

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

The background, charge, rationale, discussion and basis for recommendations can be found in the recommendations document. Please refer to that document for that information.

The Subcommittee met every two weeks for a number of months (May 2021 - October 2021). Information was shared and issues were discussed. The recommendations document contains brief synopsis of those discussions, in the form of rationale. In fairness to the participating members and given the importance of this work, this document provides more in depth reporting of those discussions.

The concept of restitution is firmly seated in the Juvenile Justice System (JJS) and Criminal Procedure Article. The Subcommittee members agree that when a juvenile creates financial loss to another, restitution is one remedy. They also believe that there is a moral and social obligation on the part of that youth to make restitution that is separate and apart from any obligation that may be required by the JJS.

While the purpose statute of the Juvenile Causes support concepts of accountability to the victim and the community, it also addresses the need to assist the child to develop competency and character. The Subcommittee concluded that, particularly in instances of poverty, some of the effects of a restitution obligation commanded by the JJS are inconsistent with the purpose of the JJS. Of special interest to the members is the notion that victims who suffer financial loss are frequently in similar or even more fragile financial situations than the youth who become involved with the JJS. Based on discussion and available data, it appears that the restitution process is largely unsatisfying for victims who have experienced financial loss.

Some of the negative consequences of a JJS restitution obligation can be directly attributed to the statutes governing restitution. There are allowances and requirements that permit restitution orders to become the source of negative credit reporting and civil judgements. Youth who leave the system with unsatisfied restitution orders can be subjected to poor credit ratings and civil judgements that place them at a disadvantage as they reenter society as young adults.

While this is unlikely to occur for juveniles and their families who have the financial means to satisfy a restitution order, it can occur for those who experience poverty. This disparity is also likely in situations where youth who would otherwise have their matter handled informally, instead have their case forwarded for prosecution solely based on the unpaid financial loss of the victim. Youth with adequate financial means may be able to avoid entry into the JJS by paying the restitution. This results in the disparate treatment of youth based solely on their poverty.

Racial disparity issues in matters of restitution obligations cannot be ignored. Based on recent studies, not only are Black, Brown, and Indigenous youth punished more often and more harshly than white youth, exposing them to higher fees and fines regardless of underlying conduct, but they are less able to pay such monetary sanctions because of the racial wealth gap. Imposing financial burdens that are impossible to meet draws young people, especially indigent young people, deeper into the maze of the legal system straining minimal resources and causing additional stress to families already suffering through poverty. Fees and fines have been found to be rooted in a history of racial subjugation and have been imposed in the context of persistent racial bias, which, in turn, reinforces and heightens racial disparities. Although restitution is not technically a fee or fine, these structural disparities must be considered by the SAB in its advisory on the appropriate use of restitution in the juvenile justice system.

In the absence of a body of quantitative data, some perceived negative effects are based on anecdotal evidence as well as the educated surmising of the Subcommittee and SAB members. It is believed that some youth remain on probation for longer periods of time solely due to the non-payment of restitution. This is another example of youth being treated differently based on wealth or lack thereof. It is believed that a large number of formal restitution obligations that are placed upon youth are by way of a plea negotiation and imposed by the court without meaningful evaluation of the youth/family's actual ability to pay. This practice has the result of creating an unrealistic expectation that restitution will be paid, often leaving the victim highly frustrated and economically harmed and the youth experiencing the negative effects of a restitution order they never had the ability to satisfy.

What can be quantified is that statewide, much of restitution owed for active cases, remains unpaid. (See data below)

Active DJS Cases, and Cases With Restitution Orders, as of January 22, 2020

County	All Youth	Youth With Orders	Restitution Ordered	Balance Owed	Average Ordered	Average Balance
State Total	5817	962	\$938,707.11	\$804,424.95	\$975.79	\$836.20
Allegany	141	1	\$100.00	\$100.00	\$100.00	\$100.00
Anne Arundel	734	80	\$60,309.02	\$54,391.73	\$753.86	\$679.90
Baltimore City	735	241	\$258,113.60	\$214,441.67	\$1,071.01	\$889.80
Baltimore County	821	168	\$192,086.44	\$166,337.91	\$1,143.37	\$990.11
Calvert	136	7	\$4,205.60	\$2,840.60	\$600.80	\$405.80
Caroline	51	3	\$1,800.00	\$1,600.00	\$600.00	\$533.33
Carroll	97	8	\$2,287.18	\$1,734.68	\$285.90	\$216.84
Cecil	107	8	\$3,972.10	\$3,972.10	\$496.51	\$496.51
Charles	174	23	\$16,324.99	\$12,122.33	\$709.78	\$527.06
Dorchester	88	38	\$23,974.39	\$21,264.06	\$630.91	\$559.58
Frederick	232	27	\$46,285.29	\$31,915.80	\$1,714.27	\$1,182.07
Garrett	51	0	\$0.00	\$0.00	NA	NA
Harford	207	23	\$34,143.92	\$26,545.70	\$1,484.52	\$1,154.16
Howard	153	57	\$49,903.61	\$46,014.90	\$875.50	\$807.28
Kent	22	1	\$500.00	\$500.00	\$500.00	\$500.00
Montgomery	616	99	\$80,837.65	\$77,625.26	\$816.54	\$784.09
Prince George's	580	107	\$104,453.91	\$94,446.63	\$976.20	\$882.68
Queen Anne's	33	6	\$6,306.00	\$4,756.00	\$1,051.00	\$792.67
Somerset	100	7	\$6,080.03	\$5,065.03	\$868.58	\$723.58
St. Mary's	140	0	\$0.00	\$0.00	NA	NA
Talbot	34	1	\$326.00	\$31.00	\$326.00	\$31.00
Washington	233	7	\$1,842.87	\$1,269.37	\$263.27	\$181.34
Wicomico	190	41	\$23,024.32	\$20,002.47	\$561.57	\$487.87
Worcester	87	9	\$21,830.19	\$17,447.71	\$2,425.58	\$1,938.63

Source: DJS Safe Measures: "Client Folder Assignments", and "Restitution Status" Reports

Extract Date 01/22/2020

Title Restitution Status

Includes All folders for all clients under the age of 21 with a restitution balance greater than \$0.00 a

Subset Folder Type: Aftercare, Probation, IC-Receiving, IC-Sending, Pre-Court Supervision, Investig

Victims with out of pocket losses often get restitution orders and judgments and are then required to try to “collect” on the orders. Most of the time the restitution is not paid in full or not paid at all. The Criminal Injuries Compensation Board (CICB) provides an alternative method of payment for items up to certain capped amounts and the Maryland Crime Victims Resource Center (MCVRC) can assist victims but only if they know of MCVRC.

CICB benefits require documentation that can be difficult for a victim to acquire, only certain damages can be covered and all are capped. Additionally, property damage is not one of the categories for CICB benefits. As most of the victims are from the same economic strata as the juvenile offenders, the effects of even moderate losses are immense. For example, the loss of a used car can create issues of debt, transportation and unemployment. Any state fund to recompense victims should include property damage losses.

In conclusion, juveniles and their families who experience poverty feel negative consequences from restitution obligations that are inconsistent with the JJS. Juveniles with financial means are able to avoid certain secondary effects that result from unpaid restitution. This disparate impact on the poor is contrary to the rehabilitative purpose of the JJS. Changes may alleviate the consequences of these inconsistencies and ensure that the system treats juveniles equally regardless of financial means.