Update: Restitution

Overview

In 2016, the Crime Commission conducted a study on restitution collection practices in Virginia and the extension of probation for failure to comply with an order to pay restitution.[1] As a result of this study, the Crime Commission endorsed 13 policy options and recommendations to improve the collection of restitution for victims of crime throughout the Commonwealth.[2]

Based on the continued work of the Crime Commission and numerous stakeholders, legislation was enacted during the Regular Session of the 2018 General Assembly to protect the confidentiality of victims' phone numbers and email addresses,[3] require court reviews to determine whether defendants are in compliance with restitution orders,[4] and facilitate the delivery of unclaimed restitution to crime victims more effectively.[5]

As a result of the 2016 study, other administrative recommendations were also completed during 2017 to 2018. The Office of the Executive Secretary of the Supreme Court of Virginia (OES) assembled numerous stakeholders to develop recommendations and best practices for the collection of restitution at the request of the Crime Commission. That group produced the following two reports: (i) *Recommendations for the Enhancement of the Collection of Restitution* and (ii) *Best Practices for the Collection of Restitution*.[6] The best practices were provided to all judges and clerks of the circuit, general district, and juvenile and domestic relations district courts and will be discussed at future trainings for judges and clerks.

The Department of Criminal Justice Services (DCJS) worked with stakeholders to develop an informational brochure for victims of crime to explain the restitution process. The brochure is publicly available on the DCJS website and was distributed to stakeholders.[7]

Summary of Legislation

During 2017 and 2018, legislation was developed to protect the confidentiality of victims' phone numbers and email addresses, require court reviews to determine whether defendants are in compliance with restitution orders, and facilitate the delivery of unclaimed restitution to victims of crime more effectively.

Confidentiality of Victims' Phone Numbers and Email Addresses

The OES report on *Recommendations for the Enhancement of the Collection of Restitution* included 13 total recommendations. Crime Commission members were presented with the following three legislative recommendations from that report at the December 2017 meeting:

Recommendation 1: Virginia Code § 19.2-305.1 should be amended to clarify that the court has the authority to reduce the amount of restitution owed by the defendant, or the restitution amount could be marked as satisfied, when such action is requested by the victim during any period in which all or part of the restitution is outstanding.

Recommendation 2: Virginia Code §§ 19.2-11.01, 19.2-11.2, and 19.2-269.2 should be amended to set forth that victims' email addresses and any telephone numbers cannot be disclosed if the victim requests confidentiality of their personal information in accordance with the statute.

Recommendation 3: Virginia Code § 19.2-305.2 should be amended to provide that if restitution ordered by a district court remains outstanding 20 years after it was ordered, then that restitution could be marked as inactive in the court's financial system, except for good cause shown. Furthermore, if restitution ordered by a circuit court remains unpaid 40 years after it was ordered, that restitution could likewise be marked as inactive.

Crime Commission members unanimously endorsed Recommendation 2 to protect the confidentiality of victims' email addresses and telephone numbers. No motions were made in regard to Recommendations 1 or 3. Identical legislation was introduced in both chambers during the Regular Session of the 2018 General Assembly. Delegate Robert B. Bell introduced House Bill 840 and Senator Janet D. Howell introduced Senate Bill 457. Both of these bills were passed unanimously by the General Assembly and were signed into law by the Governor.[8]

Monitoring Compliance with Restitution Orders

At its December 2016 meeting, Crime Commission members unanimously endorsed a recommendation to amend several sections of the Code of Virginia in order to specify who is responsible for monitoring a defendant's compliance with the payment of restitution.[9]

As a result of that recommendation, legislation was introduced in both chambers during the Regular Session of the 2017 General Assembly. Delegate Robert B. Bell introduced House Bill 1856 and Senator Mark D. Obenshain introduced Senate Bill 1285. The General Assembly passed both bills and the Governor returned both bills with proposed amendments to implement a pilot program, sunset the provisions in 2019, and require the Crime Commission to monitor the effectiveness of the approach.[10] Both chambers voted to reject these amendments and the Governor vetoed both bills.[11]

During the Regular Session of the 2018 General Assembly, legislation was again introduced in both chambers to address the same concerns related to the monitoring of restitution. Delegate Robert B. Bell introduced House Bill 484 and Senators Mark D. Obenshain and Janet D. Howell introduced Senate Bill 994. These bills established procedures for courts to review and monitor the payment of restitution by criminal defendants. The bills also created a new penalty for contempt which courts may impose when a defendant fails to comply with the restitution order. Both bills were included as part of an agreement between the Governor and the General Assembly to increase the felony larceny threshold and ensure that restitution is paid to victims.[12] Both bills passed the General Assembly and were signed into law by the Governor.[13]

Disbursing Unclaimed Restitution to Crime Victims

During 2017, an investigation by a local news agency revealed issues faced by victims when trying to collect unclaimed restitution.[14] Crime Commission staff followed up on this report and found that the Criminal Injuries Compensation Fund (CICF)[15] is in possession of millions of dollars in unclaimed restitution. Since CICF first started collecting unclaimed restitution in 2003, the Fund has received over $8 million;[16] however, during that same time period, only $419,000 of that sum has been returned to crime victims.[17] Staff also found that no one in the restitution process is specifically tasked with attempting to locate victims when a defendant is paying restitution.

As a result of the media reports and subsequent investigation, Delegate Robert B. Bell introduced House Bill 483 and Senator Mark D. Obenshain introduced Senate Bill 562 during the Regular Session of the 2018 General Assembly. The primary purpose of these bills was to require CICF to attempt to identify and locate any victims owed unclaimed restitution and to pay restitution directly to those victims. As part of the legislation, the General Assembly funded two additional positions at CICF to perform these duties. Additionally, the bills accomplished the following:

- Established procedures for courts to share information about unclaimed restitution with CICF;
- Required that CICF develop policies and procedures for collecting and disbursing unclaimed restitution and include information on unclaimed restitution in its annual report; and,
- Mandated OES to report on the amount of restitution assessed, collected, and unpaid each year, along with the amount of unclaimed restitution forwarded to CICF.

Both of these bills were also included as part of an agreement between the Governor and the General Assembly to increase the felony larceny threshold and ensure that restitution is paid to victims.[18] Both bills passed the General Assembly and were signed into law by the Governor.[19]

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Endnotes

[1] The Crime Commission report on restitution is available at http://vscc.virginia.gov/FINAL%20Restitution.pdf. Of the 13 recommendations endorsed by the Crime Commission, 8 were legislative and 5 were administrative in nature.

[2] *Id*.

[3] 2018 Va. Acts ch. 47, 83.

[4] 2018 Va. Acts ch. 316, 671.

[5] 2018 Va. Acts ch. 724, 725.

[6] Office of the Executive Secretary of the Supreme Court of Virginia. (2017, October 30). *Recommendations for the Enhancement of the Collection of Restitution and Best Practices for the Collection of Restitution*. Available at http://vscc.virginia.gov/Recommendations%20for%20the%20Enhancement%20of%20the%20Collection%20of%20Restitution%20and%20Best%20Practices%20for%20the%20Collection%20of%20Restitution.pdf.

[7] Virginia Department of Criminal Justice Services (January 2018). *Restitution in Virginia: A Guide for Crime Victims.* Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/victims/restitution-virginia-guide-crime-victims.pdf.

[8] 2018 Va. Acts ch. 47, 83.

[9] *See supra* note 1. This was Recommendation 8 in the restitution report.

[10] Governor's Veto and Recommendation (HB 1856). Available at https://lis.virginia.gov/cgi-bin/legp604.exe?171+amd+HB1856AG. Governor's Veto and Recommendation (SB 1285). Available at https://lis.virginia.gov/cgi-bin/legp604.exe?171+amd+SB1285AG.

[11] Governor's Veto (HB 1856). Available at https://lis.virginia.gov/cgi-bin/legp604.exe?171+amd+HB1856AG. Governor's Veto (SB 1285). Available at https://lis.virginia.gov/cgi-bin/legp604.exe?171+amd+SB1285AG.

[12] Office of the Governor (2018, February 8). *Governor Northam and Speaker Cox Announce Bipartisan Compromise on Grand Larceny Threshold and Legislation to Protect Crime Victims*. Available at https://governor.virginia.gov/newsroom/newsarticle?articleId=25431. Virginia House GOP (2018, February 8). *Governor Northam and Speaker Cox Announce Bipartisan Compromise on Grand Larceny Threshold and Legislation to Protect Crime Victims.* Available at https://virginiahouse.gop/2018/02/08/governor-northam-speaker-cox-announce-bipartisan-compromise-grand-larceny-threshold-legislation-protect-crime-victims/.

[13] 2018 Va. Acts ch. 316, 671.

[14] O'Brien, K. (2017, May 22). 8 News Investigates: Crime Victims Owed, Victimized Again. *ABC 8 News Richmond.* Available at http://www.wric.com/news/8news-investigates-crime-victims-owed-victimized-again/1059811964. O'Brien, K. (2017, Nov. 20). 8 News Investigates: Crime Victims Victimized Again Across the Commonwealth. *ABC 8 News Richmond*. Available at http://www.wric.com/news/8-investigates/8news-investigates-crime-victims-victimized-again-across-the-commonwealth_2018032607012479/1078055191. O'Brien, K. (2018, February 2). Bill Moves Forward After 8 News Shares Investigation Findings with Lawmakers. *ABC 8 News Richmond.* Available at http://www.wric.com/news/8-investigates/bill-moves-forward-after-8news-shares-investigation-findings-with-lawmakers_20180326072516661/1078202324.

[15] As of January 1, 2017, this fund is referred to as the Virginia Victims Fund (officially Criminal Injuries Compensation Fund).

[16] Criminal Injuries Compensation Fund, personal communication, January 24, 2018.

[17] Criminal Injuries Compensation Fund, personal communication, January 28, 2018.

[18] *See supra* note 12.

[19] 2018 Va. Acts ch. 724, 725.