support of its field staff and, most importantly, agency leadership to accomplish this objective. However, additional state resources and commitment from local officials must be part of the bargain if DCC is to take on this responsibility. At this time, DCC's primary role, as articulated throughout the process leading to the passage of Act 570, is protection of the public by reducing recidivism among probationers and parolees. DCC has embraced this role and made significant changes in its system to improve outcomes for those being supervised and, more importantly, the general public's welfare. While the collection of victim restitution is a component of the criminal justice process and of primary importance to victims and their advocates, this role for DCC will require resources and support that allow it to continue its mission to improve public safety through evidence-based supervision practices.

The two areas that DCC has effectively developed are in data capacity and officer training. These are areas that local officials, generally, have not been able to sufficiently develop. The results of the county-based survey, while limited due to the lack of responses, showed little data collection capacity and interviews with stakeholders indicated that collection responsibilities were either challenging due to communications or were generally unknown. DCC has a comprehensive process for tracking, collecting and distributing restitution in the 5 counties in which it manages collections. This capacity can be expanded statewide with additional resources. Additionally, DCC has been training officers in techniques that encourage probationers and parolees to comply with supervision conditions of which restitution is included. It has also developed a comprehensive graduated sanctions system that, among other things, encourages compliance with conditions including restitution. If these practices were expanded and communications agreements with local officials were in place, DCC could greatly increase the rate of victim restitution collections.

This outcome, whether DCC leads the effort or another entity, will require a financial investment at the state level and a commitment at the local level to consistently participate in sharing restitution information with DCC or another entity. This will not be easy but, as was made clear in various analyses of victim restitution processes across the country including this analysis, victim restitution should not be ignored or only paid lip-service during legislative hearings and political campaigns. Victims deserve recompense. They deserve to be treated with respect, not just during the prosecution of the case but long after the attention has subsided. The public's faith in the criminal justice system, often viewed through the prism of victimization, compels the leaders in Arkansas to further develop the capacity that currently exists in order to provide the citizens with a criminal justice system that takes care of its most vulnerable participants.

In either case, if Arkansas is to elevate the collection of victim restitution on the scale of criminal justice priorities, there are some foundational steps that should be taken. These include:

1. Prioritize the collection of victim restitution.
2. Create uniform data collection and information sharing criteria for all victim restitution ordered and collected. Perhaps expanding the role of DCC and eOMIS to more than 5 counties. This suggestion, however, would require significant additional personal and financial resources and is not a simple undertaking.
3. Establish a coordinated, inter-agency model that can be used by both state and local restitution collection processes.
4. Increase support for the victim-witness coordinator. This position could be made responsible for establishing all victim restitution information in a single electronic file,



ensuring the victim has all relevant information, distributing all relevant information to the collector of victim restitution and distribute restitution amount and payment plan to the Department of Correction if defendant is sent to prison.

5. Establish collection process elements that enhance payment options and collection enforcement including:
  - a. Means-testing defendants who face restitution orders to determine an amount of restitution that is reasonable to be paid within the sentence.
  - b. Evaluate the financial obligations the defendant could possibly face and ensure that the amounts ordered are reasonable and prioritized and include a payment plan.
  - c. Create a broad set of enforcement options similar to those adopted by OCSE for child support enforcement.
6. Annually submit a report to the Governor, the Administrative Office of the Courts and the legislature detailing the amount of victim restitution ordered, collected and that remains delinquent. The report should be broken out by county or judicial district depending on the collector.
7. Periodically evaluate the amount of restitution ordered and collected in every county in the state and determine whether changes that would improve collection of victim restitution should be made.

## Conclusions

The collection of financial obligations in Arkansas can best be described as uncoordinated, poorly supported and incapable of showing outcomes. After an extensive review of current practices, the policies guiding the system and the data available to track outcomes, the following conclusions are clear

1. There is no systemic mechanism for ordering or tracking restitution;
2. Other financial obligations are a higher priority than victim restitution;
3. The state has no idea how much in victim restitution is ordered or is collected;
4. Offenders are encumbered with many financial obligations that are unrealistic;
5. Most victims probably do not receive the restitution that they are owed.

The state and local governments are strongly encouraged to consider the recommendations in this report as a first step. Arkansas cannot necessarily solve the problem of collecting victim restitution with a single reform effort. There are many problems in the current system that will require careful deliberation, a decision to make collecting victim restitution a priority, financial resources and commitment from people and agencies across the governmental spectrum. There are also many entities involved in the current process and much that is not known with regard to how much restitution is ordered and how much is paid.

Victims of crime not only suffer the pain and anguish of being victimized, they frequently suffer financial losses. Stolen or damaged property, medical bills from injuries, lost wages due to missing days at work, costs of extended therapy, both physical and mental, and other. The state's role in criminal justice is not to focus solely on the apprehension and prosecution of the person responsible for the crime but to ascertain the impacts of the crime on those victimized and assist these citizens in obtaining some measure of relief. Very often that relief comes in the form of the ordering of restitution and ensuring that restitution is paid before the offender's penalty is considered served. For victims, survivors and their advocates, restitution is a significant component of the criminal justice system.

Every state in the nation adopted some form of victim restitution in law. Many states make restitution a mandatory part of the sanction unless extraordinary circumstances are present and some states require the court to document the basis for not ordering restitution. Some states apply restitution to every offense while others make it mandatory for only property or violent crimes. While the laws in each state differ on who may qualify for restitution, the unanimity around the concept of restitution is significant and a recognition of the hard work of victims' rights groups to make this a priority in criminal justice.

Unfortunately, the dedication to the concept of victim restitution does not extend to the process of collecting and delivering restitution. Most states have not been able to systematically and effectively collect and distribute victim restitution. Whether laws, practices, funding or leadership are individually or collectively a hindrance to effective restitution collection, the end result is very much the same; the victim does not receive appropriate compensation for their financial loss. Yet, the protection and support of victims is an oft-stated priority of state leaders.

Arkansas is like most states. It has passed laws protecting and supporting victims, it has a Victims Bill of Rights, it allows a judge to impose restitution but if restitution is not ordered or restitution is ordered which only covers a part of victim's loss, the court must state the basis for not requiring full restitution. Yet, the collection of victim restitution is largely an unmanned ship drifting in a sea of confusion and disregard. No one is leading the effort to collect restitution, no one is systemically tracking the ordering or collection of restitution and no one is evaluating the effectiveness of the victim restitution system in Arkansas.

Although Arkansas has a tradition of supporting victims, the infrastructure to provide this support has simply not been created. Leadership, a collaborative plan and a systemic way of executing the plan is needed. Given Arkansas' past success in creating a systemic and effective child support enforcement system and its recent success in creating a system-wide criminal justice reform proposal, reforming the victim restitution process is well within its grasp.

## Appendix A

### Victim Restitution collection practices elsewhere

#### Iowa's Crime Victim Compensation Program<sup>37</sup>

While Iowa's victim restitution collection process is county-based, the state has instituted uniform collection steps and options and has centralized data for the collection of restitution. Iowa has authorized a position whose sole responsibility is the collection of victim restitution and engaged many key stakeholders to participate in the process of collecting victim restitution. The process, while local, includes the following roles and responsibilities:

- The court and the prosecutor communicate regarding whether victim restitution has been ordered;
- The prosecutor and the clerk of the court communicate to track the compensation order;
- The clerk of the court communicates with the state collections unit to report overdue restitution orders;
- The department of correction determines whether the offender is incarcerated and if so notifies the person of the restitution amount and the expectation that the order will be collected;
- The department of correction collects up to 50 percent of the inmate's allowances to pay the restitution amount;
- The probation and parole officer to establish a plan to collect restitution from a probationer or parolee which includes a payment plan and monitoring designed to encourage payment
- The prosecutor, offender and corrections officials to deliver the delinquency letter;
- The employer to garnish wages;
- The Department of Revenue to add the offender to the Debtor File, and
- The Department of Revenue and Finance to seize income tax refunds and lottery and gambling proceeds.

Iowa's victim restitution process allows the prosecutor to attach a restitution lien to a defendant's assets and authorizes all restitution orders to become civil judgments allowing the victim or compensation program to execute the judgment if the offender eventually does not pay the restitution amount. Additionally, the compensation program can receive direct payments pursuant to the restitution statute from the defendant after he or she has paid the non-compensable losses to the victim. Since the late 1990s, Iowa's collection process has

greatly increased the amount of restitution collected and distributed to victims. In 1998, \$129,000 in victim restitution was collected and in 2011 \$747,000 was collected and distributed to victims.<sup>38</sup>

### **South Carolina**

In 2009, the South Carolina Sentencing Reform Commission recommended that the legislature address the lack of victim restitution collections. The Commission had heard testimony from victims and their advocates that offenders were discharging from probation without having paid victim restitution in full. Information from probation officers indicated that the probation periods often discharged prior to probationers completing payments and once discharged the probation officer had no authority to enforce payment conditions. In response, the legislature passed and the Governor signed language amending the probation supervision laws as part of a large sentencing reform bill. The new law created 'Administrative Supervision' for probationers who had completed the probation term imposed by the court successfully but needed more time to complete victim restitution payments. Probation officers are now required to maintain sufficient contact with the probationer to ensure victim restitution payments are made. There are no other conditions on the probationer but the period of administrative supervision will last up to five years or until the restitution has been paid in full.

The victims' advocate in South Carolina reported<sup>39</sup> that this provision has not had to be used since passage of the new law primarily because enforcement during the term of regular probation has been more successful than in the past. She believed that the threat of an extended period of supervision increased the incentive for the probationer to meet the payment schedule and also motivated the probation officer to ensure that restitution is collected regularly during the probation term.

### **Michigan**

Michigan's judiciary led the effort to improve the collection of victim restitution for two reasons. First, enforcement of victim restitution orders confirms the court's credibility with those involved in the criminal justice system. Second, ensuring appropriate payment of victim restitution is a core responsibility of the judicial branch in seeing that justice is done. Michigan's Supreme Court after extensive study and the development of a model victim restitution collection system issued an executive order requiring all relevant courts to adopt the model or elements of it and to comply with reporting requirements and meet certain collection rates.

The components of the model<sup>40</sup> include:

1. Devote sufficient court staff time to the following tasks:
  - a. Ensure all financial information of the victim and the case is entered into an automated system,
  - b. Use available resources to locate those owing restitution,
  - c. Track court dockets to determine whether delinquent individuals have court business,
  - d. Obtain corrections release information to determine whether delinquent individuals are being released,
  - e. Make payment plans for all individuals before they leave court,
  - f. Review all financial statements of the individual to determine their ability to pay,
  - g. Monitor all installment payments and make appropriate adjustments to the automated system,
  - h. Generate default judgments,
  - i. Notify Secretary of State to suspend drivers licenses when appropriate,
  - j. Prepare orders to remit inmate funds, wage assignments, income tax garnishment or intercepts
2. Communicate in every piece of correspondence to the individual owing restitution the amount owed, the terms of the payment plan and the time frame for paying.
3. Require some payment on the date the restitution is assessed even if it's insufficient and require a payment plan to be developed outside of the courtroom.
4. Require the individual owing restitution to submit an application and financial statement in support of their request for a payment plan. If the application is accepted a document is drafted that includes the following provisions:
  - a. Total amount owed,
  - b. Amount of installment payment,
  - c. Payment intervals,
  - d. Specific due dates for each payment,
  - e. Paid-in-full date,
  - f. Statement indicating enforcement actions that will be imposed for failure to meet the obligation, and
  - g. Individual's signature
5. Allows alternatives such as community service where individual has no ability to pay restitution.
6. Closely monitors the individual for compliance with the restitution order and subsequent installment plan and sets out enforcement steps if amount is not paid on time.
7. Requires all victim restitution orders and collections to be reported annually.

8. Allows graduated sanctions to be used to compel compliance with payment plan including 20 percent late penalty fee, court appearance penalty and income tax garnishment.
9. Use a locator service in order to track down an individual who has not paid.
10. Use an outside collection agency when all in-house options have failed at the discretion of the court.

The State Court Administrative Office has also developed a website for all trial court collections, training videos for all judges and court staff that show how to effectively communicate the terms and expectations of the court order.

## **California**

The California legislature, in 2004 began a series of statutory reforms designed to systematize, track and evaluate the collection of court ordered financial obligations including restitution. In 2004 it passed a law requiring the establishment of a court-county working group on collections and required each county to adopt guidelines for a comprehensive program to collect fees, restitution, fines, forfeitures and assessments.<sup>41</sup>

In 2007, the legislature passed a law that required the California Judicial Council to “develop performance measures and benchmarks to review the effectiveness of the cooperative superior court and county collection programs.”<sup>42</sup> The law also includes annual reporting requirements for this information and also requires an assessment of best practices that will be developed by each county.<sup>43</sup> In 2009, as part of the 2007 law, the judicial council adopted Collections Best Practices

In 2010, the legislature made changes to existing law intended to provide more time to collect unpaid court ordered debts and to prioritize the distribution of payments. The law requires that victim restitution be the priority for collections and restitution payments are distributed before any program costs or other assessments are paid. Secondary priorities are the costs of running the collections program, the state surcharge on court ordered assessments, fines and penalty assessments.<sup>44</sup>

California also adopted performance measures that set benchmarks for all counties and assess them based on the same criteria. The two performance measures are success rate, which “measures the amount of revenue collected from delinquent court ordered debt after adjustments” and Gross Recovery Rate, which measures the “ability to resolve delinquent court-ordered debt, taking into account court-ordered alternative sentences, community services, and suspensions.”<sup>45</sup> Analysis estimates that 80 percent of the collection programs are meeting the benchmarks for these performance measures.

While the initial goal of the early legislation was not to improve collections of restitution, the implementation of best practices and the reporting requirements have likely impacted the collection of restitution. Before the statewide initiative began division charged with receiving payments collected nearly \$1.5 million from 1993/94 to 2003/04. After the statewide initiative began, which also included collection of funds for the Victim Compensation Program, more than \$6.5 million was collected between 2004/05 and 2008/09.<sup>46</sup>

### **Maricopa County, Arizona**

In response to seriously low victim restitution payment rates, Maricopa County Probation Department<sup>47</sup> instituted a comprehensive approach designed to improve collection results and hold offenders accountable called FINCOM, which is short for Financial Compliance Program. The Department hired 14 full-time collectors so that they have at least one collector in each county probation office. The collectors focus their attention on probationers who are at least two months late delinquent on victim restitution payments or three months delinquent in other court-ordered financial obligations. FINCOM officers work with the individual's probation officer and help coordinate employment training and job searches, enroll the person in budget classes, develop payment ability assessments and repayment plans, conduct training for all Probation Department staff on how to increase collection rates, and provide financial information to the court and the Department.

In order to add teeth to the enforcement component of FINCOM, the Department and the Superior Court collaborated on an effort to use Arizona's civil contempt law to target individuals who willfully disregard the payment of restitution. They established Restitution Court<sup>48</sup> and the court holds a Restitution Enforcement Calendar once a month to hear appropriate cases. Each case is screened to determine the following

- Is the individual at least six months delinquent in restitution payments and if so does it appear that non-payment is willful?
- Does the individual show an attitude of cooperation and is willing to make changes in his or her lifestyle to become compliant with the court order?
- How does the victim feel about the situation?

If the individual is determined to be appropriate for Restitution Court than the probation officer issues an Order to Show Cause to the individual which requires them to appear in court. The appearance is to allow the individual to show cause why the nonpayment should not be treated as contempt and an arrest warrant be lodged. This process is not a probation violation hearing and only relates to the individual's restitution payment delinquency and whether he or she willfully refuses to pay or has failed to make a good faith effort to obtain money to pay



restitution. If the court finds the individual in contempt, it orders the person incarcerated and sets the amount of restitution that must be paid in order to be released from jail.

The outcomes from both initiatives have made a significant difference. The Department collected \$10.6 million in 2011 and the FINCOM program is responsible for collecting \$1.3 million that would not have been collected but for the program.<sup>49</sup> The Restitution Court collected more than \$267,000 in 2011 that would likely not have been collected.<sup>50</sup>

## Federal resources for victim support

**Office of Victims of Crime (OVC)** – is the federal agency that oversees the Crime Victims Fund and distributes Fund resources throughout the country. The Fund is self-funded and taxpayer dollars do not support the fund. The sources of the Fund's revenue<sup>51</sup> include:

- Criminal fines (exceptions are certain environmental, railroad, unemployment insurance and postal service violations)
- Forfeited appearance bonds
- Special forfeitures of collateral profits from crime
- Special assessments that range from \$25 for individuals convicted of misdemeanors to \$400 for corporations convicted of felonies
- Donations and gifts that are allowed to be deposited into the Fund pursuant to the USA Patriot Act of 2001

Nearly all of the Fund revenue though is from criminal fines<sup>52</sup> with 98% of the Fund revenues supported by fines. While the Fund revenues have continued to increase, in 2009 it had \$1.7 billion and in 2010 it had 2.3 billion, Congress placed a cap on the amount of funds that could be allocated annually from the Fund in order to ensure a long-term, stable resource stream for vital victim-related services. In 2009, the cap was \$635 million and in 2010 it was raised to \$705 million. Most of the annual distribution is sent to the states through either State Victim Assistance Grants or State Victim Compensation Grants. The Victim Assistance Grant is distributed to the states in order to support community-based organizations that provide services directly to victims of crime. Victim Compensation Grants support a state's efforts to compensate victims of violent crime for out-of-pocket expenses.

Arkansas received federal support<sup>53</sup> from the Fund to provide services or compensation to victims of crime. In 2009, Arkansas received \$1,060,000 from the Victim Compensation Grant and \$3,616,869 from the Victim Assistance Grant. In 2010, Arkansas received \$1,326,000 from the Victim Compensation Grant and \$4,072,931 from the Victim Assistance Grant.

## Appendix B

### Fees and Restitution Study

#### **Responsibility and Personnel**

1. Which agency do you work for? \_\_\_\_\_
2. What is your position? \_\_\_\_\_
3. Which agency has the responsibility to collect:
  - a. Fees \_\_\_\_\_
  - b. Restitution \_\_\_\_\_
  - c. Which agency collects other monetary orders?  
\_\_\_\_\_
4. Is a specific position allocated for:
  - a. fee collection \_\_\_\_\_
  - b. restitution collection \_\_\_\_\_
  - c. What is the percentage of time allocated to this position, i.e., ½ FTE?  
\_\_\_\_\_
5. Is the person responsible for collecting restitution trained to work with victims of crime?  
\_\_\_\_\_

#### **Collection process/Data Collection & Storage**

6. Are victim restitution orders stored electronically? \_\_\_\_\_  
  
If yes, where are they stored? \_\_\_\_\_  
  
How are they stored? \_\_\_\_\_
7. Are victim restitution payments and associated data (late payments, notes, etc.) stored electronically?  
  
If yes, where are they stored? \_\_\_\_\_  
  
How are they stored? \_\_\_\_\_

8. When imposing victim restitution, does the court require a monthly minimum be paid by the offender? \_\_\_\_\_

9. Is payment of victim restitution part of conditions of supervision (probation)?

\_\_\_\_\_

a. If so, how does the responsible agency ensure and track payment?

\_\_\_\_\_

10. If the responsible agency is not DCC in these cases, does the responsible agency establish a formal relationship with DCC to ensure payment is part of the supervision conditions? \_\_\_\_\_

b. How is this tracked? \_\_\_\_\_

c. If not, how does the responsible agency ensure and track payment?

\_\_\_\_\_

**Collections:** *For all data questions, please use the most recent year of data available. If multiple years are available, please provide the past 3 years(just make copies of this sheet for each year of data provided). If actual verifiable data is not available, please indicate it is not and provide a "ball park" figure.*

11. Annually, how much in dollars, of the following is ordered?

• Victim restitution \_\_\_\_\_

• Child support \_\_\_\_\_

• Court costs \_\_\_\_\_

• Other fees \_\_\_\_\_

12. Annually, how much of what is ordered is collected?

• Victim restitution \_\_\_\_\_

• Child support \_\_\_\_\_

• Court costs \_\_\_\_\_

• Other fees \_\_\_\_\_

13. What is the percentage of convictions that include:

• Victim restitution \_\_\_\_\_

- Child support \_\_\_\_\_
- Court costs \_\_\_\_\_
- Other fees \_\_\_\_\_

14. Does your agency have a formal policy that prioritizes which monetary orders are collected first, i.e., if a person with multiple payments imposed has limited resources child support is collected first, victim restitution is collected second?

\_\_\_\_\_

a. If so, please list the priority based on the list of monetary orders in question 1 above. \_\_\_\_\_

\_\_\_\_\_

b. If your agency does not have a formal policy prioritizing collections, is there an informal policy?

i. If so, please list the priority based on the same list above.

\_\_\_\_\_

\_\_\_\_\_

15. If there is no policy regarding prioritizing multiple payments, how does your agency decide the payments in the following scenario?:

a. A person is ordered to pay \$50 per month in child support and \$100 per month of a \$1000 victim restitution order but can only afford \$100 per month.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

16. Do you think the victim restitution process used in your office works effectively obtain money for those owed restitution? \_\_\_\_\_

a. If not, what does not work effectively? \_\_\_\_\_

b. What would you recommend to correct the problem?

\_\_\_\_\_

c. If yes, what is the primary reason for its success?

\_\_\_\_\_

If you were advising another county who was just creating a process to collect victim restitution what are the three most important elements you would advise them to include in their process?

\_\_\_\_\_

\_\_\_\_\_

17. What advice would have for a county trying to increase compliance with victim restitution orders? \_\_\_\_\_

18. Other than increasing funding, how could the state government indicate greater support for the collection of restitution orders? \_\_\_\_\_

19. Would a state annual report which included collection and compliance data be helpful?

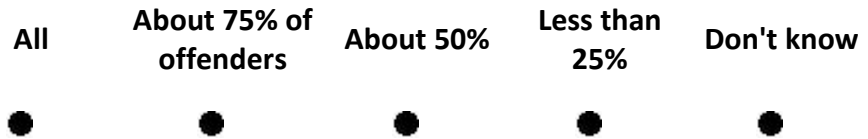
\_\_\_\_\_

20. If you have any additional comments or suggestions to add please do so:

## Appendix C

### Probation and Parole Officer Survey

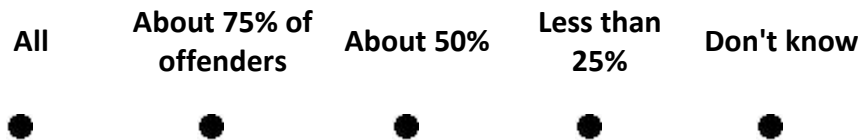
How many people on your case load owe victim restitution?



How many people on your case load owe child support?



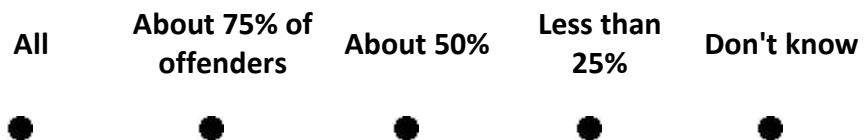
How many people on your case load owe fees related to their conviction other than a supervision fee?



How many people on your case load owe a court-ordered fine?



How many people on your case load owe two or more of the above financial obligations?



How many people on your case load complete probation or parole but still owe victim restitution?

- All
- About 75% of offenders
- About 50%
- Less than 25%
- Don't know

In your opinion, how many people on your case load have the ability to pay these financial obligations either by meeting a monthly payment plan or paying them off by the end of the supervision period?

- All
- About 75% of offenders
- About 50%
- Less than 25%
- Don't know

Who collects victim restitution in the counties in which you work?

If collectors are in different agencies in particular counties please check all that apply.

- Sheriff
- Prosecutor
- Circuit clerk
- DCC
- Other
- Don't know

Are you involved in the collection of victim restitution, child support, fees or fines and, if so, which ones?

Are you expected to ensure that the people you supervise pay victim restitution?

- Yes
- No

Is victim restitution a part of the supervision conditions?

- Yes
- No

- Usually
- Only in a few cases

**Have you received training on collecting victim restitution?**

- Yes
- No

**Do you use an agency manual or guidelines to assist in collecting victim restitution?**

- Yes
- No

**Have you ever violated a person for not paying victim restitution?**

- Yes
- No

**If so, how many people have you violated and did the court or parole board return the offender to incarceration?**

**Do you notify the collector of victim restitution to make sure restitution has been paid prior to discharging a person from supervision?**

- |                                  |                                  |                                  |                                  |
|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| Yes                              | No                               | Most of the<br>time              | Only in some<br>cases            |
| <input checked="" type="radio"/> | <input checked="" type="radio"/> | <input checked="" type="radio"/> | <input checked="" type="radio"/> |

**Do you have any comments or recommendations for improving the collection of victim restitution?**



## Appendix D

### Prosecuting Attorney Survey

1. What circuit and which counties do you cover?
2. Does the victim restitution process in your circuit work to pay victim's what was ordered by the court?
3. If not, what does not work?
4. Do you have recommendations for improving the collection of victim restitution?
5. 5-4-205(a)(2) requires - If the court decides not to order restitution or orders restitution of only a portion of the loss suffered by the victim, the court shall state on the record in detail the reasons for not ordering restitution or for ordering restitution of only a portion of the loss. In your experience, is this carried out by the judge?
6. Victim restitution orders are statutorily part of the conditions of probation for those offenders placed on probation during the period of the sentence. In your experience, does the probation officer or DCC effectively manage the offender's supervision so that victim restitution is condition?
7. Does the probation or parole officer contact the prosecuting attorney's office or the victim-witness coordinator during the period of probation to find out about the amount of victim restitution owed? Does probation or parole officer contact your office prior to the end of the probationer's supervision to see if all restitution has been paid?

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- <sup>1</sup> Act 570, Section 2. Regular Session, 2011.
- <sup>2</sup> Susan Herman and Michelle Waul, *Repairing the Harm: A New Vision for Crime Victim Compensation in America*, Washington DC, National Center for Victims of Crime, July 2004.
- <sup>3</sup> Ted R. Miller, Mark A. Cohen, Brian Wiesema, *Victim Costs and Consequences: A New Look*, Washington DC, National Institute of Justice, 1996.
- <sup>4</sup> Ibid.
- <sup>5</sup> Office of Victims of Crime archives, 1997-98 Academy Text Supplement, *Workplace Violence: Its Nature and Extent*, citing U.S. News and World Report, July 1, 1996 edition.
- <sup>6</sup> Barry Ruback, Restitution in Pennsylvania: A Multimethod Investigation, PA Commission on Crime and Delinquency, August 2002.
- <sup>7</sup> Office of Victims of Crime, *Promising Victim-Related Practices and Strategies in Probation and Parole*, July 1999.
- <sup>8</sup> An Abuse, Rape and Domestic Violence Aid and Resource Collection, information obtain from website at <http://www.AARDVARC.org>.
- <sup>9</sup> Ibid.
- <sup>10</sup> Office of Victims of Crime, *New Directions from the Field: Victims' Rights and Services for the 21<sup>st</sup> Century*, New Directions Report, May 1998.
- <sup>11</sup> Information in the following bullets is from the following publication: Rachel McLean, Michael Thompson, *Repaying Debts*, Council of State Governments Justice Center, NY, NY, and Bureau of Justice Assistance, Washington DC, 2007.
- <sup>12</sup> Department of Correction, *Report of the Massachusetts Department of Correction Division of Inmate training and Education*. (November 2007).
- <sup>13</sup> Commonwealth of Massachusetts Substance Abuse Strategic Plan reports that 81 percent of state prison population has a substance abuse disorder. (May 16, 2005).
- <sup>14</sup> Paul Ditton, *Mental Health and Treatment of Inmates and Probationers*. Bureau of Justice Statistics, Special Report. U.S. Department of Justice, Bureau of Justice, NCJ 174463. (July 1999).
- <sup>15</sup> Employers Group Research Services, *Employers of Ex-Offenders: A Survey of Employers' Policies and Practices*. SFWORKS. (April 12, 2002).
- <sup>16</sup> See Appendix B for a copy of the survey.
- <sup>17</sup> Estimate made by an official at the Office of Child Support Enforcement during in an April 25, 2012 interview.
- <sup>18</sup> Anne Seymour, *Promising Practices and Strategies for Successful Victim Services in Corrections*, Office of Victims of Crime, Washington DC, July 1999.
- <sup>19</sup> B. Smith et al., *Improving Enforcement of Court-Order Restitution*, American Bar Association, State Justice Institution, 1989.
- <sup>20</sup> Burt Galaway, Joe Hudson, *Victimization Surveys: An Overview*, Perspectives on Crime Victims, 1981. Obtained through <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=74251>.
- <sup>21</sup> Barbara Sims, *Victim Restitution: A Review of the Literature*, The Justice Professional, Vol.13, 2000.
- <sup>22</sup> Anne Seymour, *Promising Practices and Strategies for Successful Victim Services in Corrections*, Office of Victims of Crime, Washington DC, July 1999.
- <sup>23</sup> Ibid.
- <sup>24</sup> An Abuse, Rape and Domestic Violence Aid and Resource Collection, information obtained from website at <http://www.AARDVARC.org>.
- <sup>25</sup> Department of Finance and Administration, Administration of Justice Fund: Description and Performance Outline, June 30, 2010.
- <sup>26</sup> Ibid.
- <sup>27</sup> A.C.A. §5-4-205.
- <sup>28</sup> A.C.A. §16-90-1101.

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- <sup>29</sup> 2008 Annual Report submitted by the Arkansas Attorney General. Available at the Attorney General's website: [http://www.ag.arkansas.gov/pubs/08\\_AR\\_AG\\_AnnRpt.pdf](http://www.ag.arkansas.gov/pubs/08_AR_AG_AnnRpt.pdf).
- <sup>30</sup> See Appendix A for a copy of the survey.
- <sup>31</sup> See Appendix B for a copy of the survey.
- <sup>32</sup> See Appendix C for a copy of the survey.
- <sup>33</sup> The authors are grateful for the assistance of Bob McMahan, Prosecutor Coordinator of the Arkansas Prosecutor Coordinator's Office, who granted an interview and then distributed the survey to each Prosecuting Attorney's office.
- <sup>34</sup> Statement of probation officer during April 25, 2012 interview.
- <sup>35</sup> Department of Finance and Administration, Administration of Justice Fund: Description and Performance Outline, June 30, 2010.
- <sup>36</sup> Ibid.
- <sup>37</sup> See Iowa Attorney General's Office website at: [http://www.iowa.gov/government/ag/helping\\_victims/services/compensation\\_program.html](http://www.iowa.gov/government/ag/helping_victims/services/compensation_program.html).
- <sup>38</sup> *Restitution Collected since 1998*, document received in May 29, 2012 email from Melissa Miller from the Iowa Crime Victim Compensation staff.
- <sup>39</sup> Email conversation with Laura Hudson, Executive Director of the South Carolina Crime Victims Council, April 17, 2012.
- <sup>40</sup> Information on the collections programs is accessible at the State Court Administration Office website: <http://courts.michigan.gov/scao/services/collections/collections.htm>.
- <sup>41</sup> California Penal Code section 1463.101.
- <sup>42</sup> Information found at the California Courts website <http://www.courts.ca.gov/partners/447.htm>.
- <sup>43</sup> California Penal Code section 1463.010 amended by Assembly Bill 367 (Stats. 2007, ch.132).
- <sup>44</sup> *Guidelines and Standards for Cost Recovery*, Judicial Council of California, August, 2008.
- <sup>45</sup> Information found at the Collection Performance Measures and Benchmarks website, <http://www.courts.ca.gov/partners/documents/perfbench.pdf> located at the California Courts website at <http://www.courts.ca.gov/partners/455.htm>.
- <sup>46</sup> The National Center for Victims of Crime, *Making Restitution Real*, Washington DC, 2011.
- <sup>47</sup> Ibid.
- <sup>48</sup> Ibid.
- <sup>49</sup> Maricopa County Adult Probation FY 2011 Annual Report, Maricopa County, AZ, 2012.
- <sup>50</sup> Ibid.
- <sup>51</sup> Office of Victims of Crime, *2011 OVC Report to the Nation, Fiscal Years 2009 and 2010*, Washington DC
- <sup>52</sup> Steve Durene, *Crime Victims' Fund Report: Past, Present and Future*, Madison, WI: National Association of VOCA Assistance Administrators, 5.
- <sup>53</sup> *2011 OVC Report to the Nation, Fiscal Years 2009 and 2010*, Washington DC, 2011.