

Secretary of State Audit Report

Kate Brown, Secretary of State

Gary Blackmer, Director, Audits Division



Ordering Restitution for Victims

Summary

Some criminal behaviors such as theft, burglary, and assault cause economic losses to victims. When criminals are convicted of crimes that financially hurt victims, compensation by the criminal can address both the victim's financial loss and sense of injustice.¹

The right to receive prompt restitution is one of several victims' rights in the Oregon Constitution. In addition, the 2003 Oregon Legislative Assembly passed legislation that requires county district attorneys to investigate and present to the court evidence of victims' economic losses, and circuit court judges to order restitution when losses are substantiated. The objectives of this audit were to determine whether restitution was consistently ordered and, if it was not, the factors that impeded the restitution ordering process.

With the assistance of the Oregon Department of Justice and the Marion County District Attorney, we identified criminal behaviors that were more likely to result in economic losses to victims. We reviewed district attorney records in four counties for 210 cases involving these behaviors to identify reasons why restitution was not ordered. In over half of the cases we reviewed, restitution was not necessary because the victim either suffered no economic loss or was compensated by other means. For example, in many theft cases the stolen property was returned to the victim undamaged.

However, in 99 of the cases we reviewed, it appeared that the victim suffered an economic loss but no restitution was ordered. In one-third of these cases, no restitution was ordered because the victim did not provide documentation of the loss as requested by the district attorney and, in about two-thirds of the cases, the district attorney did not perform all the necessary steps that lead to restitution. For example, district attorneys did not always send letters to the

¹Akers, R. L. & Sellers, C. S. (2004). *Criminological theories: Introduction, Evaluation, and Application*, 4th Ed. Los Angeles, CA: Roxbury

victims requesting information about their losses, or did not always follow up by contacting victims by phone or in person to determine if they needed help documenting their losses. Moreover, in some cases, district attorneys had the loss information but did not request restitution in court. We also identified one case in which the judge chose not to order restitution after considering the defendant's ability to pay.

Our analysis also revealed the difficulty of setting expectations for the rate at which restitution is ordered (restitution rate) and comparing restitution rates among counties. For example, we found significant differences in how counties prosecute similar crimes that result in economic damages, as well as differences in the types of crimes that produced convictions. In addition, while court data identifies whether restitution was ordered when there was a conviction, it does not capture whether the victim actually experienced an economic loss, the extent of district attorney efforts to investigate likely losses, or the victim's follow-through. Although the success of the 2003 law in promoting restitution is difficult to measure, we identified opportunities for counties to increase the restitution rate. First, some district attorneys lacked processes to help ensure that restitution is requested for the victim. Missing elements included written policies and procedures that clearly define restitution related practices, supervisory review to ensure established procedures are followed, and performance measurement systems that can be used to periodically evaluate and help improve restitution practices. Also, district attorneys did not receive additional funding to support the investigative requirement included in the 2003 legislation. Consequently, they told us they do not have the resources necessary to fully investigate all victims' economic losses.

Recommendations

We recommend district attorneys consider setting restitution rate expectations for various criminal behaviors and monitoring their rates from year to year.

We also recommend district attorneys consider evaluating their restitution practices to determine whether improvements could better ensure that victims' economic losses are properly investigated and presented in court. Possible improvements include documenting policies and procedures and implementing methods to ensure policies and procedures are followed and periodically evaluated.

Agency Responses

Agency responses are attached at the end of the report.

Restitution Compensates Victims' Financial Losses

Crime victims have a constitutional right to restitution. Restitution is money ordered by the court to repay victims for any economic losses suffered because of a crime. Some examples of criminal behaviors that cause economic losses are property theft, assault, and identity theft. Economic losses include medical and health care expenses, repair or replacement costs of damaged property and lost income. The victim can be a person directly affected by the crime or any third party who indirectly incurs an economic loss. For example, the Oregon Department of Justice's Crime Victim Compensation Program provides financial assistance to victims suffering loss from a violent crime. The program relies on restitution monies collected to assist victims in the future. Without restitution orders, the program must incur additional costs to pursue compensation through civil action.

The 2003 legislature enacted laws that define district attorneys' and judges' responsibilities for ensuring victims receive restitution. District attorneys, who are responsible for prosecuting crimes, must identify victims' financial losses. This includes informing each victim of their right to restitution and providing a means for the victim to document their loss. They are also required to request restitution from the court for the loss amount. Often, district attorneys are in direct contact with victims during the prosecution phase and are in a position to document victims' economic losses.

Although victims have no legal requirement to provide loss documentation, documentation is crucial for restitution. District attorneys depend on this information when identifying victims' losses. Without adequate information, district attorneys are less likely to request restitution.

Judges are required to order restitution if they determine from the restitution request that the victim incurred economic losses. In addition, judges can establish payment schedules for defendants who, at the time the judgment is entered, do not have the resources to pay the full restitution amount.

Actual Restitution Rates are not Readily Available

We obtained from the Oregon Judicial Department sentencing information for all criminal convictions in all 36 Oregon counties during July 1, 2007 through June 30, 2008. We excluded convictions in which the defendant was a juvenile. With help from a knowledgeable attorney at the Oregon Department of Justice and the Marion County District Attorney, we then identified eight types of criminal behaviors more likely to result in economic loss - assault, sexual offense, homicide, theft, property damage, robbery, identity theft, and financial related acts, such as credit card fraud and forgery.

Our analysis of the data revealed that 36 percent of convictions that involve these criminal behaviors had restitution orders. Moreover, as shown in

Table 1, the rate at which restitution was ordered varied greatly among the types of criminal behaviors. For example, the data suggests that 60 percent of financial convictions had restitution orders, while only 20 percent of assault convictions had restitution orders.

Table 1

Select Convictions With Restitution Orders			
July 1, 2007 – June 30, 2008			
Type of Criminal Behavior	Convictions More Likely to have Restitution	Convictions with Restitution Orders	Percentage with Restitution Orders
Assault	6,160	1,235	20%
Sexual Crime	1,931	440	23%
Homicide	148	58	39%
Theft	11,392	4,007	35%
Property Damage	2,620	1,434	55%
Robbery	2,776	1,237	45%
Theft of Identity	2,741	1,319	48%
Financial	802	485	60%
Total	28,570	10,215	36%

Though the statewide data may be a general indicator about restitution orders, it does not paint the whole picture. The data does not show reasons why restitution was not ordered or whether the victim actually incurred economic loss. For example, an offender can be convicted of burglary even though stolen items were recovered and returned to the victim undamaged. In addition, the data does not speak to efforts district attorneys made to pursue restitution or the victim's response to those efforts. As a result, no reliable and accurate performance measures of restitution can be determined without a manual case-by-case analysis.

Audit Results

To identify the reasons restitution was not ordered, we reviewed district attorney records at Coos, Deschutes, Marion and Multnomah counties for 210 cases in which no restitution was ordered. The following table presents a breakdown, by criminal behavior, of the 210 cases.

Table 2

Cases Reviewed Without Restitution	
Criminal Behavior	No. of Cases
Assault	65
Sexual Abuse	22
Homicide	8
Theft	69
Property Damage	13
Robbery	15
Theft of Identity	11
Financial	7
Totals	210

In over half of these cases, restitution was not ordered because the victim either suffered no economic loss or was compensated by other means.

However, in the remaining 99 cases without restitution orders, it appeared the victim suffered an economic loss, which may have entitled the victim to restitution. We found the following reasons why restitution was not ordered for these cases:

- In one-third of these cases, the victim did not provide loss documentation requested by the district attorney.
- In about two-thirds of these cases, the district attorney either did not fully investigate victims' losses or did not request restitution when losses were identified.
- In one case, the presiding judge chose not to order restitution after considering the defendant's ability to pay.

The table below displays the results for the cases in which it appeared the victim suffered economic damages.

Table 3

Cases in which it Appeared that the Victim Experienced Economic Loss		Reasons Why Restitution was not Ordered			
Criminal Behavior	No. of Cases	Victim did not Disclose Losses	District Attorney did not Fully Investigate	District Attorney did not Request Restitution	Judge did not Order Restitution
Assault	44	14	25	5	0
Sexual Crime	15	5	7	3	0
Homicide	5	0	3	1	1
Theft	11	3	6	2	0
Property Damage	9	7	1	1	0
Robbery	8	2	2	4	0
Theft of Identity	4	0	4	0	0
Financial	3	0	3	0	0
Totals	99	31	51	16	1

Further, we also identified challenges with setting expectations for restitution rates and with comparing rates among counties. However, counties could track their own restitution rates from year-to-year by conducting case reviews to determine whether they were consistently requesting restitution for eligible cases.

Not all Cases Reviewed Involved Economic Loss

For 111 or 53 percent of the cases with no restitution, restitution was not necessary because the victim did not have any economic loss or was compensated by means other than restitution. Most of these cases were thefts in which the stolen item was returned to the victim undamaged. For example, the defendant in one case was apprehended while stealing a bicycle valued at \$1,500. As a result, the undamaged bicycle was returned to the victim. We also found several assault cases in which the victim suffered bodily injury, but because the victim did not incur any medical or other expenses, there was no economic loss.

For several other cases, victims suffering an economic loss were compensated by other means, such as court ordered fines or compensation from the defendant's insurance company. For example, in one case, the court ordered the defendant to pay the victim \$28,800 in compensatory fines. In this case, the defendant was convicted of running a red light while under the

influence of alcohol, causing one victim to suffer bodily injuries and the others to incur property damage.

Three Reasons Contributed to the Lack of Restitution Orders

For 99 or 47 percent of the cases for which restitution was not ordered, records contained additional evidence suggesting the victim suffered an economic loss and may have been entitled to restitution. Evidence included police reports indicating physical harm and/or property damage, records suggesting medical expenses were incurred, and reimbursement requests from parties that provided services to injured victims. For these cases, we identified three reasons why restitution was not ordered.

Despite District Attorneys' Efforts, Victims Did Not Always Disclose Losses

For one-third of the cases in which the victim may have been entitled to restitution, the victims either did not respond or chose not to cooperate with district attorneys' efforts to identify losses. Several of these cases involved personal injury crimes, such as assault and sexual abuse, when the victim was either related to or in a domestic relationship with the defendant. For example, in one such case, the victim never responded to the district attorney's requests after receiving hospital treatment for injuries sustained during an assault. The district attorney attempted to locate the victim and investigate economic loss by sending letters and making phone calls. In another case, a victim who had been in a long-term relationship with the defendant was beaten repeatedly causing her to be hospitalized. The district attorney attempted to obtain loss information, but the victim wanted to reunite with the defendant and did not want him to pay her medical bills.

District Attorneys Did Not Always Perform Necessary Steps Leading to Restitution

For the remaining two thirds of the cases, district attorneys did not fully investigate victims' losses or request restitution when losses were documented. For instance, district attorneys did not always send the victims forms to record their economic losses resulting from criminal behaviors. Best practices developed by the Oregon Crime Victims' Rights Project, which were based on the work of the Attorney General's Restitution Reform Task Force and the State Victim Assistance Academy, suggest that district attorneys should contact victims to provide them with a mechanism to report their losses.

Moreover, best practices produced by the Oregon Attorney General's Restitution Task Force suggest district attorneys contact victims by phone or in person when victims have not responded to initial inquiries, or when the financial loss information they submitted is incomplete. Although district attorneys may include restitution reminders in subsequent letters to victims, they did not always contact the victims, either in person or by phone, to

ensure that the victim received financial loss forms or to determine if they needed help documenting their losses.

Finally, district attorneys did not always request restitution in court even though the victims' losses were documented. For most of these cases, district attorneys either did not notice the restitution requests or, during the course of sentencing, forgot to present the request. For example, in one case, the Crime Victim Compensation Program compensated a victim who was treated in the hospital. The program sent a letter to the district attorney requesting restitution for the compensation it provided to the victim, but the district attorney reportedly overlooked the program's request and subsequently did not submit it in court. In another case, the district attorney chose not to request restitution after considering the defendant's ability to pay.

Judge Chose not to Order Restitution

In addition to the above reasons, we found one case in which the judge chose not to order restitution requested by the district attorney. The case involved a 19-year-old defendant who was sentenced to 14 years in prison. According to recorded court proceedings, the judge concluded that, because of the defendant's age and the length of his prison term, he would not have the current or future ability to pay the victim restitution.

Varying Practices and Data limitations Prevent Accurate County Comparisons

Although we found similar reasons why restitution was not ordered, we also found differences in county practices and limitations in statewide data that prevented us from concluding on variations in county restitution rates.

Specifically, we found significant differences in how counties prosecute similar crimes. While one county district attorney prosecuted low-level thefts as violations, another county did not prosecute them at all. Also, differences in types of convictions can make comparisons of overall restitution rates troublesome. For example, in one county 16 percent of the convictions were for personal injury crimes, such as assault and sexual abuse, compared to 43 percent in another county. Because victims' economic losses may be harder to identify in personal injury compared to property crimes, personal injury crimes may be less likely to have restitution. Thus, the mix of crime convictions in any one county can significantly affect overall restitution rates. Finally, statewide restitution data only captures whether restitution was ordered for a conviction. It does not capture district attorney efforts to investigate economic losses, whether the victim actually experienced an economic loss, or whether the victim declined to seek restitution.

Despite these difficulties in comparing county restitution rates, district attorneys may find value in tracking their general restitution rates by types of criminal behavior from year to year to set general expectations and to gauge the consistency of their restitution efforts.

Factors Limiting State's Ability to Effectively Pursue Restitution

We asked district attorneys and staff at 10 counties about their processes for investigating and presenting victims' economic losses. Using their responses and information we obtained through on-site case file reviews, we identified two factors that impede the restitution process – limited processes to ensure that restitution is requested for victims and insufficient resources to investigate victims' economic losses.

District Attorneys Could Improve Restitution Processes

We found that opportunities exist for district attorneys to improve their restitution practices. The Restitution Task Force's best practices suggest programs with clearly defined restitution practices are more likely to provide the evidence needed to support a judge's decision to order restitution. Moreover, sound business practices suggest that written policies and procedures, supervisory reviews, and performance measures help ensure program objectives are achieved. However, seven counties we included in our review did not have written policies and procedures that clearly defined their restitution related practices. Moreover, six counties did not have mechanisms to monitor whether staff followed procedures for identifying victims' losses and requesting restitution in court. Finally, none of the counties had performance measurement systems to periodically evaluate and help improve their restitution practices.

District Attorneys Reported They Need More Resources to Fully Investigate Victims' Losses

District attorneys reported they did not receive additional resources to cover the added costs necessary to meet the legislative requirement imposed in 2003. Thus, they told us they face tough decisions regarding how best to allocate limited resources. While district attorneys we spoke to acknowledge the importance of restitution, they reported they must make decisions about which crimes they prosecute and how they are going to pursue restitution for those crimes. For example, some district attorneys have chosen not to prosecute certain crimes such as misdemeanor thefts. Consequently, victims of these crimes are not entitled to restitution and may never be compensated for their losses. Other district attorneys limit their investigative efforts to sending letters to victims requesting loss documentation. As a result, restitution is not pursued for victims who do not respond to the letter.

Recommendations

We recommend district attorneys consider setting restitution rate expectations for various criminal behaviors and monitoring their rates from year to year.

We also recommend district attorneys consider evaluating their restitution practices to determine whether improvements could better ensure that victims' economic losses are properly investigated and presented in court. Possible improvements include documenting policies and procedures and implementing methods to ensure policies and procedures are followed and periodically evaluated.

Objectives, Scope and Methodology

The objectives of our audit were to determine whether restitution was consistently ordered for victims of crimes that likely resulted in economic losses and, if it was not, the factors that impeded the restitution ordering process.

To accomplish these objectives, we reviewed applicable statutes and interviewed district attorneys, their staff, and circuit court employees from 10 counties to gain an understanding of the restitution process and to identify obstacles impeding restitution.

To determine whether restitution was ordered, we analyzed sentencing information from the Oregon Judicial Information Network for crime convictions during fiscal year 2008 that were more likely to result in financial loss to the victim. We compared the data for four counties to source documentation to assess the data's reliability. We found the data to be sufficiently reliable for our audit purposes.

To determine the reasons why restitution was not ordered, we selected from four counties 231 cases in which restitution was not ordered. While we selected most of these cases randomly, we judgmentally selected 65 to include criminal behaviors not represented in the random sample, including 15 cases in which the Crime Victim Compensation Program Division paid financial assistance to the victim(s) involved. We reviewed district attorney records for 220 of the 231 cases. For the remaining 11 cases, district attorneys could not provide us with the documentation we requested.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Agency Responses

Agency responses are attached at the end of the report.

OREGON DISTRICT ATTORNEYS ASSOCIATION



CAROLYN NORRIS
Coordinator

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January 7, 2010

Gary Blackmer
Director, Audits Division
Oregon Secretary of State
255 Capitol Street NE, Suite 500
Salem, OR 97310

RE: Restitution Audit

Dear Mr. Blackmer:

Thank you for the opportunity to respond to your office on behalf of the Oregon District Attorneys Association. We appreciate the time and energy that you and your colleagues have invested in reviewing the restitution processes in four of Oregon's 36 District Attorneys' offices.

Restitution has always been a priority of the Oregon District Attorneys Association, its 36 elected District Attorneys, their deputies and staffs. In the past decade services to crime victims, both statutory and Constitutional, have expanded to reflect their importance to Oregonians and to the perceived sense of justice and public safety that our communities demand. The entire criminal justice system and each of its components bears the responsibility to provide these services to crime victims. The Attorney General's Restitution Task Force was formed to monitor and seek to improve the restitution process. District Attorneys agree that the recommendations of the task force and the data upon which they were based should be incorporated into any assessment or audit of restitution programs.

District Attorneys have been historically among the strongest advocates for crime victims' rights. As the branch of the criminal justice system which has the longest contact time with victims, District Attorneys' offices see the toll, both emotional and financial, taken on victims of crime. From court notification and impact statements to truth in sentencing to restitution and child support collections, District Attorneys understand that the treatment of victims is vital to their recovery from crime and the public's feeling of safety.

However, the most important task of District Attorneys is to prosecute criminals. Prosecuting violent criminals is and will remain the highest priority of the ODAA. As the audit report from the Secretary of State's office "is intended to promote the best possible management of public resources", so too must District Attorneys' offices prioritize their use of limited public resources. For the past 20 years, public safety budgets, particularly those of the District Attorneys, have been defunded by the state and those costs shifted to the increasingly cash-strapped counties. The recommendation of the audit that counties "track their own restitution rates from year-to-year by conducting rate reviews to determine whether they were...requesting restitution for eligible cases" places an additional task on counties already overburdened by public safety

budget shifts.

In addition, the sheer volume of restitution work precludes the ability to accomplish all of it given the current allocation of resources. This is a problem in every county and must be addressed on a statewide basis. All District Attorneys' offices, with the exception of nine counties, are also responsible for the collection of child support in addition to restitution. To maintain their core function of prosecution, DA offices must carefully consider redirecting these meager resources to focus on becoming more effective collection agencies. However, District Attorneys feel that restitution collection is a critical service and will continue to attempt to improve restitution rates despite the fact that it amounts to, as the audit points out, an unfunded mandate.

The results of the audit demonstrate the importance of victims' participation in their own restitution requests. While District Attorneys and judges are required by law to do so, victims do not have a similar requirement. The task force's best practices recommendation is that DA offices follow up information requests to victims with a phone call or an in-person interview; this recommendation would likely increase rates of restitution requests made to the court. While ideal, it is nearly impossible given reduced staffing levels and dwindling financial resources available to most District Attorneys.

Taking into account the differences in counties across Oregon, both in terms of resources and capacity, the audit identifies a key issue that concerns all District Attorneys: the ability to achieve uniformity in reporting practices in all aspects of their work. The disparity between counties in their reporting capability and practices could be most readily solved by the acquisition of a standardized information technology system that would be used in every office. This system would help increase efficiencies in restitution tracking and collection, as well as eliminating redundancies and increasing productivity in other prosecutorial functions. A mechanism for victims to report their losses would be most easily incorporated into such a system. The Oregon District Attorneys Association has included this request in the last two budget cycles, but it was eliminated in each.

The recommendation to set an annual restitution rate or goal to be met annually is impractical due to the volatile nature of crime. District Attorneys cannot predict the number of crimes they will see in a given year or the severity of those crimes that would result in a restitution order. The ODAA believes that internal reviews of practices and policies to indicate areas of improvement in this and other areas of the prosecutorial function are the right thing to do. However, any solution that would increase restitution orders and collection must be a system-wide effort, incorporating victims, the courts, community corrections and collections. Best practices should be identified and brought forward by each segment of the criminal justice court system, not only by District Attorneys, to discover those that would increase both the rates of restitution orders and collections. Services to victims, in all of its forms, remain a priority for District Attorneys and the ODAA remains committed to working with all other parties to continue to improve these services.

The District Attorneys are deeply committed to providing effective services to victims. The

Gary Blackmer
January 7, 2010
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ODAA appreciates the work of the auditors and will consider each of the recommendations forwarded in the audit. Many recommendations of the audit, including District Attorneys evaluating their respective restitution practices to determine the effectiveness of their investigations and reports, as well as improving procedures and documentation of those procedures, could be readily implemented were they to receive adequate state resources. Unfortunately, state funding for the District Attorney functions has, for nearly two decades, been receding. Hopefully, the findings in this audit will help underscore the importance of adequate state funding for these critical functions.

Sincerely,

A handwritten signature in black ink, appearing to read "John Sewell", with a long, sweeping horizontal line extending to the right.

John Sewell
Hood River District Attorney
President, Oregon District Attorneys Association



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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January 7, 2010

Sandra Hilton
Audit Manager
Oregon Secretary of State's Office
Public Service Building Suite 500
255 Capitol Street NE
Salem, Oregon 97310

Dear Ms. Hilton:

My staff and I have reviewed your draft report, *Ordering Restitution for Victims*. You have asked for our comments before releasing the final report. I would like to start by saying that we appreciate the time your office spent both in Multnomah County and in the offices of other District Attorneys. Mr. Love, Ms. Eveland and Ms. Morrison all worked very hard on this project. The recommendations you make are good ones.

I do not disagree with the conclusions of your report. As you are aware, our written policy (2.30) states, "It is the policy of this office to seek restitution equaling the amount of pecuniary loss for victims of all types of crime." While we try hard to pursue restitution, we simply do not have the staff to be able to follow the best practices produced by the Oregon Attorney General's Restitution Task Force. Personally, I would like to have people make calls to victims on a routine basis, but my budget does not allow for it.

Throughout the years the legislature and the people through the initiative process have given District Attorneys additional responsibilities for enforcing victim rights, however, they have never given us the resources to carry them out as the task force envisioned. If we were talking about the rights of criminal defendants, the funding would be found. The rights of victims are as fundamental, essential and important as those of criminal defendants.

Most District Attorneys cannot use their existing budgets to implement the Attorney General's best practices. To take funds out of existing budgets would mean that, by necessity, we would not be able to prosecute some low-level victim crimes. I do not want to do that.

January 7, 2010

I need additional resources to give me adequate victims' advocates to allow this office to comply with the law. There are some people who say this should come from the county and consequently I have asked my finance department to put in a program offer to Multnomah County so that we can comply with the task force's and your recommendations. Others feel that the state should supply the resources so I am asking your office for any guidance on how we could get the legislature to fund sufficient advocates to ensure that these additional statutory and constitutional obligations are met.

I support the Attorney General's best practice recommendations, in fact my staff assisted in their development. I wish that I was able to implement them in my office. However, I need additional resources to do so and I hope that your good work will help me to accomplish that goal.

Again, thank you for your time and effort.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael D. Schrunk". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Schrunk".

MICHAEL D. SCHRUNK
District Attorney
Multnomah County

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**Coos County District Attorney Response to
"Ordering Restitution for Victims"**

Victims of crime are often faced with a multitude of problems in the aftermath of the crime inflicted on them. Not only can they suffer physical and emotional pain and anguish, they are often times left with out of pocket expenses caused by the crime. It is only fitting that the criminal, once convicted, pay for the damages he/she caused.

The District Attorneys in Oregon are committed to do whatever we can to make sure that a convicted criminal is held responsible for the aftermath of the criminal act. The audit by the Secretary of State to determine how well we are doing in this regard is a worthwhile effort.

As an example of how well District Attorney's are doing in this area, I would point out the efforts made by Coos County in obtaining court ordered restitution for victims. In 2007, with a staff of three persons in our victim assistance program, this office obtained court ordered restitution for a total amount of \$397,292. In 2008, with a staff of only two persons, this office obtained court ordered restitution for a total amount of \$600,043.

While trying to determine how well the various DA's are doing in obtaining restitution is worthwhile, I do have some concerns about this particular audit. The recession has hit various offices differently. Timber dependent counties have budgets that are in far worse shape than other counties. There are 36 elected DA's in the State of Oregon. Each office has its own budget problems. Each DA has to make decisions about what crimes will be prosecuted in the DA's respective jurisdiction based upon what resources are available to prosecute crime. Each DA has to make decisions about where the budget for the office will be spent. For example, in one county certain misdemeanor crimes may not be prosecuted at all. In another county, that same crime would be prosecuted. In another county, that same crime may be treated as a violation versus a crime. When making budget priorities, a DA may be forced to spend money on keeping a prosecutor in the office versus spending money on keeping a person who works on obtaining restitution. The point is each county is different.

In light of these facts, the sampling that occurred in this particular audit frankly cannot be a basis to determine how well restitution is being ordered on a state wide basis.

I also have concerns about the two recommendations made by the Secretary of State.

The first recommendation is that DA's should consider setting restitution rate expectations for various criminal behaviors and monitoring their rates from year to year.

There is no definition of what a restitution rate expectation is. For example, are we to set goals in the number of cases we will obtain restitution? Or, are we to set goals in the total amount of dollars ordered by the court as restitution? In either event, setting such a goal will have no meaning. For example, one of the criminal behaviors identified by the audit is Assault crimes. I have no way of knowing how many assault cases will be referred to my office in the upcoming year. In addition, I have no way of knowing how many assault cases will have injuries severe enough to require medical treatment or otherwise be eligible for my office to seek restitution. To be able to set a goal that says in the upcoming year we will increase the number of assault cases where we obtain restitution orders and/or increase the dollars we will obtain in restitution is not realistic.

The second recommendation is that DA's should implement internal policies and procedures to make sure that restitution is being ordered. I agree that there should be such practices. However, we need to keep in mind that resources are limited. For example, in Coos County, the victim's program we have is totally dependent on state dollars to fund. Coos County does not contribute any money toward the program. Right now I have two people working on restitution issues. If I were to try to implement the full recommendation made by the Secretary of State, I would have to decrease the amount of time spent on working to get restitution figures in order to conduct internal reviews. With less time being spent on helping victims get restitution, the amount of restitution would decrease. I could cure that problem by diverting money from my budget to victim's assistance, but to do so would require I reduce personnel needed to prosecute crime. In that case less crime would be prosecuted and less restitution would be ordered.

While understandable, the recommendations are not realistic.

I agree that restitution is an important aspect of the criminal justice system and that each DA needs to make sure that his/her office is doing the best it can to make sure that restitution is ordered. Given that each DA is faced with different issues, each DA will have to determine how best to determine the efficiency of his/her particular program.

Due to those differences, I do not think this particular audit can provide sufficient information from which a state wide assessment of the issue can be made.

Sincerely:

A handwritten signature in black ink, appearing to read 'R. Paul Frasier', with a stylized flourish extending from the end.

R. Paul Frasier
Coos County District Attorney
January 6, 2010

About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of her office, Auditor of Public Accounts. The Audits Division exists to carry out this duty. The division reports to the elected Secretary of State and is independent of the Executive, Legislative, and Judicial branches of Oregon government. The division audits all state officers, agencies, boards, and commissions and oversees audits and financial reporting for local governments.

Audit Team

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The courtesies and cooperation extended by officials and employees of the Oregon Department of Justice, Oregon Judicial Department, and county district attorneys during the course of this audit were commendable and sincerely appreciated.