

Legal Background



FOUNDATIONS FOR RESTITUTION

**CAROLINE WONG
DISTRICT ATTORNEY'S OFFICE**

What is Restitution?



- ORS 137.103(3):

“Restitution” means full, partial or nominal payment of **economic damages** to a victim. Restitution is independent of and may be awarded in addition to a compensatory fine awarded under ORS 137.101.

What is Restitution?



- Under ORS 31.710(2)(a) “Economic Damages” are
 - “objectively verifiable monetary losses including but not limited to reasonable charges necessarily incurred for medical, hospital, nursing and rehabilitative services and other health care services, burial and memorial expenses, loss of income and past and future impairment of earning capacity, reasonable and necessary expenses incurred for substitute domestic services, recurring loss to an estate, damage to reputation that is economically verifiable, reasonable and necessarily incurred costs due to loss of use of property and reasonable costs incurred for repair or for replacement of damaged property, whichever is less.”
- “Economic Damages” **does not** include future impairment of earning capacity. (ORS 137.103(2)(a))

Who is a Victim?



- Under ORS 137.103(4) a “Victim” is
 - (a) The person against whom the defendant committed the criminal offense, if the court determines that the person has suffered **economic damages** as a result of the offense.
 - (b) Any person not described in paragraph (a) of this subsection whom the court determines has suffered economic damages as a result of the defendant’s criminal activities.
 - (c) The **Criminal Injuries Compensation Account**, if it has expended moneys on behalf of a victim described in paragraph (a) of this subsection.
 - (d) **An insurance carrier**, if it has expended moneys on behalf of a victim described in paragraph (a) of this subsection.
- (5) “Victim” does not include any coparticipant in the defendant’s criminal activities.

The Constitutional Right to Restitution



Article 1. Sect 42

Victims have "the right to receive **prompt** restitution from the convicted criminal who caused the victim's loss or injury."

The Statutory Right to Restitution



- **ORS137.106(1)(a)**: the district attorney **shall** investigate and present to the court evidence of the nature and amount of the damages...
- **ORS137.106(4)**: Payment of full restitution is due at the time of the judgment unless defendant proves inability to pay in full.

The Multnomah County Restitution Recovery Pilot Project



**HOW RESTITUTION
IS ORDERED AND ENFORCED**

Our Mission



The Restitution Recovery Program upholds the rights of crime victims as embodied in Oregon law by investigating the economic loss to victims and ensuring that such losses are accurately and promptly presented to the court. The Program assists Deputy District Attorneys in determining the legal sufficiency requirements for court-ordered restitution and works with community partners to improve the prompt payment of restitution to victims of crime in Multnomah County.

Collaboration



- Our goal: To work with our partner agencies to have more restitution ordered and collected on behalf of victims.
- Partner Agencies:
 - DA's Office
 - Department of Justice;
 - Department of Community Justice;
 - National Crime Victims Law Institute; and
 - Multnomah County Circuit Courts.

Pre-Conviction Stage



3 Restitution Clerks

- Investigate the nature and amount of loss to crime victims;
- Contact victims, usually at Grand Jury;
- Connect a Restitution Envelope to the case file within 25 days of indictment; and
- Quality control.

2 Halftime Attorney Positions

- Work with the courts;
- Research, writing, and advice to other DDAs; and
- Liaison to partner agencies.

1 Project Coordinator

- Collect and evaluate performance statistics; and
- Liaison to partner agencies.

The Restitution Envelope



DA#: 2221234-1

STATE V. Doe, Jane

DDA: Molina

DATE INDICTED: 5/01/2014

DATE ENVELOPE COMPLETED: 5/26/2014

RESTITUTION CLERK: R. Clerk

RESTITUTION

SCANNED

Victim Name	Restitution Letter sent		Phone call to victims		Nature of Request	Total requested
	1 st	2 nd	1 st	2 nd		
Justin Jones	At GJ 5-1-14	5-22-14	At GJ 5-1-14	5-16-14	\$5,200 hospital bills; \$3,450 car repair; \$650 to-date for physical therapy but ongoing .	PENDING
Sarah Smith	At GJ 5-1-14	5-22-14	At GJ 5-1-14	Email 5-16-14	\$1,350 medical bills; and \$700 car repair.	\$2,050
City of Portland	5-2-14	5-22-14	5-2-14	5-16-14	Damage to a traffic control box.	\$600
Multnomah County	5-2-14	5-22-14	L/M 5-2-14	5-16-14	Victim States No Loss	Ø

TOTAL: PENDING

Post-Conviction Tool for Accountability



•THE RESTITUTION PACKAGE

- Completion of financial disclosure form;
 - Maintaining employment;
 - Do not incur additional debt.
-
- Other packages in our county:
 - Alcohol and Drug
 - Financial Crimes
 - Domestic Violence

Post-Conviction Stage

2 DOJ Collection Agents

- Examine probationer's assets;
- Meet with probationers to conduct financial interviews;
- Support enforcement of probation conditions;
- Collect restitution;
- Negotiate terms of payment;
- Garnishments; and
- Probation violations.

2 Half-Time Attorney Positions

- Correct judgments;
- Work with the courts;
- Research, writing, and advice to other DDAs;
- Garnishments; and
- Probation violations.

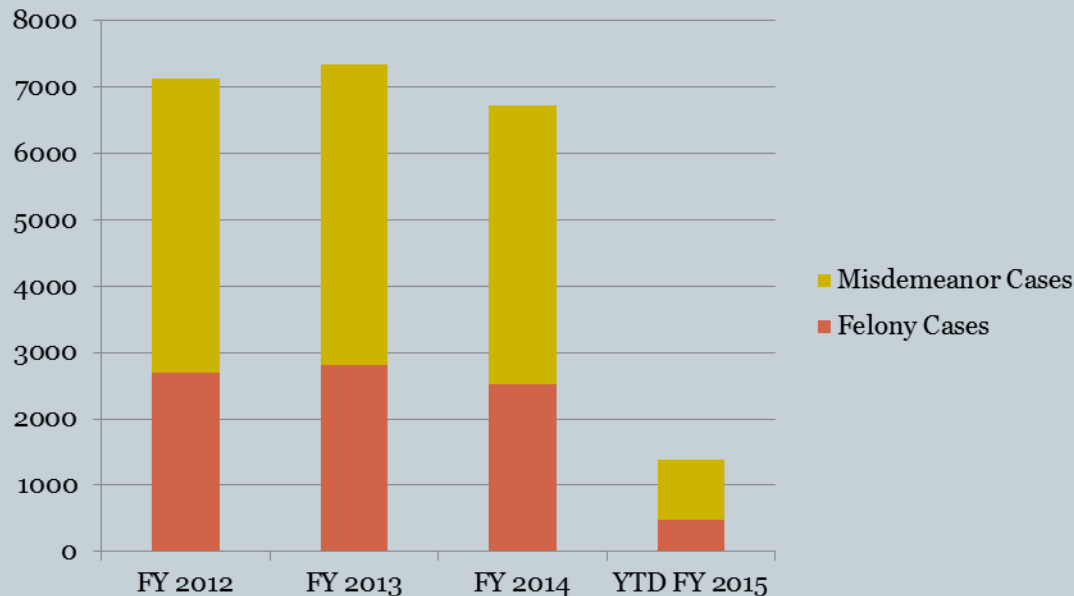
Statistics: Totals



- Total number of victims contacted to document restitution loss:

Fiscal Year	2012	2013	2014	2015*
# of Victims	7,128	7,348	6,731	1,377

* To-Date



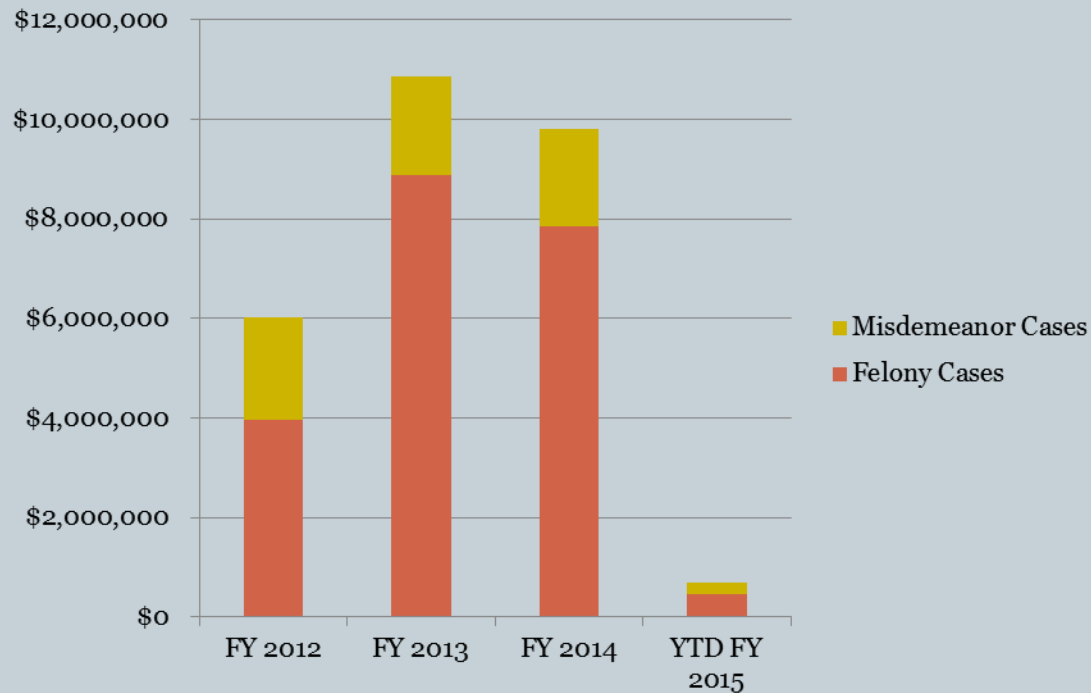
Statistics: Totals



- Total amount of restitution requested:

Fiscal Year	2012	2013	2014	2015*
Amount	\$6,019,149	\$10,872,005	\$9,818,606	\$694,992

* To-Date



A stylized graphic on the left side of the slide. It features two dark green mountain peaks of different heights. Below the mountains is a dark green wavy band representing a forest or a body of land. At the bottom is a blue wavy band representing water. The entire graphic is composed of solid-colored shapes with no outlines.

Restitution Overview

Scott Taylor
Department of Community Justice
Presentation at LPSCC
October 7, 2014

Restitution // Overview

- DCJ role:
 - Restitution is one type of condition
 - PPOs do not collect restitution but track payment
 - Victims Services Unit



Restitution // Overview

- Restitution is paid to the Office of State Courts.
- Offenders can pay in a variety of ways:
 - Online
 - Over the phone
 - In person at the Courthouse
- 50 year collection obligation



- Challenges
 - Ability to pay - on average DCJ population has income less than \$1000 monthly
 - If the client is ordered to pay restitution and a payment is made, the victims get half the funds
 - Fees of 28% are charged when restitution collection is turned over to a collections agency



Restitution // Overview

- The numbers:
 - Most recent percentage restitution collection
 - Multnomah County: 26%
 - Statewide: 25%



Restitution // Juvenile

- Project Payback
 - Juvenile restorative justice program that provides opportunities for youth to pay their restitution and other fees.
- Supervised crews work with community partners like the Portland Water Bureau and Metro on designated sites throughout Multnomah County.
- Youth are provided with opportunities to gain important knowledge and job skills that promote a safe and stable environment.



Restitution // Juvenile

- In the past year, youth have earned over \$54,000 which has been paid directly toward their restitution/fees.
- Staff are currently revising the program with plans to create youth leadership roles with financial incentives.



Restitution // Next Steps and Discussion

- DCJ Adult Division is currently designing a Project Payback program for adults.



Notes on Restitution

Historic and Current Challenges

Doug Bray

Multnomah County Circuit Court

Financial Obligations in Criminal Actions

5 Levels

Level 1 Compensatory Fine – top priority for payment.

Level 2 has two types:

Type 1 is restitution

Type 2 is any other financial obligation owed to the state.

If a judgment contains both Type 1 and 2, then equal priority for payment (50 percent each) for each type.

For purposes of restitution, none of the other levels matter.

Collection Cost complication to restitution

ORS 1.202 provides two collection cost both of which go to the State General Fund:

- 1) **Account Cost** for carrying the account: Max \$200. Currently the maximum fee is added to an account receivable balance greater than \$400.
- 2) **Collection Cost** for referral of the account to outside collection services – actual cost which is set currently at 28 percent of the amount owed at the time of the assignment.

These costs are Level 2, type 2, and have a 50 priority with restitution.

Types of Victims in Restitution

- 1) The person against whom the defendant committed the criminal offense.
- 2) Any other person whom the court determines has suffered economic damages as a result of the defendant's criminal offense.
- 3) The Criminal Injuries Compensation Account if it expended funds to support a victim defined in (1) above.
- 4) An insurance carrier, if it has expended money in support of a victim defined in (1) above.

If multiple victims: Victims in (1) paid first, then when all paid, (3) has the next priority, then (2) and (4) are paid last.

OJIN Financial Detail

Financial History.... Multnomah Circuit Court						BDM 10/07/14 7:01 AM
Case#..... 110833238 Oregon State Of/Erickson Cynthia Marie						Status Closed VBL
Offense Felony - Criminal Mistreatment-1 - C/FEL						*
3/17/14	RCP	6646382	CARD	Alt#: #500618	ARPM	75.00
	IMP	5	PAY	Anderson Kenneth G		

3/17/14	FTR	3591477			ARPM	-75.00
					REST	75.00
	RCP	6646382				

3/17/14	DSB	917360		3/19/14 Chk#: 850473 0	REST	75.00
	PAYEE		Everett-Nelson Virginia			
	IMP	2	PAE	Virginia Everett-Nelson		

4/15/14	RCP	6668504	CARD		ARPM	60.00
			#349383			
	IMP	5	PAY	Anderson Kenneth G		

4/15/14	FTR	3605800			ARPM	-60. +

F5=DSPPMT F7=DSPTRSLGR F8=DSPVBLLGR F10=BROWSE FWD F11=BROWSE BCK						
A						01/002

Odyssey Detail

Trans		Edit Pmt Plan Edit Detail View Balances					
Date	Reference	Charges	Payments	Credits	Balance	Disb	Escrow
03/17/2014			75.00		49,914.77		0.00
79875379	Disbursement				49,914.77	60.00	(60.00)
04/15/2014	852992						
79876334	Adjustment		60.00		49,854.77		0.00
04/15/2014							
80482245	Phone Payment		60.00		49,794.77		60.00
05/15/2014	2014-204196						
151382854	Counter Payment		50.00		49,744.77		110.00
05/20/2014	2014-209395						
151491774	Disbursement				49,744.77	50.00	60.00
06/06/2014	10017						
151536930	Phone Payment		60.00		49,684.77		120.00
06/16/2014	2014-247675						
151554877	Mail Payment		50.00		49,634.77		170.00
06/19/2014	2014-253005						
151570627	Disbursement				49,634.77	60.00	110.00
06/20/2014	11394						
151579864	Disbursement				49,634.77	85.00	25.00
06/23/2014	11687						
151684931	Disbursement				49,634.77	25.00	0.00
07/10/2014	13134						
151701525	Mail Payment		50.00		49,584.77		50.00
07/15/2014	2014-322294						
151724188	Phone Payment		60.00		49,524.77		110.00
07/18/2014	2014-330257						
151828074	Disbursement						
Totals		72,631.77	23,327.00	0.00	49,304.77	22,633.00	694.00

OECI Financial Information Displayed for Outside Users

TE		FINANCIAL INFORMATION
Defendant ERICKSON, LEONARD R		
Total Charges		72,631.77
Total Payments and Credits		23,327.00
Balance Due as of 10/6/2014		49,304.77
 Defendant ERICKSON, LEONARD R		
A/R Payment Balance as of 10/6/2014		0.00