

VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners and Advocates

RESTITUTION COURT:

AN INNOVATIVE APPROACH TO COLLECTING DELINQUENT RESTITUTION

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Maricopa County Superior Court has a new approach to enforcing restitution. The Honorable Roland Steinle, in collaboration with Maricopa County Adult Probation Services, began restitution court in August 2008. Judge Steinle began enforcing efforts to collect late restitution payments by applying procedures used to collect child support payments in arrears in family court.

How does it work?

Maricopa County Adult Probation (MCAP) screens accounts and prepares a list of egregiously delinquent restitution accounts. The Judicial Clerk prepares Order to Show Cause (OTSC) hearings and notifications. The assigned probation officer delivers the OTSC to the probationer and directs them to attend the hearing.

What does statute say?

Arizona Revised Statute 13-810. Consequences of nonpayment of fines, fees, restitution or incarceration costs

A. In addition to any other remedy provided by law, including a writ of execution or other civil enforcement, if a defendant who is sentenced to pay a fine, a fee or incarceration costs defaults in the payment of the fine, fee or incarceration costs or of any installment as ordered, the clerk of the court imposing the fine, fee or incarceration costs shall notify the prosecutor and the sentencing court. The court, on motion of the prosecuting attorney or on its own motion, shall require the defendant to show cause why the defendant's default should not be treated as contempt and may issue a summons or a warrant of arrest for the defendant's appearance.

The Enforcement Hearing

MCAP calculates the amount in arrears. At the hearing the judge determines the ability and willingness of the probationer to pay. The probationer is given 30 days to make restitution payments. If the probationer remains delinquent in payment after 30 days, there are three possible courses of action:

- The probationer is found in civil contempt, incarcerated and a purge amount is set by the court; or
- The probationer is found in contempt with a payment plan made to resolve the amount in arrears; or
- A plan is created to employ the probationer and start restitution payments on the agreed plan.



The Victims' Rights Brief is published by the Arizona Attorney General's Office of Victim Services, which remains wholly responsible for its content. The goal in generating the Brief is to promote justice and healing for crime victims by sharing information and fostering sensitivity within the justice system. To learn more about victims' rights visit us at www.azag.gov.

2009 LEGISLATIVE UPDATES

13-3601 "Kaity's Law"*

Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure; notice

This law expands the definition of domestic violence to include relationships between the victim and the defendant that are currently or were previously a romantic or sexual relation-

ship. Allows the following factors to be considered in determining whether a relationship is currently or was previously a romantic or sexual relationship:

- The type of the relationship;
- The length of the relationship;
- The frequency of the interaction between the victim and the defendant; and
- If the relationship has termi-

nated, the length of time since the termination.

*This legislation was named in memory of Kaitlyn Marie Sudberry. Kaitlyn was the victim of homicide, committed by her ex-boyfriend, while on her way home from school. She was 17 years old, and a senior at Moon Valley High School in Phoenix, Arizona.

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Give the Victims' Rights
Brief a call! Contact
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RESTITUTION COURT CONTINUED...

Judge Steinle's calendar is set to first hear cases continued from the previous month. This order of hearing cases is structured to permit newly-attending probationers to observe the process and see from themselves what works for other probationers as well as what has failed. Probation Officers also invite probationers to attend and watch restitution court proceedings as a tool for encouraging compliance.

Judge Steinle conducts restitution court once each month. As the proceedings are civil in nature, probationers are not entitled to representation by a public defender. A state prosecutor does not attend these hearings.

The costs for the restitution hearings involve an hour of Judge Steinle's time and the time necessary for MCAP to prepare for the hearings and notify the necessary participants. Judge Steinle hears five new cases each month as well as twelve cases continued from prior months. Judge Steinle reports that restitution hearings provide a tremendous cost savings to the court and criminal justice system when compared to the time and costs of conducting criminal probation revocation proceedings based on a probationer's failure to pay restitution.

Judge Joseph Welty of the Maricopa County Superior Court has also started restitution hearing in his court.

As a last resort, probationers who are delinquent in restitution payments can be held in civil contempt of court and incarcerated. The court places the responsibility and accountability for restitution payments squarely on the probationers. Judge Steinle reports that incarcerated probationers literally

"hold the keys of the jail" and usually find money in short order to pay their in arrears restitution amounts.

As a result of restitution court hearings MCAP has collected \$107,000.00 in restitution payments since August of 2008. Judge Steinle and MCAP are working within the Arizona Superior Court system to help start similar programs throughout Arizona.

Stephanie Bradley, Victim Rights and Program Coordinator at MCAP reports that victims are pleased with the restitution court concept and the positive results.

The restitution court model is successful because of the collaboration between the Court and Adult Probation Department. The OTSC process generally ensures consistent attendance and participation of probationers. MCAP maintains detailed records concerning restitution payment history. MCAP also maintains a financial compliance section (Fincom). Fincom's goal is to obtain the full and timely compliance of probationers in the matter of restitution payments.

Dan Levey, the Director of Victim Services at the Arizona Attorney General's Office, reports that Judge Steinle's restitution court concept is a resounding success and an excellent example of an efficient and workable program to ensure that probationers are held responsible and accountable for timely restitution payments to victims.

More Legislative Updates...

25-403 Custody; best interests of child

The court shall determine custody, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider all relevant factors, including which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent. This does not apply if the court determines that a parent was acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.

13-4271 Cold case register; law enforcement agencies; definition

A Law enforcement agency that has a cold case shall establish and maintain a cold case register. The cold case register shall consist of the names of any victim, victim's family member or other lawful representative of a victim of a cold case who requests that the person's name be included in the cold case register.

SB1011 was signed by Governor Brewer and this legislation will create a study committee to review all sex crime legislation in Arizona.

*For questions about the Restitution Court model, contact
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