



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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OAG—02—15

Mr. Ismael R. Ozanne
District Attorney
Dane County Courthouse
215 South Hamilton Street, Room 3000
Madison, WI 53703-3297

Dear Mr. Ozanne:

¶ 1. You ask whether the Wisconsin Department of Corrections (“DOC”) may lawfully collect supervision fees from an offender pursuant to Wis. Stat. § 304.074 before the offender has paid court-ordered restitution in full. I conclude that the answer is yes.

¶ 2. The Wisconsin Constitution provides for restitution only insofar as the Legislature confers such rights through statute. The Legislature makes restitution available to crime victims under Wis. Stat. § 973.20 and other statutes, but crime victims are not guaranteed restitution in every instance. Wisconsin Stat. § 973.20(12)(b) makes clear that restitution payments take priority over specific statutory fees, surcharges, fines, and costs, but the priority scheme does not include supervision fees under Wis. Stat. § 304.074. Wisconsin Stat. § 304.074 and related administrative code provisions also suggest that DOC may collect supervision fees when court-ordered restitution has not been paid in full. I expand on each of these points below.

¶ 3. An offender may be required to pay certain financial obligations under a court order or state statute. These obligations include a fine imposed at sentencing, or certain disbursements and fees of officers incurred in connection with the offender’s arrest, preliminary examination, and trial. *See, e.g.*, Wis. Stat. §§ 973.05 and 973.06(1)(a). A court may also order the offender to make full or partial restitution under Wis. Stat. § 973.20(1r). In addition to these obligations, if an offender is on probation, parole, or extended supervision, DOC must charge a supervision fee to partially reimburse DOC for the costs of providing supervision and services. Wis. Stat. § 304.074(2).

¶ 4. You ask whether restitution payments must be prioritized over the supervision fee under Wis. Stat. § 304.074. No source of authority requires this. The Wisconsin Constitution requires the state to ensure crime victims have certain privileges and protections as provided by law, including restitution. Wis. Const. art. I, § 9m. In accordance with the Wisconsin Constitution, restitution is available by statute. The section in the Wisconsin statutes entitled “Basic bill of rights for victims and witnesses” states that crime victims have the right “[t]o restitution, as provided under ss. 938.245(2)(a)5., . . . and 973.20.” Wis. Stat. § 950.04(1v)(q). In turn, Wis. Stat. § 973.20(1r) provides: “[w]hen imposing sentence or ordering probation . . . the court . . . shall order the defendant to make full or partial restitution under this section to any victim of a crime considered at sentencing . . . unless the court finds substantial reason not to do so and states the reason on the record.” As the Wisconsin Supreme Court emphasizes, “full or partial restitution is mandatory under the statute unless the court finds substantial reason not to do so and states the reason on the record.” *State v. Fernandez*, 2009 WI 29, ¶ 21, 316 Wis. 2d 598, 764 N.W.2d 509 (internal quotations omitted). The fact that the court can order partial restitution, full restitution, or (if a “substantial” reason exists) no restitution at all demonstrates that a victim’s right to restitution is not absolute.

¶ 5. The statutes prioritize payment of restitution over certain statutory fines, costs, fees, and surcharges, but court-ordered restitution is not given priority over supervision fees under Wis. Stat. § 304.074. “If the court orders restitution in addition to the payment of fines, costs, fees, and surcharges under ss. 973.05 and 973.06 and ch. 814, it shall set the amount of fines, costs, fees, and surcharges in conjunction with the amount of restitution and issue a single order, signed by the judge, covering all of the payments.” Wis. Stat. § 973.20(12)(a). Wisconsin Stat. § 973.20(12)(b) goes on to explain the priority in which those court-ordered payments must be made:

Except as provided in par. (c), payments shall be applied first to satisfy the ordered restitution in full, then to pay any fines or surcharges under s. 973.05, then to pay costs, fees, and surcharges under ch. 814 other than attorney fees and finally to reimburse county or state costs of legal representation.

While this provision prioritizes restitution over certain specific fees and costs, it does not address supervision fees under Wis. Stat. § 304.074.

¶ 6. The only fees that Wis. Stat. § 973.20(12)(b) refers to are “costs, fees, and surcharges” under Wis. Stat. ch. 814. Wisconsin Stat. ch. 814 addresses costs allowed

in civil actions and special proceedings, court fees in criminal and civil actions, and various surcharges. Court fees under Wis. Stat. ch. 814 primarily address fees associated with court administrative matters such as filing documents and transmitting documents on appeal. Supervision fees under Wis. Stat. § 304.074 are not among these fees; they partially reimburse DOC for the costs of providing supervision and services to offenders. Wisconsin Stat. § 973.20(12) thus does not prohibit supervision fees from being collected before court-ordered restitution is paid in full.

¶ 7. The statute governing supervision fees also does not require DOC to prioritize restitution payments. Wisconsin Stat. § 304.074 requires DOC to charge a supervision fee. The statute contains several specific exceptions where DOC may use discretion in not charging the fee: (1) the offender is unemployed; (2) the offender is pursuing a full-time course of instruction approved by DOC; (3) the offender is undergoing treatment approved by DOC and is unable to work; and (4) the offender has a statement from a physician certifying to DOC that the offender should be excused from working for medical reasons. Wis. Stat. § 304.074(3). These exceptions do not include a reference to the offender's restitution obligations. Thus, there is no indication that the Legislature intended supervision fees to be placed on hold until court-ordered restitution is paid in full.

¶ 8. Similarly, the Wisconsin administrative code indicates that DOC may collect supervision fees prior to court-ordered restitution being paid in full. Wisconsin Admin. Code § DOC 328.07 governs the establishment and collection of supervision fees. DOC is charged with recording all supervision fees paid by the offender. Wis. Admin. Code § DOC 328.07(4)(a). If the offender has paid in advance for a month that the offender was not under supervision, then DOC "shall apply the refund to restitution ordered by the court or any other outstanding financial obligations required by the department or the court." Wis. Admin. Code § DOC 328.07(6)(c). This provision indicates that DOC may collect supervision fees even when restitution obligations are outstanding, but any supervision fees paid in excess are to be paid toward restitution.

¶ 9. In contrast, the administrative code provision governing DOC's collection of payments earmarked for court-ordered obligations requires DOC to apply payments according to the court order and statute. Wisconsin Admin. Code § DOC 328.08(1) states that, when an offender sends a court-ordered payment to DOC, the payment is transmitted to the DOC cashier for deposit in the offender's account. The cashier "shall disburse funds from the account in accordance with the court order or state

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statute.” Wis. Admin. Code § DOC 328.08(1). Under the administrative code, this process is separate from DOC’s collection and disbursement of supervision fees.

¶ 10. Neither the Wisconsin Constitution, statutes, nor the administrative code prohibits supervision fees from being collected when court-ordered restitution obligations remain outstanding. Therefore, DOC may lawfully collect supervision fees from an offender before court-ordered restitution is paid in full.

Sincerely,

J.B. VAN HOLLEN
Attorney General

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