

DJS State Advisory Board (SAB) - Restitution Subcommittee Recommendations to the SAB

Background and Charge

The SAB, at the request of the SAB Fatality Review Subcommittee, created another subcommittee to study Restitution (the Restitution Subcommittee). The Restitution Subcommittee was tasked to consider:

- the issue of restitution in juvenile delinquency cases;
- the extent to which restitution obligations imposed upon youth through the Juvenile Justice System (JJS) are consistent with the purpose and parameters of the JJS;
- the effectiveness of the restitution system;
- the effects of the restitution system on victims; and
- the effects of the restitution system on juveniles.

Rationale, Discussion and Basis for Recommendations

The Restitution Subcommittee discussed:

- Restitution should be considered when a youth's actions creates a financial loss to another;
- When a youth or the youth's family has means to compensate a victim's financial loss, compensation should be promptly paid;
- The moral and societal obligation to assume accountability for restitution to the victim and community, separate and apart from any legal obligation defined by the JJS;
- The negative effects of a restitution obligation that are incongruent with the purpose of JJS, especially in instances of poverty and disparately impacted by race;
- The system of restitution, particularly when youth and the victims of financial loss are in similar financial situations, the obligation of restitution is a largely unsatisfying process;
- Some negative effects of a restitution obligation may well be attributed to the statutes governing restitution, including the requirement for credit reporting and civil judgements that have the capacity to place youth at a disadvantage when entering young adulthood;
- An inherent imbalance/disparity that exists between youth and families who have adequate means to pay restitution and those who do not; and
- The anecdotal information that non-payment of restitution causes youth with limited means to experience extended probation periods.

A supplementary document is attached with additional details regarding the Subcommittee's deliberations.

Recommendations

The Restitution Subcommittee proposes the following recommendations for consideration by the SAB and the Department of Juvenile Services (DJS). The recommendations are intended to alleviate/address the negative impact that a restitution obligation has on youth and is inconsistent with the purpose of the JJS. The recommendations are neither exhaustive nor comprehensive. In several instances, they identify suggestions that are dependent on actions and collaborations with other agencies and leaders. Although these agencies and individuals are outside the authority of DJS, they may well be within the Department's sphere of influence.

Recommendation 1: Department of Juvenile Services Data Collection

- a. Collect and report data relevant to the impact and effectiveness of restitution obligations on youth, families, and victims. These data points should include the number of:
 - i. cases forwarded for prosecution and having a restitution component as well as identification of the type of financial loss;
 - ii. dispositions including an order to pay restitution for respondents and/or parents/families as well as identification of the type of financial loss;
 - iii. restitution cases forwarded to the Central Collections Unit (CCU);
 - iv. civil judgements entered through a delinquency case;
 - v. cases in which the court evaluates the "ability to pay" prior to entering an order of restitution;
 - vi. cases that remain in a probationary status solely for lacking payment of restitution; and
 - vii. cases forwarded for prosecution solely based on unpaid restitution.

Rationale: Availability of data on the effects of restitution obligations was limited. Accordingly, the Restitution Subcommittee recommends that DJS place an emphasis on the collection and reporting of facts and figures reflective of the actual effects that restitution obligations have on youth.

Recommendation 2: Department of Juvenile Services Policy Changes

- a. Recommended policy changes include:
 - i. case workers should include evaluations and/or recommendations on a juvenile's and the family's "ability to pay" a restitution order;
 - ii. case workers should make a formal request to obtain a court order prior to forwarding an overdue restitution case to the CCU;

- iii. DJS should either prohibit the collection of social security numbers or limit the use. (Noted: CP 11-607 requires DJS to obtain the number to facilitate collection, subject to federal law);
- iv. case workers should ensure that Earnings Withholding Orders are entered for employed youth;
- v. case workers should create realistic plans for restitution; and
- vi. DJS should collaborate with the State's Attorney's Office (SAO) on a process regarding decision-making for cases of indigent children and families.

Rationale: The Restitution Subcommittee identified specific points at which the Department's course of action could influence a recommendation/determination of a juvenile's obligation to pay restitution. DJS policy changes have the potential to positively impact the unintended consequences of restitution orders through adjustments/technical amendments to the JJS and Criminal Procedure Article.

Recommendation 3: Potential Legislative Changes

- a. Potential legislative changes for consideration include, but are not limited to:
 - i. establish a State fund to reimburse victims of juvenile delinquent acts;
 - ii. separate the statutes covering court ordered restitution in juvenile delinquency cases from those covering adult cases;
 - iii. require a financial evaluation prior to requiring a respondent or parent/family to pay restitution;
 - iv. prohibit DJS from referring an overdue restitution account for collection to CCU without further court order; and
 - v. Prohibit the collection of a juvenile's social security number or limit its use.

Rationale: The Restitution Subcommittee reviewed the current statutory scheme regarding restitution and juveniles. The suggested recommendations are intended to ensure that the issue of restitution as it relates to juveniles is properly aligned with the purpose of the juvenile justice system.

Information provided to the Subcommittee supports that, although the total annual monetary amount of restitution ordered is not budgetary exorbitant, the amount that is satisfied each year represents only a small fraction of the amount ordered. Creation of a fund to pay restitution to victims on behalf of juveniles would address the fact that many victims wait an inordinately long time for restitution to be paid. Savings from anticipated reductions in supervision, prosecution, and collection costs may balance the State's investment in the fund. Additional funding and grants through private and philanthropic organizations and individuals should be explored.

Currently, the statutes covering court ordered restitution in juvenile delinquency cases are the same as those for adults. Separation of the adult and juvenile statutes would facilitate a better alignment of the juvenile statutes with the purpose of the JJS which is based in concepts of rehabilitation and not in punishment. Restitution is currently one of the only areas of juvenile law where there is no separation in the governing authority.

Restitution may currently be ordered or declined at the discretion of the court. Requiring a financial evaluation to determine “ability to pay” prior to ordering restitution would lay the groundwork for those decisions to be congruent with the purpose of the juvenile court and also to be more uniform and reasonable.

Currently, DJS may refer overdue restitution accounts to the CCU and must refer unpaid restitution to CCU upon case closure. Changes to prohibit this practice would address the negative impacts associated with damaged credit, civil judgements, and disadvantages to youth as they enter young adulthood and attempt to attend school, seek employment, and acquire adequate housing.

Recommendation 4: Education and Awareness

- a. Provide information, resources, and training to educate and develop awareness for judges, magistrates, court staff, DJS staff, and lawyers on the availability of and access to victim supports and services and community resources to include:
 - i. available tools to facilitate the payment of restitution - Plans, EWO;
 - ii. how and when to conduct “ability to pay” evaluations, use standards of impoverishment, consider obstacles to employment, define decision points, intake procedures, forwarding and closing cases, probation, VOP, and commitment;
 - iii. a comparison of civil judgements and CCU with the purposes of JJS and existing case law;
 - iv. increasing victim satisfaction through alternatives to restitution, including community conferencing and other ADR;
 - v. information regarding uniformity of court practices across Maryland;
 - vi. a comparison of the efficacy of ordered restitution, as it is currently implemented, to the actual satisfaction of paid restitution;
 - vii. consideration of the negative, unintended consequences of restitution orders on indigent youth through the lens of racial disparity, poverty, and gender; and
 - viii. the impact of plea bargains and restitution on youth, families, and victims.

Rationale: Many community members, victims, educators, prosecutors, and even judges and magistrates, consider the JJS system to be a criminal court for juveniles, a system of crime and punishment for youth. Both the Juvenile Causes subtitle and Maryland case law support the

concept that juvenile proceedings are special in nature, not driven by punishment, but rather by the need to protect each juvenile. Court dispositions are meant to be focused on the child's need for protection and rehabilitation. In order to impact current practices and misconceptions, educational opportunities must be offered that develop fresh concepts, address misconceptions, and develop an awareness of the impact of restitution orders on juveniles.