

The Restitution Recovery Project



MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE



DDA KATE MOLINA * DDA SUSAN O'CONNOR * DDA CAROLINE WONG

Legal Background



FOUNDATIONS FOR RESTITUTION



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.

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.

The Timeline



- January 2010 – Secretary of State Audit Report “Ordering Restitution for Victims” is released and identified areas of improvement for ordering restitution.
- January 7, 2010 – District Attorney Mike Schrunk replies to the Audit report: “I need additional resources to give me adequate victims’ advocates to allow this office to comply with the law.”
 - Halftime attorney committed to look into how the Multnomah County DA’s office can improve restitution efforts.

The Timeline



- Effective August 2, 2011 – House Bill 3066 creates an innovative pilot program to improve restitution efforts around the state.
- November 1, 2011 – Multnomah County receives an award to participate in the Restitution Pilot Project.
- January 2012 – The Multnomah County Restitution Recovery Pilot Project is created.
- February 2014 – All grant funds spent.
- June 2014 – Award period ends.

The Multnomah County Restitution Recovery Pilot Project



**CHANGING THE WAY RESTITUTION IS
ORDERED AND ENFORCED**



The Original Team – Collaboration



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

The Original Team



- **2 halftime Deputy District Attorneys**
 - 1 partially funded by the grant.
- **1 Project Coordinator**
 - No grant funding allocated.
- **3 felony Restitution Clerks**
 - 2 funded by the grant.
- **2 DOJ Collection Agents**
 - 2 funded by the grant via DOJ.

The Original Team – *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

- Grant writing and compliance;
- 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

Accomplishments: Around the Courthouse



- We recently had a case indicted but despite our best efforts had no response from the victim regarding restitution.
- However, the case was re-indicted and the Restitution Clerk attended the grand jury again and made in-person contact with the victim's mother. This contact provided information that resulted in over \$30,000 in restitution being ordered to DHS.

The Original Team – *Post*-Conviction Stage



2 DOJ Collection Agents

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

2 Halftime Attorney Positions

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

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

Accomplishments: Around the Courthouse



- ***State v. Harrington* – Using Garnishments to Enforce Payment of Restitution**
 - Harrington was ordered to pay \$3,400 in restitution to three victims, and agreed to pay \$50 per month as of March 2013. Harrington did not follow through, had never made a voluntary payment.
 - DOJ collection agent located his employment data and served a garnishment on his employer. The court is now receiving garnishment payments of \$506 bi weekly which will have the victims satisfied in short order.

Accomplishments: In the News



- ***State v. Chimuku* – Enhanced Tools for Enforcement and Accountability**
 - In January 2008, Chimuku was driving drunk when he hit and pinned a pedestrian against a tree with his car. The injuries to the victim later required amputation of one of his legs and prevented him from continuing to work as a chef.
 - In May 2008, Chimuku was sentenced and ordered to pay over \$33,000 in restitution to the victim.
 - On April 30, 2012, a Probation Violation hearing was held for failure to pay restitution. A DOJ collection agent testified about her investigation into Chimuku's ability to pay. The victim attended and made a statement to the court. Judge Bergstrom found the non-payment of restitution to be willful, and ordered a jail sanction.

Accomplishments: In the News



http://www.oregonlive.com/portland/index.ssf/2013/06/portland_dui_driver_sentenced.html

The screenshot shows a news article from The Oregonian. The headline is "Portland DUI driver sentenced to five more years prison after failing to pay victim". The article is by Aimee Green, dated June 03, 2013. It features a photo of Peter S. Chimuku, a man with a beard and mustache, wearing a green shirt. The text describes how a drunken driver, Peter S. Chimuku, careened into a North Portland pedestrian in 2008, forcing doctors to amputate the pedestrian's leg. Chimuku was sentenced Monday to nearly five years of prison for failing to abide by the terms of his original sentence. The article also mentions that Chimuku had served about two years in prison for driving under the influence of intoxicants, pinning pedestrian Bob Kramer against a tree with his 2000 Chevrolet Astro. Kramer had been walking with his wife and dog on the sidewalk near North Fessenden and Macrum Avenue. Surgeons had to amputate one of his legs above the knee, and he now uses a wheelchair. The article includes social media sharing options (Twitter, Facebook, Email) and a "Print" button. There is also a sponsored advertisement for "THE MIRA FOR ENTREPRENEURS" on the right side of the article.

One factor in Chimuku's revocation was non-payment of restitution, another was his new conviction for Felony Driving While Suspended.

<http://www.youtube.com/watch?v=DXJ-do27yRI>

The Pilot-Within-the-Pilot



**EXPANDING THE SUCCESS WITH FELONY
CASES TO MISDEMEANOR CASES**





The Pilot- Within-the- Pilot

*Tackling misdemeanor
restitution*

- **The Goal:** To expand the felony restitution project into misdemeanors to better serve more victims.
- **The Process:**
 - Issuing DDA identifies cases where restitution is applicable.
 - Misdemeanor Restitution Clerk contacts victims within days of arraignment.
 - The goal: Have a finalized “Restitution Packet” connected to the file by Trial Readiness, which occurs 42 days after arraignment.

The Pilot-Within-the-Pilot: Timeline



- September 2012 – A paid law student began experimenting with models.
- January 2013 – A volunteer law student was brought in to help implement selected model.
- May 2013 – 3 volunteer law students each worked 30 hours a week during the summer to fully implement the process in misdemeanors.
- January 2014 – A full-time employee was dedicated to collecting restitution information on misdemeanor cases.

Accomplishments: Around the Courthouse



- A misdemeanor DDA reported that after the Pilot-Within-the-Pilot started, his 90-day setover files went from 10-12 per week to 1-2 per month.

Statistics



TRACKING THE IMPACT OF THE RESTITUTION RECOVERY PROJECT



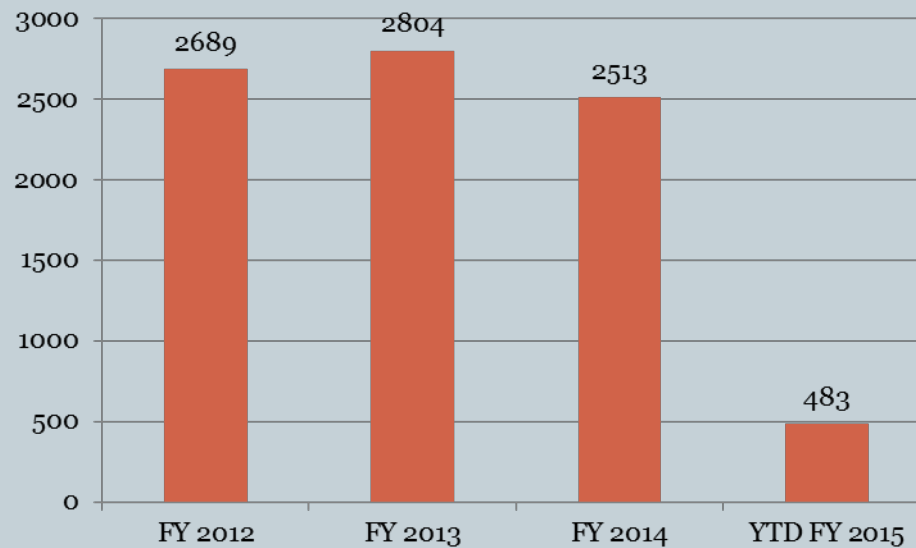
Statistics: Felony Cases



Number of Victims on Felony Cases Contacted to Document Losses:

Fiscal Year	2012	2013	2014	2015*
# of Victims	2,689	2,804	2,513	483

* To-Date



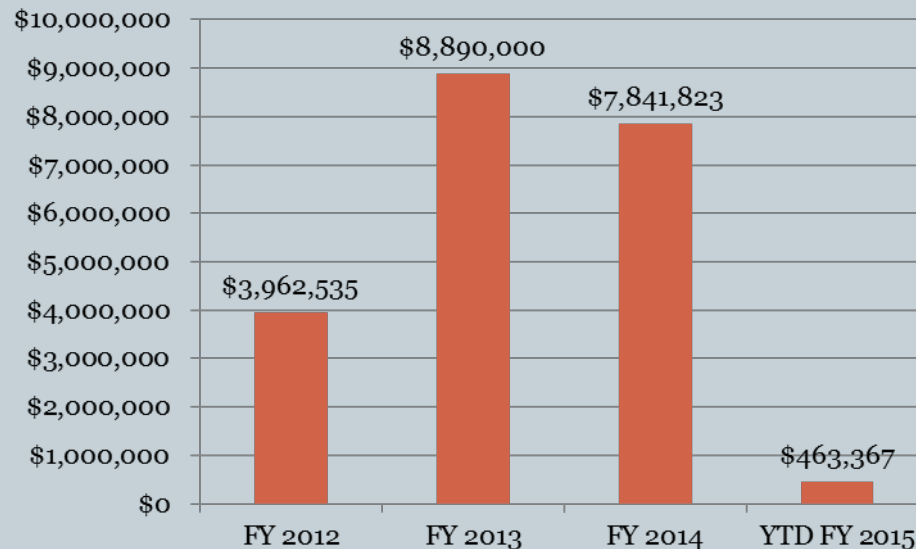
Statistics: Felony Cases



Amount of Restitution Requested by Victims on Felony Cases:

Fiscal Year	2012	2013	2014	2015*
Amount	\$3,962,535.91◇	\$8,890,000	\$7,841,823	\$463,367

* To-Date



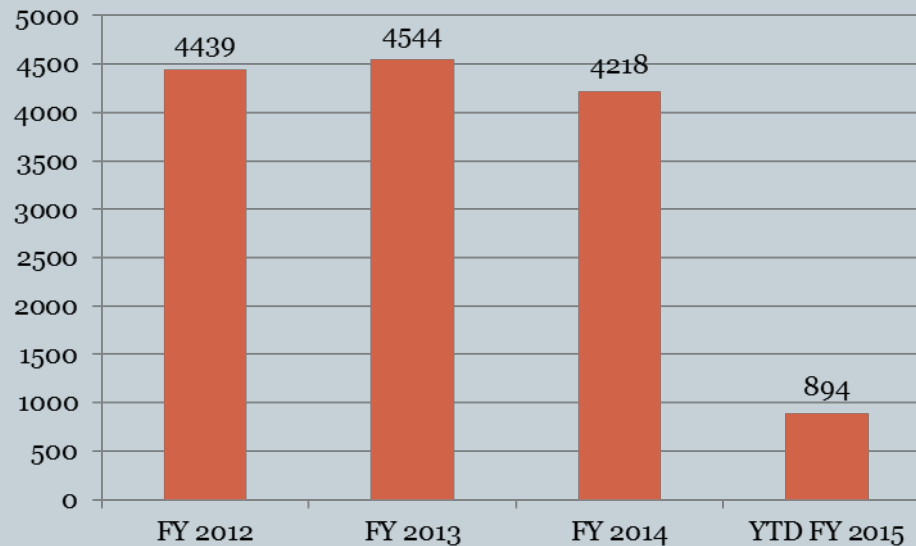
Statistics: Misdemeanor Cases



Number of Victims on Misdemeanor Cases Contacted to Document Losses:

Fiscal Year	2012	2013	2014	2015*
# of Victims	4,439	4,544	4,218	894

* To-Date



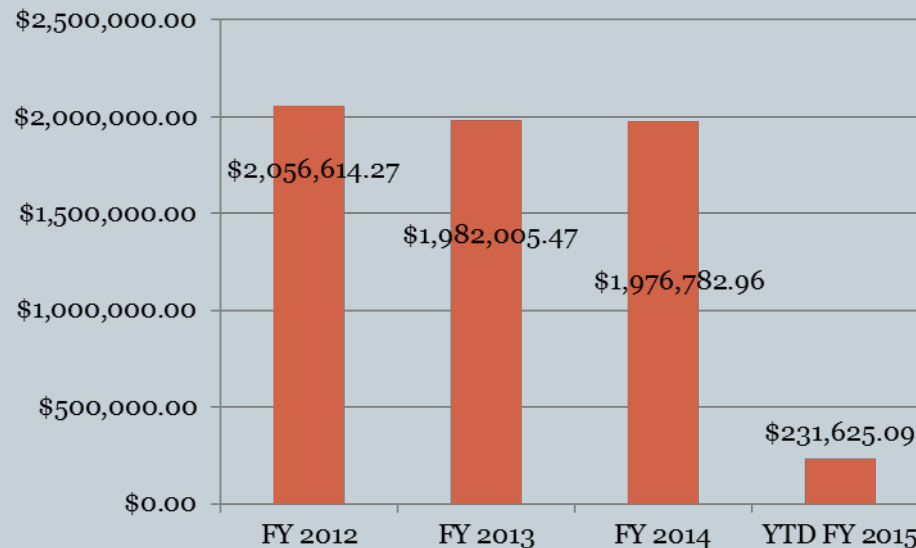
Statistics: Misdemeanor Cases



Amount of Restitution Requested by Victims on Misdemeanor Cases:

Fiscal Year	2012	2013	2014	2015*
Amount	\$2,056,614.27	\$1,982,005.47	\$1,976,782.96	\$231,625.09

* To-Date



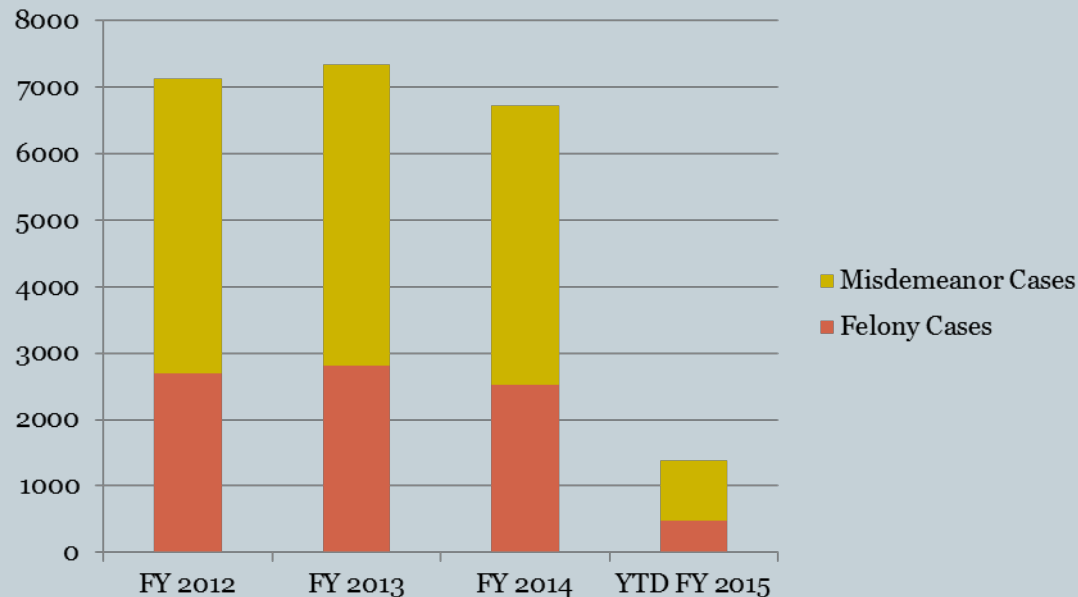
Statistics: Totals



- 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



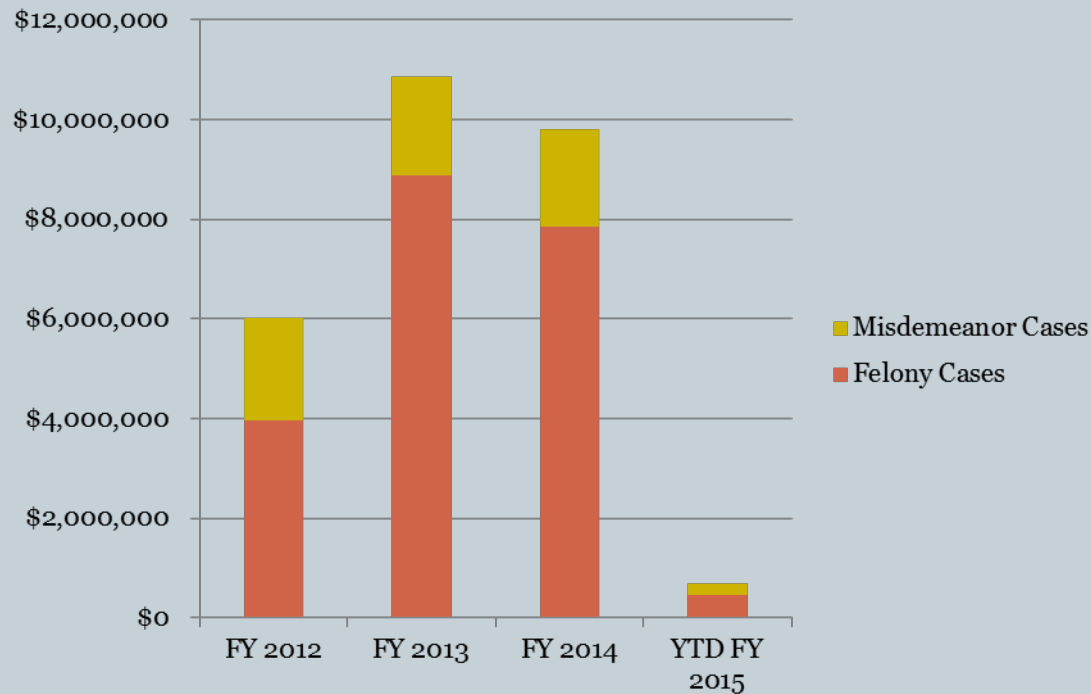
Statistics: Totals



- 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



How the Restitution Recovery Project has been Restructured



Project Structure



With Grant Funding

- **Pre-conviction**
 - 1 project coordinator
 - 2 halftime attorneys
 - 3 felony restitution clerks
 - 3 misdemeanor volunteer law students
- **Post-conviction**
 - 2 DOJ collection agents
 - 2 halftime attorneys

Without Grant Funding

- **Pre-conviction**
 - 1 project coordinator
 - 2 halftime attorneys
 - 2 felony restitution clerks
 - 1 misdemeanor restitution clerk
- **Post-conviction**
 - 2 halftime attorneys

The Original Team – *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.

Current Challenges



OBSTACLES TO CONTINUED SUCCESS



Current Challenges



- The loss of DOJ Collection Agents has significantly reduced our ability to enforce:
 - Collection of restitution payments; and
 - Restitution probation conditions ordered at sentencing or subsequent Probation Violation hearings.
- Reduction in personnel (including Restitution Clerks and Victims Assistants) has reduced our ability to outreach to victims to collect necessary restitution information.
- The loss of grant funding means an insecure future for the continuation of the Project and its successes.

Potential Future Funding



HOPE FOR THE FUTURE





Potential Future Funding

*The Multnomah County
Justice Reinvestment
Program*

HB 3194

September 5, 2014: The Grant Review Committee voted on a finalized draft of the grant rules for next biennium.

The proposed rules set up an application where counties applying for JRI money will be graded on their plan to assess all offenders and address the following areas:

1. Decreased Utilization of DOC facilities
2. Decreased Recidivism Rates
3. Increased Public Safety
- 4. Increased accountability for offenders**



Potential Future Funding

*The Multnomah County
Justice Reinvestment
Program*

HB 3194

MCJRP Grant Application Review Criteria:

- OAR 213-060-0060
- (4) Whether the applicant's program would hold offenders accountable. Examples of factors that may be considered, but are not limited to, include whether or not the applicant's program would track successful completion of:
 - a) **Restitution.**
 - b) Probation.
 - c) Treatment.
 - d) Community Service.

Project Accomplishments



**HOW THESE CHANGES HAVE IMPROVED
WORK AROUND THE COURTHOUSE**



Project Accomplishments



- The 25 day window;
- Additional probation conditions;
- Working with the courts;
- Garnishment;
- Identification of areas for improvement;
- In-house Restitution Expert;

- Case tracking mechanisms and statistics;
- Restitution Package;
- New page on website;
- Expungements;
- Culture change;
- Restitution Inbox;

- Collaboration!

Accomplishments: Around the Courthouse



- ***State v. Haga* – Holding Defendants Accountable Through Financial Information Disclosure**
 - Haga was sentenced to aggravated theft charges on October 21, 2008, and over \$20,000 in restitution was ordered.
 - To date, she has only paid approximately \$1,700: she paid \$100 in October, 2013, and prior to that the last payment had been in July, 2012.
 - On October 31, 2013, Judge Bergstrom ordered the Restitution Package and Haga was ordered to meet with a DOJ collection agent within one week. This information will shed light on Haga's actual ability to pay the ordered restitution.

Accomplishments: Around the Courthouse



- ***State v. Combs* – Holding Defendants Accountable Through Financial Information Disclosure**
 - In March 2011, Combs was ordered to pay \$9,000 in restitution and set a \$100 per month payment plan.
 - PPB Detective Andy Madden was concerned that Combs was continuing to engage in financial transactions that violated his probation conditions. Detective Madden and the DOJ collection agent interviewed Combs. The Collection Agent then conducted a financial evaluation. Combs has now increased his payment amount to \$275.00 per month.

Accomplishments: Around the Courthouse



- From a Judicial Assistant in the courthouse:
 - “I think it is a great program that seems to be getting some really positive results. The money actually seems to be getting collected!”
- One defendant brought a check to his probation violation hearing and paid off the owed restitution in full so that he could be done with probation.

Accomplishments: Around the Courthouse



- **From Oregon Department of Justice:**
 - This project has given us a taste of the kind of victim oriented system that could be possible with the proper resources and system-wide collaboration. DOJ agents brought skills and tools to the collection process which did not exist for us before and will not continue if the project ends. Project staff and attorneys worked to improve processes and procedures to make sure that restitution for victims was addressed from start to finish and to draw other criminal justice system agencies into a collaborative process. The volume of cases in Multnomah County and the size and scope of the system here can make it hard for those of us who work here to see beyond our individual tasks and responsibilities. This project, by providing additional services and focus, encouraged us all to try harder to work together to improve service to victims.

Questions? Comments?

