

Restitution Working Group

Recommendations organized by general area

RECOMMENDATIONS TO BE DISCUSSED AT "PROCESS" MEETING

General Area	Recommendation	Type	Comments
Process	Change statutory process for ordering restitution so that to the extent possible, restitution is determined at sentencing hearing, and if reserved, there are clear guidelines for process of ordering and objecting.	Statutory	Goal is to have restitution set at hearing and minimize the number of restitution reserved cases. See defense attorney meeting notes.
	Need clarity on "not known at the time of the hearing" as well as what should happen if "not know at time of hearing." Need to improve process for when restitution is reserved --standard process, standard timelines.		
	Examine whether process should be different for juveniles.		Brought up in juvenile committee.
	Change existing process for contesting.	Statutory	See defense attorney meeting notes.
	Eliminate need for a sworn affidavit from the defendant; a motion from defense attorney should be sufficient	Statutory	Court is moving away from sworn affidavit. Suggestion here is to have a motion with factual basis.
	Clearly identify who is responsible to identify the amount of restitution (prosecutor or probation/court's designee?)	Statutory	Section 611A.01(a) states that court or its design shall obtain information from the victim.
	Establish and adhere to firm deadlines for victims to get information to the court. Set deadline for submission earlier than 3 days prior to hearing.	Statutory	
	Create a restitution calendar, possibly handled by referees or others who are authorized, who just handle restitution issues.	Statutory	
	Payables: Create a statutory fix to allow restitution or a civil judgment to be ordered up to 6 months after the fine has been paid and restitution becomes known in payable misdemeanor traffic cases where injury or damage occurred, but "endangerment box" not check and/or victim not notified of hearing so only option for victims is in conciliation court.	Statutory	
	Create process for monitoring and ensuring restitution payments for offenders on unsupervised release. Create process for prosecutor to get information about outstanding restitution prior to the expiration of a continuance, stay or unsupervised process	Statutory/ practice	Need to address the uncertainty and lack of follow-through with these cases. These cases tend to "fall through the cracks." . Need to make clear who has responsibility for monitoring and taking action on restitution in these cases (role of prosecutor vs. role of court admin.). Note: If can't get to this in "Process" meeting, move to "Other" meeting.

Restitution Working Group

Recommendations organized by general area

RECOMMENDATIONS TO BE DISCUSSED AT "ORDERING" MEETING

General Area	Recommendation	Type	Comments
Ordering	Clarity on valuation of "losses" -- replacement or repair value?		
	Clarify process for handling situations with multiple defendants.	Statutory	
	Clarify process for handling situations with multiple victims.		
	Make it clear that victims are not required to file claims for insurance when victimized.	Statutory	In some cases, victims are reluctant to submit claims to insurance because it will increase their premiums.
	Expand restitution section to include more specifics on what is "out of pocket loss" to conform to current case law, e.g. loss of support.	Statutory	One option: Keep this as a general recommendation to examine and provide some specificity.
	Joint and several liability--need clarity regarding process; review management, effectiveness, fairness.	Statutory/ practice	
	Refine definition of crime victim to include conduct that is prohibited by law and results "in loss or bodily harm to an individual." (Related to payables issue.)	Statutory	Section 611A.01(a). Wrap this into discussion of loss.

Restitution Working Group

Recommendations organized by general area

RECOMMENDATIONS TO BE DISCUSSED AT "FORMS/PAYMENT PLANS" MEETING

General Area	Recommendation	Type	Comments
Financial Disclosure forms	<p>Complete form right away: Require defendants who do not pay restitution at the time of sentencing to complete a financial disclosure form.</p> <p>Complete form if offender misses payment: Require offender to complete a financial change form to substantiate why. Failure to complete this form would be treated the same as failure to complete a UA--would be considered willfully not paying--making probation violation easier to substantiate. Process would enhance prosecutor's ability to address whether offender really "can't afford to pay."</p> <p>Require updates: Complete another form when there has been a change in circumstances or at request of probation or prosecutor.</p> <p>No minimum: Change section 611A.04, subd 1b so no threshold (i.e.. delete minimum of \$500 for form completion).</p>	Statutory	<p>Several strategies suggested for use of financial disclosure forms.</p> <p>The key purpose of requiring the offender to complete financial disclosure forms is to verify the offender's resources and ability to pay. This will guide the payment schedule established, the collection efforts of supervising agents, and the degree to which any nonpayment would be considered "willful."</p>
	Development of financial disclosure form--ensure that it is comprehensive enough to capture financial status and offender's ability to pay (e.g. ask about sources of household support).	Practice	
Payment plans	Provide offender with standard information at sentencing and when setting up payment plans.	Process	
	Standard schedule/methodology for determining installment amounts (setting benchmarks).	Process	
	Clearly identify who is responsible for setting up payment plans.	Statutory	In 611A.045, subd. 2a, it states that court should identify who is responsible for setting up the payment plan.
	Create a standard payment plan form that offender signs.	Statutory/ process	Need to identify responsibility for creating and updating this form and including this language in 611A.045.
	Provide victim with right to request a hearing if aware of changed circumstances. (Or right to request that prosecutor request a hearing.)	Statutory	
	Create clear process to change payment plan if there are changed circumstances or for prosecutor to challenge established payment plan.	Statutory	
	Released from DOC: Require offenders to set up payment plan following release from prison within 60 days of release.	Statutory	

Restitution Working Group

Recommendations organized by general area

RECOMMENDATIONS TO BE DISCUSSED AT "COLLECTIONS" MEETING

General Area	Recommendation	Type	Comments
Collections	For cases that have gone to collections, make it easier for offenders to designate payments toward restitution.	Practice	
	Allow offender to make counter payment without incurring the 20% collections surcharge.	Statutory	
	The MN Department of Revenue uses a 5 year Statute of Limitations to be consistent with Tax Debts. Debts that are in collections will be returned to the referring agency when the 5 year SOL has expired. It would be beneficial to have the SOL extended to 10 years.	Statutory	From Court: Will require a statutory change. The Restitution Work Group may want to recommend a statutory change that extends the SOL from five years to 10 years. Given this statute governs the DOR collection process, DOR buy-in to the change should be sought. Applicable statute: Minn. Stat. § 270C.67. Comment: Needs more discussion with DOR--Lisa and Jason will talk some more.
	Make clear to agents that even if restitution goes to collections, agents still have responsibilities. Make clear to judges that restitution is still an issue during supervision/probationary period even if it goes to collections and that court continues to have authority.	Practice	
	Provide good information to offender so that if restitution goes to collections, they understand process and they can designate a payment for restitution.	Practice	DOR can give offenders a code that identifies what payment is for. They are provided vouchers and are able to specify where to apply the voucher.
	Find strategy to keep restitution with county rather than sending to collections.	Statutory/ practice	Incentivize" offenders to make payment rather than face 20% surcharge. The surcharge added by MN DOR is a burden on offenders.
	Need clarity on process for sending restitution to collections after DOC offender is released from facility.	Practice	Unclear what process is/should be. DOC offenders often returned to custody (and often more than once). DOR will not collect on offenders who are incarcerated.
	Create the ability to determine payments from DOR. Data needs to be viewable in MNCIS.	Process	
	Clarify process for handling situations with multiple victims, multiple orders.	Statutory	
	Clarify that prosecutors are responsible to provide notification to victims of restitution amounts ordered and actions necessary to pursue civil docket process.	Statutory	From Court: Statute states that this is a prosecutor responsibility. The Restitution Work Group may want to recommend education/training for prosecutors. Applicable statute: Minn. Stat. § 611A.04 & § 611A.03

Restitution Working Group

Recommendations organized by general area

RECOMMENDATIONS TO BE DISCUSSED AT "CIVIL JUDGMENTS" MEETING

General Area	Recommendation	Type	Comments
Civil Judgments	Enter a civil judgment automatically if restitution not paid and don't require the victim to complete an additional form.		
	Need clarity on use of civil judgments in juvenile cases.		Issue: Does the fact that it came out of a confidential file and then goes into a public civil file make a difference? Two questions: (1) Are we sure that this is permitted? (2) Is this a good idea?
	Clarify process for entry and docketing of restitution judgment	Statutory/ practice	Much confusion on this issue and discussion in all affinity group meetings. Need to clarify process of when case file opened, when restitution order "entered," and when restitution order "docketed." Clarify when in that process the affidavit of ID required.
	Use civil judgments as an incentive to pay - don't enter right away but give time for probation to get offender to pay. (Same leverage as going to collections.)	Practice	
	No filing fees related to victim's efforts to collect civil judgment (e.g. garnishment, request for financial disclosure, etc.)		No fee for filing of affidavit of ID, but victim assessed other filing fees associated with collection on judgment. Notes: Courts will discuss further. Make sure that this recommendation is only for court fees.
	Change exemptions for garnishment for civil judgments collected for restitution.	Statutory	Section 571.72, subd.

Restitution Working Group

Recommendations organized by general area

RECOMMENDATIONS TO BE DISCUSSED AT" CREATIVE STRATEGIES" MEETING

General Area	Recommendation	Type	Comments
Creative strategies: incentives, collection tools, best practices	Require all offender to make periodic "good faith payments," e.g. \$10 a month.	Practice	Note: Defense attorneys generally not in favor of the creative collection tools and creative incentives listed here.
	Mailed communication to the offender about restitution--automated monthly bills sent to offender, or overdue notices.	Practice	
	Accept credit card payments	Practice	Already done in some counties.
	Voluntary wage garnishments/payroll deductions	Statutory/ practice	Is there statutory authority for these? Brought up in Juvenile Committee.
	Involuntary wage garnishments	Statutory	
	Update statute to require payout of restitution and fines from bail prior to release to defendant.	Statutory	From Court: The Restitution Work Group may want to recommend a statutory change that requires money bail be applied to any restitution and fines ordered upon conviction or as a condition of an interim disposition upon order of the court. <u>Applicable statute: Minn. Stat. § 629.53</u>
	Use revenue recapture at county level	Practice	Revenue recapture by counties allowed under Revenue Recapture Act. This practice problematic if restitution sent to collections so MN DOR doing revenue recapture at same time.
	Use restorative justice opportunities and creative tools with juvenile offenders to the extent possible.	Practice	Many juveniles cannot pay so there is a need to push for creative solutions, use of restorative justice opportunities, and use early release as an incentive. RJ opportunities: Meeting face to face humanizes offender for victim and tempers feelings that offender is just awful. Likewise, offender can put a face and personality to victim and restitution becomes a bigger priority. Generally, RJ may have a large role to play for juvenile and adult court for this reason. (From Juvenile Committee meeting.)
	Offender's participation in special programs is contingent on contribution to restitution obligation: Huber, ignition Interlock, Electronic Home Monitoring, SCRAM (secure continuous remote alcohol monitoring)	Statutory	There is a cost to revise current process.
	For offenders applying to Boot Camp, a factor in making the decision is the offender's efforts to pay restitution while incarcerated.	Statutory	
	Give court the ability to waive fines and fees when restitution is over a specific amount (e.g., \$200).	Statutory	
	Revoke recreational licenses for nonpayment of restitution.	Statutory	Note: Other states revoke drivers' licenses.
	If restitution paid within 60 days, then waive fines and fees	Statutory	
Restitution Fund: Juvenile and adult restitution fund models take different forms, but basic concept is that there is a revolving fund where victims paid from fund, and offenders can contribute to fund by working at some activities and/or the fund is replenished by fines/fees/grant money/other sources of revenue.	Statutory	Some funds do exist but there is a question about the statutory authority.	

Restitution Working Group

Recommendations organized by general area

RECOMMENDATIONS TO BE DISCUSSED AT "SUPERVISION" MEETING

General Area	Recommendation	Type	Comments
Probation	Prohibit early release from probation when there is restitution owed.	Statutory	Use early release as an incentive to get offenders to pay; prior to early release, require court to make finding that no restitution ordered before signing off on early release (get information from probation via "restitution report." Tell offenders at outset the early release is a possibility. Concern: For insurance company victims, may not want to prevent early release. Part of conversation: Do we treat insurance companies differently?
	Should statute be changed to require probation officers to check MNCIS prior to issuing discharges and probation violation summons? If restitution is outstanding in either of these scenarios, ensure that appropriate action is taken, i.e. not file the discharge or include restitution amount as part of the violation summons.	Statutory	From Court: The Restitution Work Group may want to analyze what is preferable: a statutory change or implementation of best practice. Probation would have to be supportive of making this change. Applicable statute: Minn. Stat. § 609.14
	Make it easier to extend an offender's probation even beyond the timeline established in <i>Barrientos</i> case if restitution hasn't been paid. Greater use of statutory authority to extend probation	Statutory	The extent to which this would be meaningful depends on how actively probation is pursuing restitution.
	Include restitution efforts and collection as part of performance measure for agents.	Practice	
	Follow section 609.135 regarding setting probation violation hearing for nonpayment of restitution according to payment schedule and also if nonpayment determined at 60 days prior to expiration of probation.	Statutory/ practice	Many courts have policy of not permitting hearing if only violation if nonpayment of restitution.
	View failure to pay restitution in the same way as other probation violations. Judges should be open to sanctions for willful noncompliance without needing to attach to other violations.	Practice	
	Juvenile: At the 6 month review hearing (or standard review hearing), require that restitution be reviewed at that time.	Statutory	
Supervised release	Use informal sanctions conference for nonpayment of restitution-- impose available informal sanctions such as Community Work Service	Policy and practice	Some counties will not do a sanctions conference.
	Classify nonpayment of restitution for offenders who refuse to pay, but are able to pay restitution, as "willful nonpayment." Change DOC policy so that they can sanction for willful nonpayment.	Policy and practice	
	Use Restructure: Use ability to restructure, in lieu of a hearing, before expiration.	Policy and practice	Restructuring currently not being done.

Restitution Working Group

Recommendations organized by general area

RECOMMENDATIONS TO BE DISCUSSED AT "OTHER" MEETING

General Area	Recommendation	Type	Comments
Expungements	OPTION 1: Require as part of the petition for expungement that the petitioner identify the amount of restitution ordered and the amount that has been paid at the time of petitioning. Require the court to consider the efforts the petitioner has made toward paying restitution since the restitution order was issued, taking into consideration such factors as the total amount of restitution ordered, the amount paid by the petitioner, the length of time since restitution was ordered, the timing of the restitution payments made by the petitioner, and the petitioner's income, resources, and obligations since restitution was ordered.	Statutory	Current legislation pending that would require court to consider the extent to which offender has paid restitution. Does not prohibit expungement if restitution is owed. Several options were discussed in the meetings regarding how to deal with expungements.
	OPTION 2: Prohibit expungement if restitution owed is less than a certain amount (e.g., less than \$2000).	Statutory	
	OPTION 3: Make presumption that expungement is prohibited if restitution owed unless certain factors established by petitioner.	Statutory	
	OPTION 4: Prohibit expungement if restitution is owed.	Statutory	
Victims	Data: Clarify what offender information a supervising agent and correctional/detention facility can provide to the victim in order to assert their right to restitution under current data provisions.	Statutory	Minn. Stat. 13.84, subd. 6(a)(2), 13.85, subd. 5.
Ongoing	Review Rules to determine if modifications need to be made as a result of statutory changes or recommended practice/policy changes.	Rules	
	Create plan for next steps--what will happen after the report to the legislature, how will recommendations be implemented, how will statutory changes be drafted and by whom, etc.	Planning	
	Create a process/entity for continuing oversight of restitution in Minnesota.	Statutory	