# REPORT ON RESTITUTION STUDY

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# REPORT OF THE GOVERNOR'S OFFICE OF CRIME CONTROL & PREVENTION ON RESTITUTION

## EXECUTIVE SUMMARY

Section 12 of the Justice Reinvestment Act (Chapter 515 of 2016)(as shown in Appendix A) requires the Governor's Office of Crime Control and Prevention to study and report on issues relating to restitution. Principal recommendations of this report include:

1. **Form a new unit—the Victims' Services Unit—within the Governor's Office of Crime Control and Prevention (GOCCP) to collect data, develop evidence-based practices for restitution collection, and coordinate and improve efforts of State and local entities regarding restitution.**
    - Data on restitution should be collected through use of an automated information system.
    - This system should be designed to receive restitution order data from the judiciary through the Maryland Electronic Courts (MDEC) system and from the Department of Public Safety and Correctional Services (DPSCS) through its case management (OCMS and OBMS) systems.
    - Data collected on restitution by the new Unit, as well as by DPSCS, the Department of Juvenile Services, Criminal Injuries Compensation Board (CICB), and the Central Collection Unit, should permit determination of what percentages of restitution order amounts are satisfied in each jurisdiction and categorized by offense.
    - All relevant/impacted agencies – including the local detention centers should be actively involved and consulted in the formation process.
2. **Effective restitution requires interoperability** of justice system databases.
3. **Require inclusion of restitution data fields. Each of the databases (e.g., case management systems) needs a data field to indicate that there are outstanding restitution orders.**

4. **Adoption of Standards** - The Secretary of Public Safety and Correctional Services, acting on the advice of the Maryland Commission on Correctional Standards, should adopt regulations establishing minimum mandatory standards applying to all State and local correctional facilities regarding victim notification, restitution, and administrative record keeping.
5. **Earnings Withholding Orders** - Use of Earnings Withholding Orders to collect restitution should be emphasized.
6. **The Victims' Services Unit Should collect data from the Division of Correction, the Division of Parole and Probation, the Central Collection Unit, the Department of Juvenile Services, and local correctional facilities on restitution collections.**
7. **Consolidation into Victims' Services Unit** - Consolidate the Criminal Injuries Compensation Board (CICB) and the Sexual Assault Forensic Examination (SAFE Exam) Reimbursement Unit under the Department of Health and Mental Hygiene, with the Victims' Services Unit, under the GOCCP.
8. **Victims' Services Unit should assess whether the current system of collecting restitution should remain with the existing State and local entities and make recommendations for change if warranted.**
9. **The Victims' Services Unit and Central Collection Unit should coordinate efforts to improve restitution collection.**
10. **In coordination with the Victims' Services Unit, the Division of Parole and Probation should modernize collections. The Victim's Services Unit and the Division of Parole and Probation should collaborate on communicating with Parole and Probation agents on their role with restitution collection.**
11. **The Victims' Services Unit, the Division of Parole and Probation, and the Central Collection Unit should coordinate on ways to expedite the referral of cases to the Central Collection Unit.**
12. **Develop programs to be presented at the Judicial Institute of Maryland and the Maryland State's Attorneys' Association** to emphasize the statutory obligations of State's Attorneys to assist victims in submitting restitution requests and the responsibility of judges to receive and consider restitution requests in accordance with statute, and to include fees and costs in dispositions presumptively.
13. **Upgrade notification to victims**

14. **The Victims' Services Unit should examine the current remedies available to enforce restitution orders to determine whether they are being effectively used and make recommendations regarding the need for additional remedies.**
15. **The Justice Reinvestment Oversight Board should monitor the formation of the Victims' Services Unit and provide oversight and guidance to the Victims' Services Unit.**

**Prioritizing restitution**. The top priority identified by both Justice Reinvestment Initiative Victims' Roundtables held in 2015 was ***improving restitution management statewide***: determination of restitution orders should provide as much consideration to a ***victim's ability to recoup their losses*** as is given to a convicted offender's ability to pay.

**Need for centralized and improved information**. Currently, responsibility for collection of restitution for victims is spread among several agencies. The different information systems utilized in the state's courts all are intended to be replaced within three years by the Maryland Electronic Courts (MDEC) system. These current systems do not always report the presence of an outstanding restitution order on the commitment transmitted with the offender to the various correctional institutions and agencies.

**Need for implementation**. Despite the enactment of laws aimed at providing restitution as a readily-available remedy for victims in the criminal justice system, victims continue to face obstacles in seeking restitution in Maryland. The provisions of the Justice Reinvestment Act, Chapter 515 of 2016, made implementing the efficient collection and distribution of restitution a priority. Section 12 of the Justice Reinvestment Act requires a study of and a report on the restitution process.

# REPORT OF THE GOVERNOR'S OFFICE OF CRIME CONTROL & PREVENTION ON RESTITUTION

## 1.0 INTRODUCTION—RESTITUTION'S CRITICAL ROLE IN JUSTICE

Restitution is a critical concept of restorative justice and it benefits victims of crime.
"In 1982, President Reagan's Task Force on Victims of Crime produced a Final Report highlighting the inequities between the rights of criminal defendants and the rights of their victims. While the report ultimately recommended a federal amendment to the Constitution protecting crime victims' rights, no such amendment has yet been enacted by Congress. As a result of the report, however, all 50 states subsequently enacted statutes protecting victims' rights and 33 states went so far as to amend their own constitutions to include protections for the rights of crime victims."[1]

Despite the enactment of a state constitutional amendment and several statutes aimed at implementing effective operation of restitution as a readily-available remedy for victims in the criminal justice system, obstacles persist for victims seeking restitution in Maryland. The provisions of the Justice Reinvestment Act (Chapter 515 of 2016), made the efficient collection and distribution of restitution a priority. With respect to reinvesting in restitution collection processes for victims of crime, the Final Report of the Justice Reinvestment Coordinating Council (JRCC) issued in December 2015 concluded as follows:

> Many victims and survivors are underserved by the criminal justice system. To include the voices of crime victims and victim advocates in the assessment of Maryland's criminal justice system, as well as in the process of developing recommendations for legislative and budgetary changes, two Survivor-Victim Roundtables were held, one in Millersville focused on survivors of crime, and a second gathering in Upper Marlboro focusing on victims' needs. Discussion at both Roundtables focused on the challenges of effective restitution collection and management and elevated it as a top priority for restorative justice as well as a means of holding offenders accountable.
>
> *The Council recommends*
>
> - In cases where there is unpaid restitution to an identifiable victim, directing 25 percent of inmate earnings to restitution payments, to begin after $50.00 has

[1] RESTITUTION IN PENNSYLVANIA: TASK FORCE FINAL REPORT (February 2013), at p. 13.

been acquired in the reserved account. Any child support payments shall have priority consistent with existing law.

- Collecting data and developing evidence-based practices for restitution collection and developing additional enforcement and data collection technology infrastructure.
- Tasking the Governor's Office of Crime Control and Prevention with identifying the appropriate agency to oversee restitution collection, making a recommendation by December 31, 2016, and requesting the Governor implement by executive order the transfer of restitution collection to the successor agency.[2]

The JRCC Final Report was based on the Victim/Survivor/Advocate Roundtable Priorities which set restitution as the first of six listed priorities:

> **Restitution**. The top priority identified by both Roundtables is *improving restitution management statewide*. Effective restitution systems are comprehensive and need to communicate across agencies while bearing the responsibility of managing and collecting restitution. Further, victim advocates, prosecutors and the judiciary must have training to support the request and ordering of restitution. Finally, effective restitution management in Maryland would require an increase in staff to support this effort.[3]

Section 12 of the Justice Reinvestment Act requires a study and report on the State's restitution process, including the issue of establishing a new State unit to be in charge of restitution and related matters. Section 13 of the Act requires the Governor to submit an executive order reorganizing State government to establish a new State unit to oversee the restitution process, unless the Governor finds that this will not improve the restitution process.

> "SECTION 12. AND BE IT FURTHER ENACTED, That the Governor's Office of Crime Control and Prevention shall:
>
> (1) study the restitution process in the State and make recommendations concerning the restitution process, including:
>
> (i) recommending a process and State unit for collecting data and developing evidence–based practices for restitution collection; and
>
> (ii) recommending methods for developing additional enforcement and data collection technology infrastructure;
>
> (2) determine which State unit should assume the duties currently undertaken by the Division of Parole and Probation and the Central Collection Unit regarding collection of restitution;
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> (3) determine whether the Criminal Injuries Compensation Board and any other victim services programs should be transferred to another entity, including considering whether a transfer would:

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[2] JUSTICE REINVESTMENT COORDINATING COUNCIL, FINAL REPORT (Dec. 2015) at p. 26.

[3] Anne Seymour, Memorandum to JRCC: Victim/Survivor/Advocate Roundtables Summary Report and Priorities (Nov. 3, 2015) at p. 3.

(i) minimize fragmentation of functions that the State government performs on behalf of victims of crime and delinquent acts, while ensuring that services for special populations, including victims of sexual assault and child sexual abuse, are performed by providers with expertise in the area of need; and

(ii) improve the coordination, efficiency, and effectiveness of State assistance to victims of crime and delinquent acts;

(4) consider any other ways to improve the collection of restitution;

...

(6) report to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly by December 1, 2016, on its findings and recommendations."

SECTION 13. AND BE IT FURTHER ENACTED, That unless the Governor determines that transferring the collection of restitution from the Division of Parole and Probation and the Central Collection Unit to another State unit will not improve the collection of restitution, the Governor shall order the new State unit to assume the responsibility of collecting restitution by issuing an executive order to reorganize State government under Article II, Section 24 of the Maryland Constitution for the 2017 regular session of the General Assembly. The Governor shall include a provision in the executive order providing that the transfer may not be effective until 30 days after the Governor's Office of Crime Control and Prevention notifies in writing the Governor, the President of the Senate, and the Speaker of the House that the new State unit is able to assume the collection roles and responsibilities."

## 2.0 PROBLEMS AND ISSUES TO BE ADDRESSED

A survivor observed that "restitution is the victim's right in Maryland that is least applied;" the Victim Roundtables framed three central issues regarding restitution:

1. **Do victims know they can receive restitution, and are State's Attorneys requesting it and/or facilitating victim requests?**

   For victims in Maryland, restitution is an important tenet of offender accountability. One survivor noted that many victims are "unclear about what restitution is and what it means."

   Moreover, there is not a consistent practice in handling restitution requests; some state's attorneys do not request restitution, some use restitution as a "bargaining chip" for plea agreements, while others "try to get the money up front."

   State's Attorneys' Victim/Witness staff play an essential role in helping victims collect bills for the purposes of documenting pecuniary losses and communicating with the State's Attorney who requests a specific restitution

amount from the court. To ensure offender accountability, probation and parole agents should have the ability to hold offenders in violation of their supervision terms where no good faith efforts have been made to pay restitution.

2. **Do judges consistently order restitution when it is requested, and enforce the collection of restitution when it is not paid?**

   Judges should understand the significant financial losses that many victims endure as a result of crime, and which can be addressed through restitution orders. Determination of restitution orders should provide as much consideration to a *victim's ability to recoup their losses* as is given to a *convicted offender's ability to pay*. Roundtable participants stated that probation officers don't research an offender's ability to pay, and an offender's failure to make restitution payments often is not treated as a violation of conditions of probation. Offenders may have cell phones, cable or satellite TV, and multiple cars, all while failing to make restitution payments, and can do so without consequences.

   Judges would benefit from training on ordering restitution to provide justice to victims. A clear set of guidelines for judges about when and how to order restitution and what to order is needed in Maryland.

3. **Are there more effective ways to manage the ordering, collecting and disbursing of restitution?**

   A comprehensive statewide system to measure and maintain restitution data is needed to be able to document accurately restitution management in Maryland. Hawaii's new restitution system, which is partially funded by that state's justice reinvestment savings, is a sound example of how a restitution system can be run effectively and a good model for replication in other states, including Maryland. It features the following: 1) a collaborative and comprehensive approach that increases the amount of restitution payable by incarcerated inmates from 10 percent of inmate wages to 25 percent of all funds deposited into an inmate's account; and 2) creates a comprehensive statewide computer database across multiple agencies to track restitution orders, collections and payments to victims; increases the frequency of restitution disbursements to crime victims.

Hawaii also added additional employees to assist with the restitution process.

**Figure 1. Main features of JRI-sponsored restitution reform in Hawaii.**[4]

Issues to consider on how to address restitution challenges in Maryland:

1. Consolidate the collection of restitution into one entity whose employees will have accountability for collecting funds.
2. Maintain data regarding restitution collection and the development of evidence-based practices for restitution collection.
3. Emulate Hawaii's JRI system regarding restitution.
4. Utilize technology and collaboration to facilitate the collection of restitution.

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[4][Hawaii] Crime Victim Compensation Commission, Hawai`i Justice Reinvestment: Progress Towards the Victim Centered Goals of JRI (PowerPoint presentation), slide 5

5. Utilize earnings withholding orders to increase the collection of restitution.
6. Allow for a reasonable percentage of funds deposited in inmate trust accounts to fulfill restitution obligations (see Hawaii's initiative, Fig. 1, above).
7. Expand the categories of what can be requested for restitution orders (i.e. future earnings of the convicted offender and future pecuniary losses of the victim).
8. Emulate the evidence-based practices for child support collection.
9. Make restitution mandatory to eliminate discretion in restitution decision-making.
10. Explore asset forfeitures and other options to help get restitution paid up front.[5]

Earlier analysis identified several procedural obstacles faced by victims seeking restitution in Maryland:

1. **Restitution Orders Need to Be Recorded Properly**. Courts do not always enter restitution judgments on their commitment orders so corrections, parole, and probation authorities may not be aware the judgment was ordered.

2. **Judicial Waiver of Costs, Fees, and Restitution**. Some judges readily grant defendant motions to waive costs and restitution and especially if there is a plea agreement, the State's Attorney may be silent and the victim may not be present or represented.

3. **Ineffective Collections Process**. Collections by the Division of Probation and Parole, the Department of Juvenile Services, and the Central Collections Unit do not always proceed to secure payment to the victim in an effective manner. Many victims do not learn about earnings withholding orders, which have a higher priority for payment under the law than both wage garnishment orders and restitution judgments alone.

4. **Limitations of Victim Information Notification Everyday System (VINE).** The current VINE system requires victim to re-register when offender moves from one system (court, local detention, state corrections) to another; victim may not be aware of offender's status or location.

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[5] *Id.* at pp. 4-5.

5. **Criminal Injuries Compensation Board (CICB) Limitations**. The CICB has limited funding and may often grant smaller awards based on this limited funding.

6. **Collecting Interest on Restitution Judgments.** A 10% per annum interest fee should be charged on outstanding restitution as a money judgment in accordance with Criminal Procedure Article § 11-608.

## 3.0 THE NEED FOR CENTRALIZED AND IMPROVED INFORMATION

Currently, responsibility for collection of restitution for victims is spread among several agencies. When an order granting restitution is entered by a court, the order should be and normally is transmitted with the commitment of the offender. In this way, local correctional facilities, the state Division of Correction, the Division of Parole and Probation, the Parole Commission, and, with respect to juvenile offenders, the Department of Juvenile Services may be made aware of the order's existence.

When the offender is released from incarceration, if ordered, and completes a term of supervision, the restitution order is currently sent to the Central Collections Unit, within the Department of Budget and Management. Others involved in the process are the Criminal Injuries Compensation Board (CICB), which seeks to recover from offenders the funds the CICB has previously paid to victims, and attorneys representing victims, who may proceed in court for enforcement of restitution orders.

The different information systems currently utilized in the state's courts do not always report the presence of an outstanding restitution order on the commitment transmitted with the offender to the various correctional institutions and agencies (all courts in the State within three years will be using the Maryland Electronic Courts (MDEC) system,). If the restitution order is issued subsequent to the original commitment, it needs to catch up with that original transmission and to be noted accordingly on the files maintained by each institution or agency.

At present, the Division of Parole and Probation endeavors to enforce restitution orders by providing offenders with a schedule of payments in accordance with the order and envelopes in which to mail the payments to a lockbox. These payments then are processed by the Division of Financial Services within the Department of Public Safety Correctional Services (DPSCS) and then ultimately forwarded to the Office of the Comptroller for payment to victims. Upon completion of supervision, either the Division of Parole and Probation or the Department of Juvenile Services transmits the restitution order to the Central Collections Unit as an unpaid debt. Unlike the Division of Parole and Probation, the Department of Juvenile Services will refer cases to the Central Collection Unit during the period of supervision if an account becomes delinquent. Both agencies are obliged to inform the court if a restitution order remains unpaid.

Some local detention centers collect restitution from inmates on work release. Others arrange for the restitution payments to be collected through the Division of Parole and Probation or the State's Attorney's Office (see Fig. 3). Many restitution orders, however, delay the start of payments until an offender completes the incarceration phase of a sentence; in contrast, other states, such as Minnesota, now impose surcharges that are transmitted to restitution recipients on all funds received and paid by inmates.[6]

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[6] The Minnesota collection policy for incarcerated offenders "includes the following key elements:

• 10% of all incoming funds will be retained and used for court-ordered restitution and fine obligations;

• A 10% surcharge will be assessed on outgoing funds to be used for court-ordered restitution;

• After an offender has saved $100 in so-called "gate money*", the DOC will reduce the timeline needed to save gate money but will make more funds available for lower deduction priorities, including court-ordered restitution fines;

• A 5% surcharge will be assessed on all canteen purchases except health and hygiene items to be used for court-ordered restitution and fines; and

• Offenders may choose to put more money toward restitution and fines without incurring any surcharge to address their obligation more quickly by sending a voucher to offender accounts."*

*Bigham *et al.*, Restitution Practices in Minnesota (Univ. of Minnesota, Humphrey School of Public Affairs, August 2013) describing Minn. Dept. of Corrections, Memorandum to All DOC Staff from Deputy Commissioner Terry Carlson: Restitution & Fine Collection Changes for Minnesota DOC Offenders Effective April 1, 2013 (Oct. 29, 2012), full memorandum included as appendix to Restitution Practices report.

The depiction of the Restitution Process in Maryland (see Appendix B) discloses the manner in which the process operates: (1) responsibility for collecting restitution is divided among the Division of Parole & Probation, the Department of Juvenile Services, and the Central Collection Unit of the Department of Budget and Management; (2) enforcement of the restitution order may be affected by the Division of Parole & Probation, the Department of Juvenile Services, or an attorney representing the victim going to court to enforce the original order, or, as often is the case, none of these parties; (3) the most effective device for enforcing payment is the Earnings Withholding Order (EWO) which is rarely used; and (4) when an offender has completed parole or probation and is most likely to gain employment that pays sufficiently to enable payment of restitution, the case has normally been turned over to the Central Collections Unit, which gives priority to cases which are time sensitive, such as motor vehicle insurance lapses. It then handles cases based on their available personnel. The Central Collections Unit adds a 17% collection fee to the amount owed, which is paid by the obligor.

In addition, the Justice Reinvestment Act requires that 25% of an inmate's earnings be withheld if there is an order of restitution. Because of this requirement it is apparent that the Division of Correction and the local detention centers will both be taking on additional responsibilities regarding restitution collection.

While the current system appears to be somewhat fractured, it is not clear that having a central hub for collecting restitution will be an improvement. Many of these individuals will owe fines and court costs which will have to be collected. Having one unit responsible for restitution collection and another with collection of fines and costs would result in a duplication of effort and likely confusion on the part of those responsible for making payments. While it may be possible for the Victims' Services Unit to undertake all of these collections, dividing them between the victims and the appropriate governmental entities, this matter deserves detailed study and planning before it is undertaken. Representatives of the Central Collection Unit also stated that many persons who owe restitution also have other State debts for which the Central Collection Unit is responsible for collecting, so there is a similar concern with these collections.

Collecting court costs and other related supervision fees in addition to restitution for the correctional and juvenile detention and supervision units may turn out to be the best way to increase restitution collections. It is less likely that this will be the case regarding Central Collection Unit matters, which has responsibility for

collecting a wide variety of State debt unrelated to criminal justice matters. These matters need a thorough review before any changes are considered. It is clear, however, that the existing processes can be improved while the concept of a central restitution collection hub is given a more thorough review.

## 4.0 ANALYSIS AND RECOMMENDATIONS

The Governor's Office of Crime Control & Prevention makes the following recommendations regarding collection of restitution and improving services and compensation for crime victims.

**Recommendation 1: Restitution Unit. Form a unit, the Victims' Services Unit, within the Governor's Office of Crime Control and Prevention (GOCCP) to collect data, develop evidence-based practices for restitution collection, and and coordinate and improve efforts of State and local entities regarding restitution.**

- Data on restitution should be collected through use of an automated information system.
- This system should be designed to receive restitution order data from the judiciary through the Maryland Electronic Courts (MDEC) system and from DPSCS through its case management (OCMS and OBMS) systems.
- Data collected on restitution by the new Victims' Services Unit, as well as by DPSCS, DJS, Criminal Injuries Compensation Board, the Central Collection Unit, and local correctional facilities should include information that will permit determination of what percentages of restitution order amounts are satisfied in each jurisdiction and categorized by offense.
- All relevant/impacted agencies – including the local correctional facilities should be actively involved and consulted in the formation process.
- The Victims' Services Unit should consult with the Governor's Office of Performance Improvement to develop outcome measurements related to restitution collection and other victims' services.

At present, data on restitution is collected mostly by the Division of Parole and Probation. It only contains information covering restitution payments that are

made through the Division. The other principal channel for restitution payments is the Central Collection Unit, to which the Division of Parole and Probation and the Department of Juvenile Services refer cases once inmates complete their term of supervision if restitution remains unpaid. DJS will also refer delinquent accounts to the Central Collection Unit while a juvenile is still under supervision.

Thus there is no existing information system that gathers reliable and complete data regarding restitution collection and payment. The principal sources of information about restitution are likely to be the courts and the correctional system. The courts are gradually introducing the Maryland Electronic Courts (MDEC) system. In three years MDEC will operate State-wide and currently is operating in Anne Arundel County and the counties on the Eastern Short. This system does contain data fields for information about restitution orders entered by courts. The Department of Public Safety and Correctional Services (DPSCS) has restitution information on two different systems, OCMS and OBSCIS. The latter system is used for transmitting financial information from probation officers to the department's finance section and then to the Office of the Comptroller for remittance.

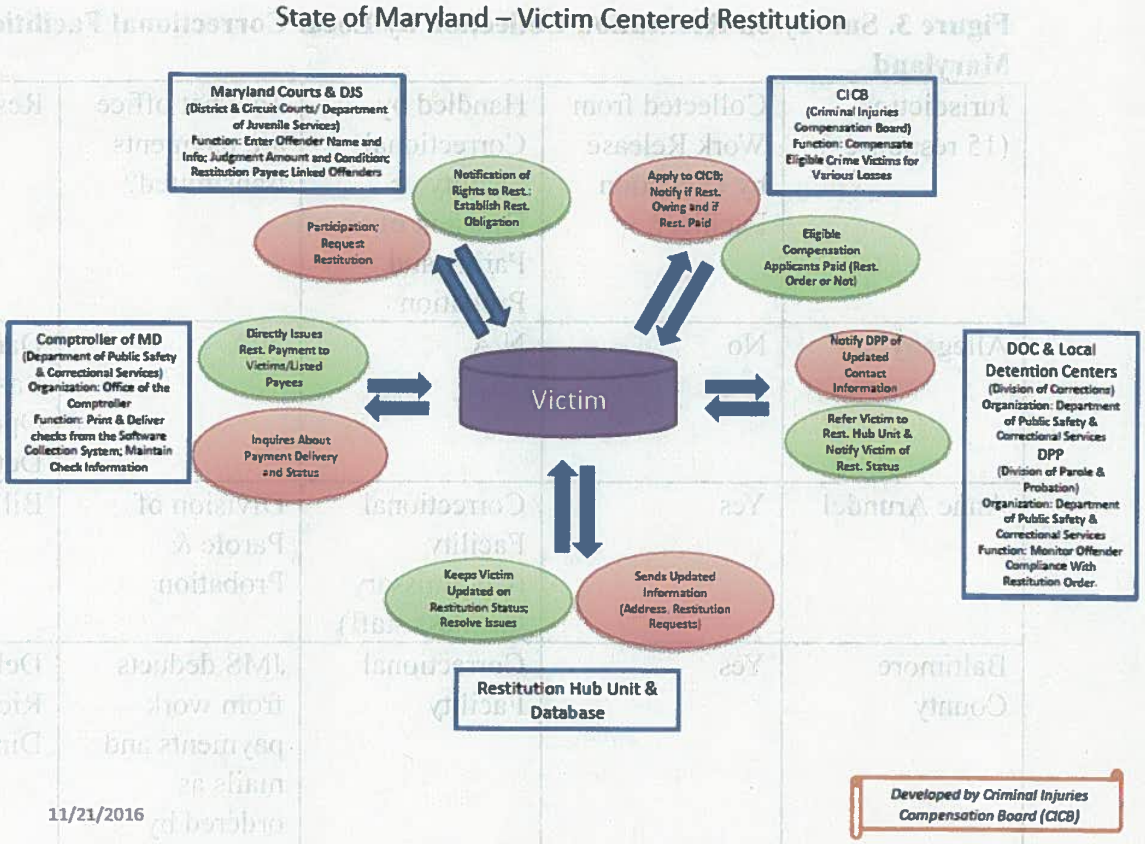


**Figure 2. Proposed Structure of Victim-Centered Restitution in Maryland**

Local correctional facilities in the State's 23 jurisdictions[7] follow different procedures in deducting restitution payments from work release program income or other income sources for inmates. A recent survey found that of 15 responding county detention centers, nine collect restitution on work release; in two, the Division of Parole and Probation collects restitution, and in one, collection is handled by the Division of Parole and Probation or the State's Attorney's Office. Three do not collect restitution. Payments are processed directly by eight local correctional facilities, and in four, by the Division of Parole and Probation (one is by the Division of Parole and Probation or the State's Attorney's Office). See Figure 3 below.

[7] In Baltimore City the State Division of Pretrial Detention and Services operates what in other counties is the local correctional facility.

**Figure 3. Survey on Restitution Collection by Local Correctional Facilities in Maryland**

| Jurisdiction (15 responses) | Collected from Work Release by Detention Facility? | Handled by Correctional Facility or Division of Parole and Probation | To what office are payments transmitted? | Respondent |
|---|---|---|---|---|
| Allegany | No | N/A | N/A | Daniel B. Lasher, Dir. Operations, Detention Ctr. |
| Anne Arundel | Yes | Correctional Facility (Commissary business staff) | Division of Parole & Probation | Bill Martin |
| Baltimore County | Yes | Correctional Facility | JMS deducts from work payments and mails as ordered by court | Deborah Richardson, Director |
| Calvert | Yes | Money order payable to victim | Sent to State's Atty's office to victim; notify Division of Parole & Probabation upon release | Donna L. Glover, Work-Release Supervisor |
| Carroll | No | Division of Parole & Probation | Division of Parole & Probation | Corrections staff |
| Cecil | Yes | Correctional Facility | Victim or agency as ordered | Matthew Carr, Lt., Community Corrs. |

| | | | | |
|---|---|---|---|---|
| Charles | No | N/A | N/A | D. Dofflemyer Dep. Director |
| Garrett | No | Division of Parole & Probation or St. Atty.'s office | Division of Parole & Probation or St. Atty's Office | Cpt. Jim Tichnell, Jail Administrator |
| Howard | Yes | Correctional Facility | Division of Parole & Probation | Jack Kavanagh, Director |
| Kent | No | Division of Parole & Probation | Division of Parole & Probation | Herb Dennis |
| Montgomery | Yes | Correctional Facility | Division of Parole & Probation | Angela Talley |
| Prince George's | No | N/A | N/A | Mary Lou McDonough, Director |
| Queen Anne's | Yes, but only if so ordered by court | Division of Parole & Probation | Division of Parole & Probation | LaMonte Cooke, Warden |
| Wicomico | Yes, if Correctional Facility is so ordered | Correctional Facility | Sent to victim, court, Division of Parole & Probation, or agency as ordered | Christina Tyler, Dep. Dir, Programs & Services |
| Worcester | Yes | Correctional Facility | Victim or agency as ordered | Garry L. Mumford, Warden |

Source: Survey conducted for GOCCP by Maryland Correctional Administrators Association

1. Of fifteen counties responding, nine collect restitution on work release; in two, the Division of Parole and Probation collects restitution, and in one, collection is handled by the Division of Parole and Probation or the State's Attorney's Office. Three do not collect restitution.

2. Payments are processed by eight local correctional facilities, and in four, by the Division of Parole and Probation (one is by DPP or the State's Attorney's Office).
3. In six counties, payments are transmitted by the Division of Parole and Probation; in four, payments are transmitted as directed in the restitution order; and in one, payments are sent to the State's Attorney's office to be sent to the victims. (One either sends payments through the Division of Parole and Probation or the State's Attorney's Office.)

Ensuring that all relevant/impacted agencies – including the local correctional facilities – are actively involved and consulted in the formation process will prevent the omission of key restitution collection steps and encourage collaboration by those entities that may be apprehensive of creating another level of administration. Additionally, ensuring a collaborative effort will assist in achieving Recommendation 2 (see below), which requires interoperability of all criminal justice systems.

Establishing a centralized data collection operation in the Victim Services Unit will help ensure that complete data is available so that the efficacy of the restitution process can be measured. This unit would interact with six different groups of public-sector bodies as well as the victims. These groups are as follows:

| **Grouped Units** | **Restitution Functions** | **Provides to Victims' Services Unit** | **Receives from Victim's Services Unit** |
|---|---|---|---|
| Maryland Courts and Dept. of Juvenile Services | Enter offender name and information, judgment amount and condition, restitution payee, and linked offenders | Court sends restitution order and Earnings Withholding Order | Reports restitution order compliance |
| Criminal Injuries Compensation Board | | Reports restitution obligors with compensation claims | Reporting restitution requests for compensation victims |
| Division of Correction and Local Detention Centers | House offenders and offer rehabilitation | Provides restitution status updates; monitors compliance | Reports restitution data and complies with JRA statute |
| Division of Parole | Monitor offender | Provides | Reports |

| | | | |
|---|---|---|---|
| & Probation | compliance with restitution order | restitution status updates; monitors compliance | restitution data |
| Comptroller of Maryland | Print and deliver checks from the Software Collection System; maintain check information. | Issues receipt of payment to victims Pays victim directly | Sends payee information |
| Central Collection Unit | Collect delinquent restitution | Provides collection information | |

Victims send updated information (address, restitution request) to the Victims' Services Unit and receive victim information and service from the the Victims' Services Unit.

The Victims' Services Unit should analyze the data it receives. Using this data it should work with the various governmental entities to improve restitution collection and make recommendations for changes to the laws and processes.

**Recommendation 2: The new Victims' Services Unit shall take all steps possible to provide interoperability with the new automated information system. All stakeholders shall use an electronic system to perform and track their restitution functions, including communicating with the electronic system used by the Victims' Services Unit. Effective collection of restitution requires interoperability of all criminal justice system databases.**

Currently, each agency operates different systems that track the restitution process in different ways. This fragmented approach inhibits the State's ability to capture restitution collection data in real time. Therefore, the new automated information system should be designed to allow interoperability with other agencies' systems. Furthermore, until justice system interoperability is achieved, the Victims' Services Unit should compare victim restitution orders in court clerks' office systems with the records of DPSCS, DJS, CCU, and local correctional facilities.

The comparison would determine if the agency records for inmates, probationers, parolees, those on mandatory supervision and work release, and individuals under the jurisdiction of DJS who are ordered to pay restitution can be electronically matched against the records from the clerks to see if there are omissions in those who are to receive restitution.

Interoperability of criminal justice systems has long been a goal in Maryland. The MDEC system cannot yet transfer data about cases to DPSCS's information systems. As a result, an offender is transferred by commitment papers that are just that: on paper, even if generated by an information system in the courts. Further, there is no interoperability between State's Attorney's Offices and the courts when charges are initially filed in court. The new Victims' Services Unit should develop a program to obtain restitution order information from the courts and then compare the results with records of orders maintained in the DPSCS, including DOC, DPP, and the CICB, DJS, local correctional facilities, and CCU. In revamping its system, Hawaii concentrated on creating a database designed specifically for restitution, gathering the data elements specified in Figure 4 below,

**Figure 4. Hawaii Restitution Information Involving:**

JAIL AND PRISON
-Amount of restitution ordered at sentencing
-Offense of conviction and misdemeanor level
-Number of victims to whom the debt is owed
-Aging of the debt
-Number of payments in the last reporting period
-Amount paid in the last reporting period
-Average frequency of payment
-Facility with the highest percentage of restitution collections and disbursements and disbursed in the quarter
-All statutorily-mandated information regarding institutional collections

PROBATION
-Amount of restitution ordered at sentencing
-Offense of conviction and felony level
-Number of victims to whom the debt is owed
-Variation in orders across jurisdiction

PAROLE
-Amount of restitution ordered at sentencing
-Offense of conviction and felony level
-Number of victims to whom the debt is owed
-Aging of the debt
-Number of payments in the last reporting period
-Amount paid in the last reporting period
-Average frequency of payment
-Parole region with the highest percentage of restitution collections and disbursements and disbursed in the quarter

UNSUPERVISED CASES
-Amount of restitution ordered at sentencing

-Offense and misdemeanor level, if applicable
-Number of victims to whom the debt is owed
-Variation across jurisdiction [8]

[8] [Hawaii] Crime Victim Compensation Commission, supra note , slides 29-33

**Recommendation 3: Require inclusion of restitution data fields. Each of the databases (e.g., case management systems) needs a data field to indicate that there are outstanding restitution orders.**

If the information on restitution is in a text field and not a data field, efforts should be undertaken so that prospectively the respective databases have data fields to maintain this information. To the extent that there are omissions, efforts should be undertaken to ascertain why the information did not get from the Clerk's office to the respective entities and to fix the deficiency.

In view of the limited existing provisions for collecting restitution information in the currently operating justice system databases (i.e., MDEC, OCMS, OBSCIS, JMS), both the design and operating procedures of these systems should be examined to ensure that restitution data entered in the fields provided in these systems is retrievable. Most of the data will eventually be accessible through the judiciary and corrections systems (MDEC, and OCMS and OBSCIS) so these are the critical systems that require review to determine that needed data is being entered and processed so as to be retrievable by system users.

**Recommendation 4: Correctional restitution standards.**
**The Secretary of Public Safety and Correctional Services, acting on the advice of the Maryland Commission on Correctional Standards, should adopt regulations establishing minimum mandatory standards applying to all State and local correctional facilities regarding, among other matters, victim notification, restitution, and administrative record keeping. In addition the Secretary should also adopt, with the advice of the Commission on Correctional Standards, regulations establishing approved standards applicable to work programs, which shall apply to all State correctional facilities and may be adopted by local correctional facilities.**

These standards should be examined and modified to:

1. Require electronic interoperability with the new system designed for the Victims' Services Unit and with the judiciary's MDEC system when a jurisdiction implements MDEC.

2. Require maintenance of data fields in DPSCS and DJS case management systems for restitution and victim notification that will allow analysis and statistical information to be performed.
3. Consider the adoption of the national Statewide Automated Victim Information and Notification (SAVIN) technical standards for victim notification.
4. Provide for a priority for restitution as required under Maryland law.

Similar regulations should be adopted by the Department of Juvenile Services and by the Secretary of Public Safety and Correctional Services for the Division of Parole and Probation.

Collection procedure may be improved through adoption of minimum mandatory standards in accordance with Correctional Services Article, § 8-103(a)(1), which provides that with the advice of the Maryland Commission on Correctional Standards, the Secretary shall adopt regulations establishing minimum mandatory standards applying to all State and local correctional facilities regarding victim notification, restitution, and administrative record keeping. In addition, under § 8-103 (b), the Secretary shall also adopt, with the advice of the Commission, regulations establishing approved standards applicable to work programs, which shall apply to all State correctional facilities and may be adopted by local correctional facilities. These standards shall be consistent with federal and State law. The Secretary should also adopt standards relating to data reported pursuant to State Government Article, § 9-3208; case plans per Correctional Services Article, § 3-601; evidence-based programs and practices per Correctional Services Article, § 6-119; training per Correctional Services Article, § 6-120; and inmate earnings per Correctional Services Article, § 9-615, all as amended by the Justice Reinvestment Act. *See also* Correctional Services Article, § 2-109.

The Commission on Correctional Standards has yet to pass any standards requiring State or local correctional facilities to utilize systems that are interoperable with another system; however, the Commission's Director has been reported as ready to approach the Commission's Chair to initiate discussion of the elements in this recommendation.

**Recommendation 5: Earnings Withholding Orders - To improve victim restitution collection, use of earnings withholding orders should be emphasized through the following steps:**

1. Establish an automated system for the new Victims' Services Unit where a draft earnings withholding order can be created to be submitted to the court for signature.
2. Ascertain whether DPP and DJS comply with the Criminal Procedure Article, § 11-607 (c) by notifying the Court when restitution is overdue and particularly whether a request for an earning withholding order is made. When a request is made, submit a draft earnings withholding order with the request.
3. When a presentence sentence investigation or a predisposition investigation is prepared, and restitution damages are known, submit a draft earnings withholding order with the request. (Ascertain if the predisposition investigations are including a victim impact statement.)
4. For a defendant on work release, if an earnings withholding order has not yet been signed, attempt to have the inmate consent to an earnings withholding order or request the court to issue an earnings withholding order before commencing work release. Make it clear that if the employer fails to withhold earnings, the restitution obligor is required to pay unless funds are taken from the inmate's pay.
5. If a defendant is to be released on parole or mandatory supervision, make a condition of the release be that the inmate consent to an earnings withholding order. The new automated system should include this function and the Parole Commission should be engaged in the development of the new automated system. Changes to accommodate earnings withholding orders on parole and other forms of release should be included in the process for Administrative Release Orders as provided in the Justice Reinvestment Act beginning in October 2017.
6. Make it clear that if the employer fails to withhold earnings, the restitution obligor is required to pay unless funds are taken from the inmate's pay.
7. Automated efforts should be uniformly followed to serve earnings withholding orders on obligors who are working, but not paying restitution.

Earnings withholding orders should be the preferred statutory vehicle for obtaining compliance by restitution obligors with restitution orders. In § 11-617(b) of the Criminal Procedure Article, these orders were given priority over other liens or legal process and second only to orders granted in certain family law (e.g., child support) cases. This makes them more effective than a standard wage garnishment.

Nevertheless, earnings withholding orders have not been sufficiently utilized to date; requesting them should become a standard practice in restitution execution. Since most restitution orders are sought by State's Attorneys, those offices should be responsible for requesting an earnings withholding order when seeking a restitution order. Probation officers should determine whether an earnings withholding order has been sought or issued when setting up a payment plan. Lastly, the Victims' Services Unit should seek an earnings withholding order in cases where it has not previously been requested or issued.

**Recommendation 6: The Victims' Services Unit should collect data from the Division of Correction, the Division of Parole and Probation, the Central Collection Unit, the Department of Juvenile Services, and local correctional facilities on restitution collections.** Making policy based on adequate data is a key element of the Justice Reinvestment Initiative. Currently available evidence strongly suggests that restitution is being collected at a very low rate. Having better data will allow the Victims' Services Unit to focus its efforts on areas most in need of improvement.

- Victims' Services Unit should provide case management services to victims. The new Victims' Services Unit should be designed to provide robust case management services to victims. The Unit should not just track restitution collection, but should be a one-stop shop for victims where the Unit tracks and logs calls received to ensure continuity of care.

**Recommendation 7: Consolidation into Victims' Services Unit - Consolidate the Criminal Injuries Compensation Board (CICB) and the Sexual Assault Forensic Examination (SAFE Exam) Reimbursement Unit under the Department of Health and Mental Hygiene, with the Victims' Services Unit, under the GOCCP.**

In addition to moving the CICB and the SAFE Reimbursement Unit to the Victims' Services Unit, there are other victim-serving entities currently part of GOCCP that may also be combined under this unit. Consolidating victim agencies will result in the following expected outcomes: (1) Significant new income into the state. If the Sexual Abuse Forensic Examination payments currently paid by DHMH are made instead through CICB, 60% of the money paid by the State will be paid back to the State by the federal government. Based on fiscal year 2015 figures, the State would receive about $800,000 annually; (2) Maximizing the payment of restitution to victims; (3) Establishing cost savings through the efficiency of services created by consolidation; (4) Provision of better services for victims of crime, especially those victims who are owed restitution.

**Recommendation 8: Victims' Services Unit should assess whether the current system of collecting restitution should remain with the existing State and local entities and make recommendations for change if warranted** - Currently the duties of collecting and paying restitution are spread over various State and local entities, which have other duties in addition to restitution collection, resulting in restitution collection not being a priority. The Victims' Services Unit should consider and make recommendations regarding assuming the role of collecting and paying restitution for these various entities.

In fiscal year 2016, DPSCS processed 14,059 monthly restitution payments; in October 2016, there were 1,020 such payments.[9] CCU collected $1.2 million from the Maryland State Lottery & Gaming Control Authority in fiscal year 2014 from lottery prize payments. In fiscal year 2015, there were $355,052 of assignments for overdue restitution from DJS, of which CCU collected approximately $92,000, earning CCU a 17% fee of $15,640. DPP has referred $24.4 million of assignments to CCU, of which $726,000 has been recovered, earning CCU a fee of approximately $123,420 to date in fiscal year 2015. DPP assignments include other outstanding fees besides restitution, so it is unknown how much of the DPP

[9] Division of Parole and Probation, Collection and Accounting, Fiscal Year Summary, 07/01/15 - 06/30/16 and 10/01/16 - 10/30/16.

assignments total stems from overdue restitutions, but it is a significant portion.[10] This collection rate is too low.

In reviewing the operation of a similar referral provision to its equivalent of CCU, the Department of Revenue (DOR), the Minnesota Restitution Working Group pinpointed the shortcomings of referring collections to one unit:

> As a result of automatic referral to DOR, there is a perception by some within the criminal justice system that restitution collection is no longer an issue they must address. This is not the case, however, and this misperception underscores the need for training on the statutory mechanisms that remain if restitution is not paid, as well as the role of various professionals in keeping it a priority. Making it a priority starts with a clear message from the court at the time of sentencing about the expectation of timely payment, followed by ongoing attention from the offender's supervising agents. Agents work on multiple issues with the offenders they supervise, and their influence has the greatest likelihood of improving restitution payment.[11]

In 2013, State law was modified to provide a priority to restitution ahead of the payment of other funds. See Chapter 363 of 2013, as codified in § 11-606 of the Criminal Procedure Article. Governmental entities around the State that collect funds should make restitution the priority as required. (e.g., Drinking Driver Monitor Program (DDMP), work release program fees, court costs, fines, CCU fees, etc.). For example, offenders under DDMP pay a $55 monthly supervision fee, which is deposited into a special fund to support the program. DPSCS advises that due to the importance of generating revenues to sustain DDMP, this program fee is paid first from any monies collected. Subject to this exception, it has been standard practice since 1991 that the Division of Parole and Probation collect fees in the following order of priority: (1) restitution; (2) fines; (3) court costs; (4) public defender costs; (5) restitution collection fees; and (6) supervision fees.

Making restitution work better means relying on the supervising agencies to initiate payment plans and to design internal procedures to facilitate effective collection, as stated in the Minnesota study:

> The RWG [Restitution Working Group]'s recognition of the critical role played by supervising agents in the restitution process resulted in a series of practice recommendations:

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[10] Fiscal note of HB 549 – 2105. http://mgaleg.maryland.gov/2015RS/fnotes/bil_0009/hb0549.pdf

[11] Minnesota Restitution Working Group, Report to the Legislature (2015), at p. 15.

• **Role of agents:** Agents should regard restitution as a priority in working with offenders, including requiring offenders to complete financial disclosure forms, setting up payment plans, and getting offenders to make payments.

• **Emphasize restitution at PSI stage:** During the pre-sentence investigation process, the agent should explain to the offender that restitution will be ordered as part of the sentence, and that it can be paid at the time of sentencing. Agents should make clear that the restitution obligation starts immediately and should not be put off to the end of probation. Agents should explain the consequences of the order going to collections.

• **Use available tools:** The DOC Hearings and Release Unit (HRU) should consider a restructure for willful nonpayment of restitution. Agents should be encouraged to use informal sanctions in willful nonpayment situations.

• **Emphasize restitution at sentencing:** The court should provide a strong message to the offender at the time of plea acceptance and at sentencing about the importance of restitution, the expectation of payment, and the consequence of nonpayment. If restitution is identified at the plea stage, an agent can inform offender during PSI to bring payment to sentencing.[12]

Currently, as stated above, the Division of Parole and Probation, the Department of Juvenile Services, and the Central Collection Unit all collect money owed for other reasons besides the payment of restitution. In light of this, while consideration was given to moving all responsibilities for collection of restitution to the Victims' Services Unit, this would involve a duplication of efforts, the addition of staff, and the potential of additional confusion into an already complicated system. Consideration was also given to requiring the Victims' Services Unit to collect all fines, costs, and fees. This would involve moving the current employees with Division of Parole and Probation and the Department of Juvenile Services who do collection work to the Victims' Services Unit. This would avoid the duplication of effort concern with the Division of Parole and Probation and the Department of Juvenile Services, but would involve the Victims' Services Unit in matters unrelated to providing services to victims. This could detract from the new unit performing its primary mission serving victims. It may be, however, that the Victims' Services Unit could take over all collections and improve these collections without impacting its ability to serve victims. The Victims' Services Unit should assess these matters and make recommendations if warranted.

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[12] *Id.* at pp. 42-43.

**Recommendation 9: The Victims' Services Unit and Central Collection Unit should coordinate efforts to improve restitution collection** - The Central Collection Unit collects debts owed to the State, including collecting restitution for cases the the Department of Juvenile Services and the Division of Parole and Probation refer to the Central Collection Unit. The Victims Services Unit and the Central Collection Unit should work together to determine methods for improving collection of restitution, including considering whether the Central Collection Unit should assign specific employees to concentrate on restitution cases.

The Central Collection Unit has tended to focus on seeking out funds to payments from state sources, such as tax refunds or lottery winnings. It should examine each referral to determine whether the offender has available assets. It should aggressively pursue other means of enforcing restitution payments including: wage garnishment, judicial sales, and any other means of enforcement available under law.

All funds for which the victim cannot be located should promptly be turned over to the Comptroller so that the Comptroller can use the abandoned property tools to help locate victims.

**Recommendation 10: In coordination with the Victims' Services Unit, the Division of Parole and Probation should modernize collections. The Victim's Services Unit and the Division of Parole and Probation should collaborate on communicating with Parole and Probation agents on their role with restitution collection** - Currently the Division of Parole and Probation collects restitution from the individuals it supervises by requiring monthly payments only by certified check or money order. The Victims' Services Unit should work with the Division of Parole and Probation on ways to expand methods of payment and specifically to consider the use of electronic transfers.

Currently, probation agents monitor payment of restitution. Collection of restitution is one part of their job and they may not be trained or have access to cutting edge collection techniques. The Victims' Services Unit and the Division of Parole and Probation should collaborate on how best to communicate to Parole and Probation agents the importance of their role in restitution collection. In furtherance of the Justice Reinvestment Coordinating Council recommendation, "...it is important to focus community supervision and support services in the first

days, weeks, and months after an inmate's release."[13] In this way, community corrections may enable released offenders to secure work that will enable them to pay restitution obligations in a timely manner.

**Recommendation 11: The Victims' Services Unit, the Division of Parole and Probation, and the Central Collection Unit should coordinate on ways to expedite the referral of cases to the Central Collection Unit** - Currently, the Division of Parole and Probation refers cases to the Central Collection Unit only if restitution is still owed after the period of supervision ends. This may be years after restitution is ordered, and after a substantial period of time of being delinquent. The Department of Juvenile Services refers cases to the Central Collection Unit during the period of supervision if restitution is not paid. The Victims' Services Unit, the Division of Parole and Probation, and the Central Collection Unit should work together to expedite the referral of cases to the Central Collection Unit.

**Recommendation 12: Education for judges and prosecutors.**

1. **Educational programs**. The new Victim Services' Unit should develop programs to be presented at the Judicial Institute of Maryland and the Maryland State's Attorneys' Association to emphasize the statutory obligations of State's Attorneys to assist victims in submitting restitution requests and the responsibility of judges to receive and consider restitution requests in accordance with statute, and to include fees and costs in dispositions presumptively. Training should also include information on the collection of fees that go to victim programs and how they are often waived by judges (see fees under Courts and Judicial Proceedings Article, § 7-409). The training should also include the automated earnings withholding order system as part of the new system for the Victims' Services Unit.

2. **System and Other Aids**. Development and distribution of judicial bench books, quick reference sheets, and toolkits covering applicable statutes, rules, and regulations relating to victim restitution should be developed by the Victims' Services Unit. The unit should investigate the need for software applications to provide judicial officers with computer access to mandatory and discretionary fines and fees, and assessment data for infractions and selected misdemeanor and felony

[13] JUSTICE REINVESTMENT COORDINATING COUNCIL, FINAL REPORT (Dec. 2015) at p. 10.

violations. Those program components may then become part of the MDEC system when implemented.

Several recommendations contained in Pennsylvania's recent restitution study that resulted in major reform emphasize the need for practical, readily-implementable solutions of the kind recommended here that emphasize thorough education and training of judicial, prosecutorial, and probation personnel in the specifics of making restitution effective:

1. Develop restitution bench books for the juvenile justice and criminal justice systems.
2. Upon completion of the restitution bench books, develop quick reference sheets for restitution in the criminal and juvenile justice systems.
3. In conjunction with the development of restitution bench books, develop educational strategies, training and technical assistance for bench, bar, victim services, police and probation.
4. Develop a toolkit which would clarify policy and practice around restitution issues, identify evidence-based and/or promising practices, clarify available enforcement tools and provide helpful articles, brochures, etc.
5. Encourage Administrative Office of Pennsylvania Courts and/or the Court Rules Committee to standardize a restitution order for use at sentencing/disposition.[14]

In Maryland, especially in view of the erratic consideration and enforcement of restitution orders, increased efforts at education through the Judicial Institute of Maryland for judges and court personnel, as well as in-service education for correctional officers at all levels of institutions, both state and local, are critical to successful implementation of a new structure for restitution in the state. Benchbooks, reference sheets, and standard orders exemplify the kind of tools that should be provided to judges and court staff. Pennsylvania's approach is instructive. It identified specific areas for each justice system component to focus in preparing its training approach:

[14] RESTITUTION IN PENNSYLVANIA TASK FORCE FINAL REPORT (February 2013), at pp. 7-8.

1. **Judges** – focus on the law, guidelines, and the areas covered in the bench book;
2. **Prosecutors** – focus on the law and the mechanics of restitution (pre-sentencing leverage for up-front payments, post-sentencing responsibilities and implications for collection, ways to use restitution in negotiation to provide the best possible outcome for the victim, use of re-directed bail money);
3. **Victim Services** – focus on law, allowable costs, evidence-based and promising practices, tools for solicitation and restitution information for victims;
4. **Police** – focus on impact of the information gathered, actions taken throughout the investigation that may impact the ability to order restitution and restitution information for victims;
5. **Probation** – focus on restitution in the Pre-Sentencing Investigation (PSI), collections, the importance of restitution as a tool to reduce recidivism, … means to ensure collections and potential sanctions for non-compliance.
6. **Court and court-related personnel engaged in collections enforcement** … (Clerks of Court, [Sheriffs]… – present training and information by experienced/ expert collections enforcement staff …. [15]

**Recommendation 13: Upgrade notification to victims.**

The State is currently working on providing for a necessary interface between MDEC, the courts' new records system, and VINE, the Victim Information and Notification Everyday System. The Victims Services Unit should continue to improve the victim notification process in the State. The Unit should consider whether the adoption of the federal Statewide Automated Victim Information Notification (SAVIN) system would improve restitution collection and payments.

When restitution is ordered in a circuit court, but not in District Court except in Baltimore City, it is supposed to be entered as a civil judgment. This usually occurs, but it is not universally entered as a civil judgment as required. Some caseflow management systems currently in use in the courts, such as the UJS system now utilized in several jurisdictions, have the capacity for clerk's office employees to enter the restitution order and amount in the system. This entry permits the clerk's office to flag the existence of a restitution order on the

[15] *Id.* at p. 29.

commitment order which accompanies a convicted defendant to the place of incarceration—either a local correctional facility or DPSCS. Eventually, the UJS and other court caseflow management systems will be replaced by the Maryland Electronic Courts system (MDEC); efforts are now proceeding to ensure that victim notification requests and restitution orders are entered into the new system so as to stay with the case through judicial disposition and with the convicted defendant when committed to correctional facilities.

For restitution to be paid, the correctional institutions at both the local and State level must also know the victim's address and contact information so that payments may be forwarded in a timely manner. In some circuit court cases, but not in District Court cases, victims have the right to submit a Victim Notification Request through the State's Attorney who then files the request with the court. This request for notification has several copies which are to be sent on with the convicted defendant. However, the copies do not always move on with the defendant and thus intended recipients toward the end of the process, such as the Parole Commission, may not always receive the request. Similar issues occur in District Courts.

The need for improvement in victim notification of court proceedings and correctional hearings and release dates was another priority identified in the Victim/Survivor/Advocate Roundtables:

> "Roundtable participants stated that "Maryland needs to make effective victim notification a high priority." Both roundtables raised concerns over the fact that victims have to re-register for the Victim Information and Notification (VINE) system that provides victims with information about the status of their case and alleged or convicted offender at each stage of the criminal proceeding (pretrial, release, transfer from local to state facility, etc.). If victims are unaware of this requirement and fail to re-register, they will not be notified of the status of their case and/or offender. In addition, Roundtable participants concurred that the Department [sic] of Corrections can enter offender case/location data into the VINE system "in a more timely manner," and recommended that the VINE system include notification of sentence reconsideration and other post-sentencing hearings to registrants.
>
> Failure to provide effective notice to victims re-victimizes a victim. For victims to adequately assert their rights to be informed, present, and heard, they need to receive timely notice of offender release. In fact, in certain cases a lack of notice may place the victim in harm of death or serious injury. Justice demands that victims be accorded proper notice to prevent such occurrences.

Roundtable participants believed that improving victim notification was potentially "low hanging fruit" that could be achieved without substantial funding. Participants mentioned that by implementing the national Statewide Automated Victim Information and Notification (SAVIN) standards developed by the U.S. Department of Justice (http://it.ojp.gov/documents/ijis_savin_guidelines_standards.pdf), Maryland could improve its system by utilizing existing technology without having to reinvent the wheel.

1. There was consensus from both Roundtables that Maryland should adhere to the National SAVIN Guidelines and Standards, which include centralized registration, timely data entry from justice agencies, and the capacity for notification across the criminal justice spectrum from arrest through parole and reentry.

2. Victim Information, Notification and Participation during Pretrial Proceedings While victims have legal standing in Maryland pretrial proceedings, the issue of "timing" with cases moving very quickly often precludes effective victim participation in accordance with law. Victims need "improved communications," including information and notification about pretrial proceedings or, as one participant noted, "law enforcement just needs to call people back." Timely advance notice to victims is a key to improvement."

**Recommendation 14: The Victims' Services Unit should examine the current remedies available to enforce restitution orders to determine whether they are being effectively used and make recommendations regarding the need for additional remedies.**

Some states have recently studied their restitution systems and made recommendations for changes. A Texas study of improving restitution collected several approaches from other states:

> A number of measures have been taken in other states to more effectively enforce restitution orders. One way to enhance enforcement is improved monitoring of restitution orders. **Texas** has addressed this need with the Collection Improvement Program discussed above. However, some states have implemented other provisions that could enhance current Texas policies. For example, **Wisconsin** law requires that a separate account be set up for offenders who are ordered to pay restitution. Presumably, this allows for better tracking of compliance with restitution orders. In **Michigan**, the probation or parole officer must review each case in which restitution was ordered every two years. This is to ensure that all payments are being made. In **Utah**, the Corrections Department is required to file a violation report when a defendant does not make required restitution payments.

> Some states specifically provide victims with information on offenders' restitution plans. In **Massachusetts**, a victim has the right to the restitution payment schedule and the contact information of the probation officer in charge of supervising these orders. This enables the victim to monitor compliance as well.[16]

The Pennsylvania Restitution Task Force recommended that the following enforcement tools, at a minimum, should be clarified and strengthened for use in both the juvenile justice system and the criminal justice system:

- Wage attachments
- Written warnings
- Contempt of Court
- License suspension
- Travel restrictions
- Increased reporting requirements
- Act 84 of 1998 (42 Pa.C.S. §9728) process
- Utilize Department of Human Resources' Individuals' Financial Tracking System
- Review of eligibility for public assistance
- Enforcement tools option in the Common Pleas Case Management System (CPCMS)
- County restitution funds
- Restitution specific programs
- Enforcement conferences
- Utilizing third party collection agencies
- Utilizing review hearings to review restitution collection
- Attaching IRS refunds
- Attaching lottery winnings[17]

The Victims' Services Unit should review the State's current enforcement mechanisms to determine if they are being effectively used and make recommendations regarding the need for additional remedies if necessary.

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[16] Glen Kercher, *et al.*, RESTITUTION IN TEXAS (Crime Victims' Institute, Criminal Justice Center, Sam Houston State Univ., 2006), at p. 9.

[17] RESTITUTION IN PENNSYLVANIA TASK FORCE FINAL REPORT (February 2013), at p. 35.

**Recommendation 15: Justice Reinvestment Oversight Board. The Justice Reinvestment Oversight Board should monitor the formation of the Victims' Services Unit and provide oversight and guidance to the Victims' Services Unit.**

As part of its overall responsibilities relating to implementation of the Justice Reinvestment Initiative, the Justice Reinvestment Oversight Board should monitor the formation of the Victims' Services Unit and provide oversight and guidance to the Victims' Services Unit. The Victims' Services Unit should provide regular reports to the Oversight Board on its progress and issues it is confronting. The Oversight Board should ensure that any data systems developed and used by the Victims' Services Unit enhance victims' services and are user friendly for persons responsible for using the data systems. The Oversight Board should ensure that the Victims' Services Unit adopts appropriate outcome measures as provided in Recommendation 1 of this Report. The Oversight Board should review the outcomes and take any appropriate actions based on the outcomes.

## 5.0 CONCLUSION

Recent experience in several other states that have reformed their systems for providing restitution to victims of crime confirms that achieving greater success in collecting restitution for crime victims can be accomplished. Some states have elected to centralize the responsibility into one specialized unit for managing the process and directing collection, thereby permitting expansion of the methods that can be utilized to produce higher returns for the effort expended. At this time, however, we are not recommending that the new Victims' Services Unit assume all collection duties. The new Victims' Services Unit will act in many ways as an information hub tracking orders, payments, and collection effectiveness. Other improvements, including regular use of earnings withholding orders and intercepts of state payments, will likely increase the funds recovered. Increased awareness of the priority of restitution and the need for it on the part of the judiciary and State's Attorneys will be required so that requests will be given the treatment provided for by the statutes already in effect. The Victims' Services Unit will be responsible for ensuring that the State and local entities are using best practices and best efforts regarding restitution. The Victims' Service Unit will also include the Criminal Injuries Compensation Board and the Sexual Assault Forensic Examination program, two existing programs designed to ensure that victims receive necessary

compensation and treatment. It is our expectation that these changes will result in significantly improved services for and compensation of victims.

## APPENDICES

A. SECTIONS OF JUSTICE REINVESTMENT ACT (CH. 515 OF 2016) RELATING TO RESTITUTION

B. RESTITUTION PROCESS

C. PARTICIPANTS IN RESTITUTION WORKING GROUP MEETINGS

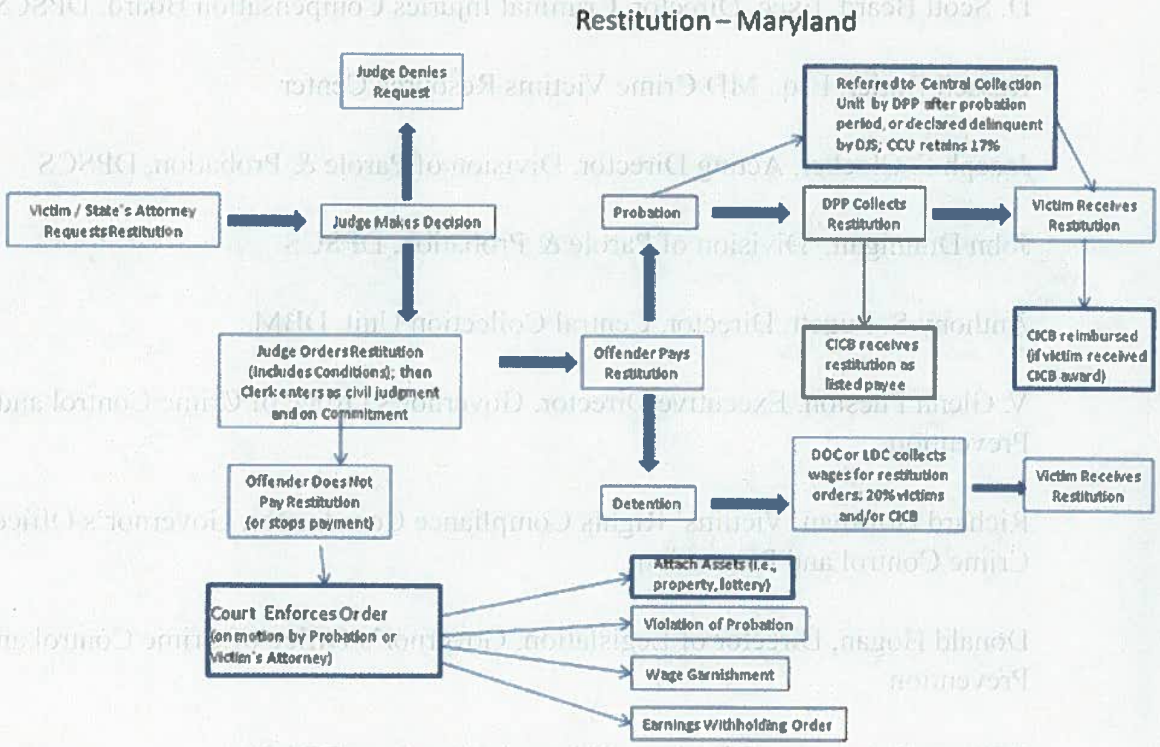
D. PROCESS UTILIZED IN PREPARING THIS REPORT

## APPENDIX A. SECTIONS OF JUSTICE REINVESTMENT ACT (CH. 515 OF 2016) RELATING TO RESTITUTION

SECTION 12. AND BE IT FURTHER ENACTED, That the Governor's Office of Crime Control and Prevention shall: (1) study the restitution process in the State and make recommendations concerning the restitution process, including: (i) recommending a process and State unit for collecting data and developing evidence–based practices for restitution collection; and (ii) recommending methods for developing additional enforcement and data collection technology infrastructure; (2) determine which State unit should assume the duties currently undertaken by the Division of Parole and Probation and the Central Collection Unit regarding collection of restitution; (3) determine whether the Criminal Injuries Compensation Board and any other victim services programs should be transferred to another entity, including considering whether a transfer would: (i) minimize fragmentation of functions that the State government performs on behalf of victims of crime and delinquent acts, while ensuring that services for special populations, including victims of sexual assault and child sexual abuse, are performed by providers with expertise in the area of need; and (ii) improve the coordination, efficiency, and effectiveness of State assistance to victims of crime and delinquent acts; (4) consider any other ways to improve the collection of restitution; ...and (6) report to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly by December 1, 2016, on its findings and recommendations.

SECTION 13. AND BE IT FURTHER ENACTED, That unless the Governor determines that transferring the collection of restitution from the Division of Parole and Probation and the Central Collection Unit to another State unit will not improve the collection of restitution, the Governor shall order the new State unit to assume the responsibility of collecting restitution by issuing an executive order to reorganize State government under Article II, Section 24 of the Maryland Constitution for the 2017 regular session of the General Assembly. The Governor shall include a provision in the executive order providing that the transfer may not be effective until 30 days after the Governor's Office of Crime Control and Prevention notifies in writing the Governor, the President of the Senate, and the Speaker of the House that the new State unit is able to assume the collection roles and responsibilities.

# APPENDIX B. RESTITUTION PROCESS




11/2/2016

## APPENDIX C. PARTICIPANTS IN RESTITUTION WORKING GROUP MEETINGS

D. Scott Beard, Exec. Director, Criminal Injuries Compensation Board, DPSCS

Russell Butler, Esq., MD Crime Victims Resource Center

Joseph F. Clocker, Acting Director, Division of Parole & Probation, DPSCS

John Dunnigan, Division of Parole & Probation, DPSCS

Anthony S. Fugett, Director, Central Collection Unit, DBM,

V. Glenn Fueston, Executive Director, Governor's Office of Crime Control and Prevention

Richard Hoffman, Victims' Rights Compliance Coordinator, Governor's Office of Crime Control and Prevention

Donald Hogan, Director of Legislation, Governor's Office of Crime Control and Prevention

William C. Johnson, Division of Financial Services, DPSCS

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Ashley Lohr, MD Correctional Enterprises, DPSCS

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Alec Weadon, Criminal Injuries Compensation Board, DPSCS

Adrienne White, Div. of Financial Services, DPSCS

## APPENDIX D. PROCESS UTILIZED IN PREPARING THIS REPORT

A Restitution Working Group was organized in August 2016 by the Governor's Office of Crime Control & Prevention to examine and determine how restitution for crime victims was being processed in State agencies, including the Division of Parole & Probation and the Criminal Injuries Compensation Board (both within the Department of Public Safety and Correctional Services), the Department of Juvenile Services, the Central Collections Unit of the Department of Budget and Management, the Office of the Comptroller, the Judiciary, and the Department of Information Technology. Several meetings of the Working Group were held during September and October 2016. Participants are listed in Appendix C. In addition, a group was assembled within the Department of Public Safety and Correctional Services to analyze the processes within that Department and to recommend appropriate improvements to the Restitution Working Group.

In preparing the report and recommendations, reference was made to the Final Report of the Justice Reinvestment Coordinating Council (JRCC) issued in December 2015; this report in turn relied on the Victim/Survivor/Advocate Roundtables held in 2015 by the JRCC and the Priorities identified by those Roundtables.

A survey of local correctional facility practices with regard to collection of restitution was conducted for the Office by the Maryland Correctional Administrators' Association; the results of that survey are contained in the chart that appears as Figure 3.