



# WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

**TO:** Assembly Committee on Criminal Justice and Public Safety

**FROM:** Senator Luther Olsen & Representative Rob Hutton

**DATE:** Thursday, January 14, 2016

**SUBJECT:** Testimony for Assembly Bill 663

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Thank you Chairman Kleefisch and members of the Assembly Committee on Criminal Justice and Public Safety for holding a hearing and allowing us to testify in support of Assembly Bill 663. This is an important piece of legislation that focuses on the victim of a crime and ensures restitution payments are made a priority.

In the criminal justice system, "restitution" means payment by an offender to a victim for harm caused by the offender's wrongful acts. Restitution can cover any out-of-pocket losses directly relating to the crime, which includes: medical expenses, therapy or counseling costs, prescription drug charges, lost or damaged property, insurance deductibles, crime-scene clean up, loss of wages, or any other expense that resulted directly from the crime.

Victims are granted the right to restitution by both Wisconsin's Constitution and through our state laws. However, when an offender is placed on probation, the Department of Corrections may collect supervision fees from offenders *prior* to collecting full restitution for victims according to current law. On January 2<sup>nd</sup>, 2015, Wisconsin's former Attorney General J.B. Van Hollen, issued a formal opinion expanding upon this point:

*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.*

As we mentioned in our co-sponsorship memo for this legislation, a recent Brown County case helps explain why Assembly Bill 663 makes important changes to Wisconsin's laws. In this case, the defendant was convicted of causing great bodily harm by operating a motor vehicle while intoxicated. At sentencing the judge ordered the defendant to pay restitution to the victim. By the end of the sentence, the **victim had received one-third of all payments made by the offender** and the Department of Corrections had received the rest.

It is important to note that restitution serves a purpose for not only crime victims, but also criminal offenders. For victims of crime, it has been found that full restitution, in the amount of a victim's total losses, is a critical step in a victims' recovery. Restitution is also an effective rehabilitative tool for offenders because restitution payments force defendants to concretely confront and take responsibility for the harm they have caused.

Ultimately, we do not believe that Wisconsin's government should collect its payments before crime victims are made whole because victims should not have to essentially pay for the Department of Corrections' Community Corrections Program. Too many victims of crime are not receiving the full restitution that they are due and we believe Wisconsin can do better for crime victims by making restitution payments a priority.

Assembly Bill 663 puts crime victims first, and it also makes changes to restitution payments in order to make this process more effective, efficient, and easier for victims. These changes include: codifying that the Department of Corrections and counties can use the tax intercept tool to collect owed restitution for victims, allows for collection of restitution from wages earned while incarcerated, and requires renewal of wage garnishments only if the offender changes jobs not every 13 weeks.

Our offices have worked in conjunction with the Attorney General, the Department of Justice, and Victim Advocates to create this legislation. We believe these changes provide meaningful reform to help victims and provide a better opportunity for offenders to pay back those they have harmed. Thank you members, we ask for your support of Assembly Bill 663 and we would be more than happy to answer any questions.



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DEPARTMENT OF JUSTICE

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**PREPARED TESTIMONY OF ATTORNEY GENERAL BRAD D. SCHIMEL**  
Support for Assembly Bill 663  
Assembly Committee on Criminal Justice and Public Safety  
Thursday, January 14, 2016

Good morning Chairman Kleefisch and members of the Assembly Committee on Criminal Justice and Public Safety. Thank you for this opportunity to testify on AB 663.

My entire 25 year prosecutorial career has been spent fighting for victims. In my work as an assistant DA and District Attorney, I met countless people who had suffered harm as a result of criminal activity. No two crimes are alike, and no two victims are affected the same way by crime. Even though they all face different circumstances, crime victims virtually universally report that one of their greatest sources of frustration is trying to recover restitution for the costs they bear as a result of the crimes committed against them. I heard this frustration not only in my work as a prosecutor, but also through my service for years on the state Crime Victim Council, which as the name implies, exists to improve the delivery of services to crime victims statewide.

As Attorney General, I don't appear in court on a daily basis or handle cases directly like my former colleagues, so I no longer have day to day contact with crime victims. But the Crime Victim Council and the state Office of Crime Victim Services are now under my authority. Through those responsibilities, I continue to advocate for the rights of crime victims, only now on a much larger scale, and with a larger microphone.

As you can imagine, or as you might have experienced firsthand, being a crime victim is a life changing experience, typically with lasting economic, physical and/or emotional consequences. Some of the immediate out of pocket expenses, like bills for hospital and other medical services, counseling, repair of damaged property, replacement of stolen property, funeral expenses, or lost wages, slow a victim's ability to begin the healing process. For this reason, crime victims in Wisconsin have constitutional and statutory rights to receive restitution for expenses that are a direct result of crimes committed against them. Unfortunately, the current system

is onerous for victims to navigate, which leads to the frustration I described earlier. Under current law, almost all types of costs, assessments, fines and fees assessed against a defendant may not be collected until restitution is paid in full. Unfortunately, current law permits Department of Corrections supervision fees to be collected before the victim receives restitution. We owe economic justice to crime victims. AB 663 requires that victims be made financially whole before DOC can collect supervision costs. Passage of this law will hold offenders accountable and will advance their rehabilitation, and will ensure crime victims never have to wait for the state to cover its costs before they receive money owed to them by those who hurt them.

AB 663 also requires a court to order a defendant to authorize DOC to collect restitution from a portion of the wages earned and funds held in a prisoner's account while incarcerated. The victim has a far greater need for the restitution ordered by the court than the incarcerated defendant.

Once a defendant completes Department of Corrections supervision, if restitution is not yet paid in full, the victim is left to seek enforcement of the restitution judgment in civil court. Currently, if the victim is able to obtain a wage garnishment order against the defendant, the order is limited to a 13-week duration. If full restitution is not completed in that 13 week period, the victim must keep going back to court every 13 weeks to renew the court order until restitution is paid in full. AB 663 eliminates this unfair burden on victims and leaves the wage garnishment order in place until restitution is paid in full.

Currently, counties may utilize tax refund intercepts to recover amounts owed to the county, however, victims do not have a similar right to recover restitution from a defendant's tax refund. AB 663 gives crime victims the same power to recoup their losses as the government currently possesses.

Finally, AB 663 requires annual reporting on the collection of restitution to be reported to the Legislature so that it can gauge if the policy change is effective.

I am confident the proposed changes included in AB 663 will have a positive impact on the lives of crime victims and encourage all the members of the Senate Committee on Judiciary and Public Safety to vote yes.

Thank you for taking the time today to hear testimony on AB 663. I am happy to take any questions from the members of this committee.



**DANE COUNTY  
DISTRICT ATTORNEY  
ISMAEL R. OZANNE**



October 31, 2014

Attorney General J.B. Van Hollen  
Wisconsin Department of Justice  
17 W. Main Street  
Madison WI 53703

**RE: Unpaid Restitution**

Dear Mr. Van Hollen,

As District Attorney of Dane County, I am requesting an Attorney General's Opinion, pursuant to Wis. Stats. §165.015(1), to resolve this issue of statewide importance which I believe presently has no other legal means of being resolved regarding the constitutional and statutory rights of victims of crimes to receive full restitution when ordered by a court. Section 9m of the Wisconsin Constitution provides, in relevant part, "This state *shall* ensure that crime victims have all of the following privileges and protections as provided by law: . . . restitution . . ." (emphasis added) Wis. Stats. §950.04(1v)(q) provides that victims of crime have the *right*, "To restitution, as provided under ss. 938.245(2)(a)5., 938.32(1t), 938.34(5), 938.345, 943.212, 943.23(6), 943.245, 943.51 and 973.20."

The issue to be resolved is whether victims can be deprived of their constitutional and statutory right to restitution by the DOC when the DOC is collecting money towards restitution from offenders and the DOC applies that money **first** to its fees and costs before applying the remainder of the funds tendered by the offender, who is ordered to do so by the court for restitution purposes, to the court-ordered restitution.

Wis. Stats. §304.074(2) provides that DOC, ". . . *shall* charge a fee to probationers, parolees, and persons on extended supervision to partially reimburse the department for the costs of providing supervision and services. . . ." (emphasis added) Sec. 304.074(4m)(b) specifically gives the DOC its remedy if such fees are not paid, i.e., "*The department may request the attorney general to bring a civil action to recover unpaid fees owed to the department under sub.(2) by a person who has been discharged from probation or from his or her sentence and who, at the time of discharge, owed the department unpaid fees under sub. (2).*" (Emphasis added.)

Wis. Stats. §973.20(12)(a) states, "If the court orders restitution in addition to the payment of fines, costs, fees, and surcharges under sec. 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." At issue here is §973.20(12)(b) which directs that, ". . .

payments *shall* be applied *first* to satisfy *the ordered restitution in full*, then to pay any fines or surcharges under §973.05, *then* to pay costs, fees, and surcharges under ch. 814 . . ." (Emphasis added.)

Wis. Stats. §973.20(12)(a) and (b) make no exception from the law that payments by offenders *shall* be paid first to satisfy the ordered restitution, and only then after that to fines and costs and fees. This is what is required by the Wisconsin constitution and Chapter 950. Subsection (b) of §973.20(12) does not say that "fees" there means only the fees legislated about in subsection (a). It just says "fees" and "fees" are to be paid after the ordered restitution. Section 304.074(2) deals with "fees" and "fees" are to be paid after the restitution.

If the legislature intended DOC's fees to be paid first, they could have said so in §973.20(12)(b), but they did not. Wis. Stat. §304.074(2) has been in effect since 2003, so the legislature is presumed to know what laws it has on the books when it passes new laws. Wis. Stat. §973.20 has been amended at least three times since 2003 and such a change has never been made. This office believes that a fee is a fee, and it only gets paid after the victim has received their constitutional and statutory due.

The law provides no other remedy for victims to collect restitution by way of the criminal justice system except by way of restitution as ordered by the judge who presided over their case. Reducing restitution owed to a civil judgment does victims no good where they have to spend money to hire a lawyer to enforce the judgment. In addition, on those occasions where DOC has collected enough to pay all the restitution, but half of it went to fees, and the person is revoked for not paying the restitution, these clear statutory provisions may in fact give that inmate a cause of action against the DOC for continuing to confine that person illegally.

In that the DOC is not proceeding with its collections as this office believes it ought to under the law, and because it is likely that the DOC is conducting itself similarly across the entire state of Wisconsin, the office believes this is a matter of statewide importance which should be resolved by way of an Opinion of the Attorney General. Thank you for your care and attention to this important matter.

Sincerely,



Ismael Ozanne



# Wisconsin Victim Witness Professionals

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January 13, 2016

To Whom It May Concern:

The Wisconsin Victim Witness Professionals Association has identified restitution payment as the issue most important to crime victims. We write today to encourage your support of AB 663, which addresses many of the obstacles that impede collection of restitution for crime victims.

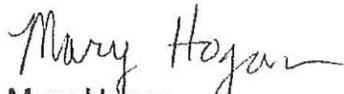
This bill provides for improvements in collection; easier process for garnishing wages; and assistance with the tax intercept process in collecting unpaid restitution amounts. Additionally, AB 663 provides for an annual reporting of the amounts of restitution ordered and collected, which provides for transparency and accountability.

Victim/Witness Professionals throughout Wisconsin work with crime victims every day who have suffered physical and emotional injuries AND financial hardship due to the impact of crime. Many victims experience a reduced quality of life, not just because of the initial crime but also because of ongoing financial liabilities imposed upon them by offenders.

Payment of restitution has long been recognized as a greatly under-enforced right and the toll these financial losses take on crime victims, (including private businesses), is astronomical. The goal of WWVP is to spark the kind of transformation in Wisconsin that will serve as a nationwide model for offender accountability, victim repayment and service to citizens. This proposed legislation is a great step in the right direction.

To that end, your support of AB 663 is crucial in our efforts to improve the collection of restitution for crime victims and to begin progress toward meaningful solutions. Please use this opportunity to help Wisconsin citizens who have already suffered the effects of crime and help prevent further victimization.

Thank you for your consideration.

  
Mary Hogan  
Vice-President, WWVP

  
Jen Dunn  
SE Region Representative, WWVP

1/14/2016

AB663

My name is Mary Hogan and I am the Victim Witness Coordinator in Barron County. I have been a Victim Witness Coordinator for almost 19 years and during that time, I have personally witnessed the effects resulting from unpaid restitution. I use the word devastating intentionally as I have seen victims and families overwhelmed and small businesses who struggle to stay afloat – only to have to try and absorb the costs associated with crime. As the current VP of WVVWP I can tell you that I speak on behalf of victim witness coordinators throughout the state who are at their desks today and wishing they were here to help support this bill and try to share with you some of the frustrations they hear from crime victims. We have an old saying in the criminal justice system that talks about how the State of Wisconsin is not a collection agency. Of course, the competing philosophy says that restitution is designed to assist in the rehabilitation of offenders as they meet their responsibilities in making victims whole. We have created a culture of non payment in the criminal justice system.

Victim Witness professionals have to routinely manage expectations of crime victims who expect that because they are owed restitution and the court orders defendants to pay restitution – that they will actually receive the money owed to them and receive it in a timely manner. Very often this is not the case. Also, when we discuss restitution problems we are often quick to ignore cases with high amounts of restitution owed: thousands or even hundreds of thousands - but keep in mind – those dollars are owed to someone or some business and the ripple effects of those unpaid amounts are felt by all of us as citizens. We also need to remember that even the lower amounts of unpaid restitution add up. A survey of cases with offenders scheduled to end DOC supervision in 90 days with unpaid restitution, in 23 counties of varying sized populations, shows a total of \$503,580.73 for the month of November 2015 alone.

Now what does this number tell us? Not much actually. This is simply a snapshot in time which indicates that an individual is scheduled to be released from supervision without meeting his or her financial obligations. It does not tell us if the restitution was paid at the last minute or reduced to civil judgment. It does not tell us if supervision was extended or if it had already been extended in the past. We don't know if court review hearings ever happen and finally, this number tells us nothing about restitution in cases where no supervision was ordered.

We frequently hear stories about businesses forced to have costly security systems in place and we hear about businesses and individuals and families who are forced to make hurried, slap dash repairs because they can't afford the new window or door or car repairs necessary as a result of crime. A case from my own county early in my career is such a good illustration of how victims suffer when restitution is unpaid – it almost seems made up. The offender was drunk or under the influence of drugs and decided to walk down a street slashing tires on vehicles. Fortunately he only got a few but one vehicle belonged to an older woman who told me that she needed to get the tire repaired quickly so that she could drive to dialysis each week. She explained that she could use her rent money but that she would need to have

the restitution paid before the end of the next month. Now while I was able to ease her fears that she had been targeted specifically by sharing that the vehicle next to hers belonged to an off duty cop – I had no way to alleviate her concerns about her rent money.

This bill specifically addresses the payment of restitution before supervision fees, which will be a huge benefit to crime victims. Currently, there are no requirements for offenders on Huber to pay restitution out of wages or in WSP out of wages BUT collections are made for room/board & other expenses.

Making the process easier to attach offender wages will be a huge benefit to victims. I urge you all too strongly support this legislation and show our citizens that their frustrations are being heard. Thank you for allowing me to speak with you today.



**BUFFALO COUNTY  
OFFICE OF DISTRICT ATTORNEY**

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*Thomas Clark, District Attorney  
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*Sue Burr, Victim Witness Coordinator  
Lea Krzewski, Legal Assistant*

January 13, 2016

Assembly Committee on Criminal Justice and Public Safety  
State Capitol  
E Main Street  
Madison, WI 53703

RE: AB 643

Dear Committee Members:

This letter serves as a request for your support of AB 643 relating to restitution owed to victims of crime. Restitution has been identified as the most important issue to crime victims. Too often, victims are not paid restitution owed to them which further victimizes the victims. Our system needs to be fixed to make sure defendants are held accountable for their crimes. This bill provides for improvements in collection of restitution, easier process for garnishing wages and tax intercept in collecting unpaid restitution amounts. The language also addresses the issue of Department of Correction supervision fees being paid by defendants before restitution has been paid in full. Crime victims in Wisconsin need to take priority! We urge you for your support of AB 643.

Thank you.

Sincerely,

Thomas W. Clark  
District Attorney

Sue Burr  
Victim Witness Coordinator

**Waukesha**  
**COUNTY**  
OFFICE OF  
DISTRICT ATTORNEY

January 13, 2016

To Whom It May Concern:

I write to you today in support of AB 663, relating to restitution owed to crime victims. This bill provides for improvements in collection; easier process for garnishing wages; and assistance with the tax intercept process in collecting unpaid restitution amounts. Additionally, this bill provides for an annual reporting of the amounts of restitution ordered and collected, which provides for transparency and accountability.

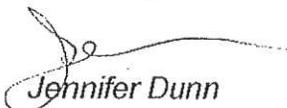
As someone who has worked in victim services for 21 years, I have first-hand knowledge of the frustration and hardship caused not only by the physical and emotional impacts of crime but the compounding issue of non-payment of restitution. The vast majority of crime victims report restitution as their priority need from the criminal justice system. It is also the most common complaint and source of dissatisfaction among crime victims.

In reviewing restitution payments in Waukesha County, of offenders being released from supervision between December, 2015 and February, 2016, I found that 18 of 61 offenders ordered to pay restitution had paid nothing towards restitution. The supervision terms of these offenders lasted up to 5 years. Another several offenders had paid less than one dollar. Well over half of these offenders had paid less than \$100.00 towards restitution per year of their supervision. In one case, victims have called me regarding an offender charged with 24 counts of burglary and criminal damage to property. Restitution of \$10,306.32 was ordered and the offender served 5 years of supervision. The offender was released from supervision with nothing paid towards victim restitution.

Unfortunately, I could cite dozens if not hundreds of other examples. We do victims no favors by releasing offenders from supervision and converting their restitution to civil judgments, placing yet another burden on the crime victim. Offender rehabilitation is a hollow concept if it does not include a meaningful attempt to make the victim whole.

Please support AB 663 in order to improve the collection of restitution for crime victims in Wisconsin.

Sincerely,

  
Jennifer Dunn

VICTIM/WITNESS ASSISTANCE PROGRAM

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