



**Report of the  
Study Committee on Future Funding for the  
Vermont Center for Crime Victims Services**

**December 2013**

*Representative James W. Masland, Chair*

*Senator Timothy R. Ashe, Vice Chair*

*Representative Peter J. Fagan*

*Senator Richard W. Sears*

*Representative Michelle Fay*

*Senator Richard A. Westman*

*Heather Campbell  
Agency of Administration*

*Judith Rex  
Vermont Center for Crime Victims Services*

*Prepared by:*

*Joint Fiscal Office and Office of Legislative Council  
State House, 115 State Street, Montpelier, VT 05633-5301  
802-828-2231*

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## I. EXECUTIVE SUMMARY

The Study Committee on Future Funding for the Vermont Center for Crime Victims Services (CCVS or “the Center”) was established by the General Assembly in 2013 and directed “to address an anticipated decrease in available revenue for CCVS and to develop a financial plan of action that will ensure that CCVS will be able to continue to provide the services that victims of crime need in order to recover from the physical, emotional, and financial aftermath of criminal victimization.” After hearing testimony from a wide variety of witnesses and carefully considering the budgetary shortfall CCVS is facing, the Committee recommends that the General Assembly take the following steps to return CCVS to financial health and stability:

1. Victims should be reimbursed from the Victims’ Compensation Fund before the Restitution Fund in order to maximize federal reimbursement.
2. The General Assembly should consider modifying the \$10,000.00 Restitution Fund cap or establishing guidelines regarding the amounts that will be reimburse from the Fund for different types of property.
3. The Vermont Network Against Domestic and Sexual Violence and the Vermont Hospitals Association should jointly develop a proposal for achieving cost savings for rape examination procedures.
4. The Chittenden County Restitution Pilot Project offers a model of consistency and efficiency for purposes of determining and verifying a victim’s losses and treating victims equally, and consideration should be given to expanding this model to other parts of the State.
5. The Restitution Unit should be provided with more tools to obtain restitution owed by offenders, potentially including assessing interest or bringing contempt proceedings against offenders who willfully refuse to make timely restitution payments.
6. The restitution enforcement process should be simplified and made less costly by making the restitution order an enforceable civil judgment that does not require a new case to be opened.
7. The statutory preference for payment of restitution at the time of sentencing should be followed more frequently.
8. The Center’s outdated IT system should be updated or replaced.
9. Victims’ Advocates should be included in the Pay Act, which would result in an annual savings to the CCVS of \$30–40,000.00.

10. The General Assembly Should Repay the \$2,000,000.00 that it Borrowed from the Vermont Center for Crime Victims Services.

If these measures, or some combination of them, were enacted by the General Assembly, the Committee believes a majority of the Center's financial challenges could be resolved and crime victims would have a stable source of funding to rely on to compensate them for their losses.

## II. THE COMMITTEE

The Study Committee on Future Funding for the Vermont Center for Crime Victims Services was established by 2013 Acts and Resolves No. 50, Sec. E.220.1.

The Committee consisted of eight members:

- (1) One member of the House Committee on Ways and Means, appointed by the Speaker of the House: Representative Jim Masland, *Chair*.
- (2) One member of the Senate Committee on Finance, appointed by the Committee on Committees: Senator Tim Ashe, *Vice Chair*.
- (3) One member of the House Committee on Appropriations, appointed by the Speaker of the House: Representative Peter Fagan.
- (4) One member of the Senate Committee on Appropriations, appointed by the Committee on Committees: Senator Richard Westman.
- (5) One member of the House Committee on Judiciary, appointed by the Speaker of the House: Representative Michelle Fay.
- (6) One member of the Senate Committee on Judiciary, appointed by the Committee on Committees: Senator Dick Sears.
- (7) A representative of the Agency of Administration, appointed by the Secretary of Administration: Heather Campbell, Budget and Management Analyst, Agency of Administration.
- (8) The Executive Director of the Vermont Center for Crime Victims Services: Judith Rex.

The Committee was staffed by: Steve Klein, Chief Fiscal Officer, and Maria Belliveau, Associate Fiscal Officer, Joint Fiscal Office; Erik FitzPatrick, Legislative Counsel, and Julie Tucker, Committee Assistant, Office of Legislative Council.

### **III. THE COMMITTEE'S CHARGE**

2013 Acts and Resolves No. 50, Sec. E.220.1 (H.530) created the Study Committee on Future Funding for the Vermont Center for Crime Victims Services “to address an anticipated decrease in available revenue for CCVS and to develop a financial plan of action that will ensure that CCVS will be able to continue to provide the services that victims of crime need in order to recover from the physical, emotional, and financial aftermath of criminal victimization.” The Committee was authorized to meet up to six times and to file a report of its recommendations with the General Assembly.

### **IV. MEETINGS AND WITNESSES**

The Committee met three times in 2013: October 2, October 23, and November 14. The following witnesses appeared before the Committee:

Judy Rex, Executive Director, Vermont Center for Crime Victims Services

Elaine Boyce, Restitution Unit Manager, Vermont Center for Crime Victims Services

Mary Kay Hewlett, Director, Victims' Services, Vermont Center for Crime Victims Services

Patricia Gabel, Court Administrator

Renny Perry, Special Assistant, Office of Court Administrator

Oliver Twombly, Attorney, Vermont Center for Crime Victims Services

Bram Kronickfeld, Executive Director, Department of State's Attorneys and Sheriffs

T.J. Donovan, Vermont State's Attorney, Chittenden County State's Attorneys

Armina Medic, Chittenden County Victims Advocate

Nietra Panagoulis, Chittenden County Domestic Violence Victim Advocate

Hon. Amy Davenport, Administrative Judge

Andy Pallito, Commissioner, Department of Corrections

Stephen Klein, Chief Legislative Fiscal Officer, Joint Fiscal Office

Maria Belliveau, Associate Fiscal Officer, Joint Fiscal Office

Hon. Brian Grearson, Superior Judge

Jeffrey Cohen, Director, Office of Child Support

James Reardon, Commissioner, Department of Finance and Management

Maribeth Spellman, Director of Policy, Outreach and Legislative Affairs,  
Department of Taxes

Joan Carson, RN, Clinical Coordinator, Sexual Assault Nurse Examiner  
Program (SANE)

Jill Olson, Vice President of Policy and Legislative Affairs, Vermont  
Association of Hospitals and Health Systems

Jason Williams, Government Relations Strategist, Fletcher Allen Health Care

## V. FINDINGS AND RECOMMENDATIONS

A. The Vermont Center for Crime Victim Services is facing a significant fiscal challenge: the Center's current sources of funding are insufficient to meet the expenses it incurs. If steps are not taken to address the Center's financial resources, in FY 2015, the Center's Victim's Compensation Fund will have insufficient assets to cover expenses.

The Center administers three different funds: the Victims' Compensation Fund, the Restitution Fund, and the Domestic and Sexual Violence Fund. The funds were established for a particular purpose and have specific funding sources. Each Fund obtains revenue from one or more of the following sources: a portion of the \$47.00 surcharge on court fines and traffic tickets; a 15 percent surcharge on criminal and civil fines; federal Victims of Crime Act (VOCA) funds; and a \$20.00 surcharge on marriage licenses. The \$47.00 surcharge is distributed as follows; \$29.75 to the Victims' Compensation Fund, \$10.00 to the Domestic and Sexual Violence Fund, and \$7.25 to the General Fund. A close examination of how each Fund operates reveals the financial challenges that must be addressed.

**Victims' Compensation Fund.** The Victims' Compensation fund receives \$29.75 of the \$47.00 surcharge on court fines and traffic tickets, as specified in 13 V.S.A. § 7282(a)(8)(D), as well as Victims of Crime Act (VOCA) funds from the U.S. Department of Justice. The purpose of the fund is to reimburse victims of crime, as long as they have no other source to pay for their losses, such as insurance, for medical and dental care, mental health counseling,

funeral costs, lost wages, travel expenses, crime scene cleanup, rent and relocation costs, safety and security, eyeglasses, hearing aids, dentures or any prosthetic device, and pet injuries and care. The fund will reimburse up to \$10,000.00 and, generally, will not reimburse victims for property loss. Payments are made directly to the victim or service providers and they are reimbursable to the CCVS at a rate of 60 percent by the federal government. The Fund will pay for emergency room costs, prophylaxis of sexually transmitted diseases, and forensic rape examinations and kits, as well as for 20 counseling sessions. The victim is not required to report the assault to the police and is not required to use any private insurance he or she might have. If the victim does not have insurance, the Fund pays 70 percent of the hospital bill as required by 32 V.S.A. § 1407. If the victim does have insurance, the Fund pays the deductible and co-payment.

The Victims' Compensation Fund supports the Victims' Assistance Program, which includes 22 full-time equivalent positions in the State's Attorneys' Offices in all 14 counties. The positions are responsible for keeping the victim informed and heard at all stages of the criminal justice process. In some counties, the victim advocates work with the Specialized Investigative Units (SIUs) who focus on victims of domestic violence, child abuse, or sexual assault. These positions are State employees but do not receive Pay Act funds, which means cost of living and step salary increases must be paid by the Center rather than from the State General Fund.

Current projections for the Victims' Compensation Fund indicate that the Fund balance at the end of FY 2014 will be \$222,500.00, the lowest level in recent history. If revenue and spending trends continue, the Fund will be in default by \$411,000.00 at the close of FY 2015. This reflects a continuing problem of declining revenue from traffic tickets as well as the Center's growing expenses. Although there is no definitive explanation for the trend, it is clear that the revenue from traffic tickets has been decreasing every year, and this projection assumes a decline in traffic tickets written of 0.7 percent.

**Domestic and Sexual Violence Fund.** The Domestic and Sexual Violence Fund receives \$10.00 of the \$47.00 surcharge on court fines and traffic tickets, as specified in 13 V.S.A. § 7282(a)(8)(D), as well as a \$20 surcharge on marriage licenses, as specified in 32 V.S.A. § 1712(1). The Fund supports grants to the Vermont Network Against Domestic and Sexual Violence and pays the cost of a Domestic Violence Trainer at the Vermont Police Academy who is dedicated to domestic violence training. The cost of the Domestic Violence Trainer increases each year and will cost \$103,148.00 in FY 2015. The cost of the Trainer position is putting pressure on the Fund balance, which is projected to be \$51,183.00 at the close of FY 2014 and only \$20,019.00 at the close of FY 2015.

The year-end Fund balance in the Domestic and Sexual Violence Fund is projected to decline from FY 2013 to FY 2015. At the end of FY 2013, the year-end balance was \$86,212.00. The balance is projected to decrease to \$51,183.00 at the end of FY 2014 and be \$20,019.00 at the end of FY 2015. This downward trend is of concern for the long-term stability of the Program.

**Crime Victims' Restitution Fund.** The Crime Victims' Restitution Fund is capitalized by a 15 percent surcharge on criminal and civil fines, as specified in 13 V.S.A. § 7282(a)(9). The Fund is authorized to make an advance payment of up to \$10,000.00 to an eligible individual crime victim. 13 V.S.A. § 5363(d). When an offender makes restitution payments, the amount received is paid out by first reimbursing the victim for his or her losses that were not eligible for an advance payment from the Fund. After the victim is made whole, the Fund gets reimbursed by the amount that was advanced to the victim. Businesses and governmental entities are not eligible to receive advances and instead receive payment as the Restitution Unit collects from the offender.

The fund will reimburse for a material loss up to \$10,000.00 as defined by 13 V.S.A. § 7043(a)(3). Based upon projected revenues and expenditures, the Restitution Fund will have a positive balance of \$256,807.00 at the end of FY 2014 and \$294,540.00 at the end of FY 2015.

There are several challenges facing the Restitution Fund. First, though the collection rate of court-ordered restitution is quite good (overall 29 percent and up to 55 percent for older cases), some of the restitution orders are very large and it takes time for offenders to pay in full. Second, 60-70 percent of the restitution collected is paid out to reimburse victims for losses that are not eligible for advance payment from the Fund, which is last in priority to get paid back from the offender. Third, the Restitution Unit does not have sufficient tools to hold offenders accountable. Last, the revenue into the Fund has been decreasing as a result of the decline in the number of traffic tickets issued.

**B. The Vermont Legislature is committed to helping the Vermont Center for Crime Victim Services meet its financial challenges, and considers it a high priority to continue its support of the Center's efforts to provide services to those affected by crime.**

The Vermont General Assembly has for many years demonstrated its commitment to doing all it can to help crime victims recover their losses and protect their rights. The Center for Crime Victims Services, the Restitution Unit, and the Victims' Compensation Fund, for example, were all created by the General Assembly to accomplish the key role that the State has in safeguarding the rights and aiding the recovery of those in the Vermont community who have been victimized by crime. The Vermont statutes similarly contain a wide variety of measures intended to promote the rights of



crime victims, including requiring that a victim receive notice of court proceedings against the offender and be permitted to be present for the proceedings, make a statement at sentencing, and be notified when an offender is released from custody. These statutory protections for crime victims reached a peak when Vermont created the Restitution Fund in 2005, thereby becoming the first state in the country to establish a method for making “up front” restitution payments to crime victims that do not depend on collecting money from criminal offenders.

The General Assembly is deeply concerned about the financial challenges CCVS is facing. Because of its longstanding view that crime victims’ safety and recovery should be aided by the State, the General Assembly created this Committee to determine what statutory measures could be taken to ensure that the Center’s monetary difficulties do not result in harm to victims. After taking extensive testimony from a wide variety of stakeholders and interested parties, the Committee is able to make a number of recommendations that it believes will help return the Center to fiscal health.

C. Substantial cost savings may be had by making changes to the use and composition of the Restitution Fund.

**1. Victims should be reimbursed from the Victims’ Compensation Fund before the Restitution Fund in order to maximize federal reimbursement.**

Victims’ Compensation Fund claims are eligible for a 60 percent federal match that is not available from the Restitution Fund. Directing victims to the Victims’ Compensation Fund for medical, dental, counseling, and lost wage claims would therefore decrease the pressure on the Restitution Fund. Unfortunately, under current practice, some expenses that are eligible for a federal match through the Victims’ Compensation Fund are, instead, paid out of the Restitution Fund and receive no federal match. This occurs primarily because victims either are not notified about, do not understand, or do not wish to apply to the Victims’ Compensation Program. It appears that victims may prefer to rely on the Restitution Fund because it pays the victim directly while the Victims’ Compensation Fund pays providers for services provided to the victim. Despite these differences in program operation, the benefits in obtaining federal matching funds make it worthwhile to consider whether victims should be required to submit claims to the Victims’ Compensation Fund before submitting them to the Restitution Fund.

**2. The General Assembly should consider modifying the \$10,000.00 Restitution Fund cap or establishing guidelines regarding the amounts that will be reimburse from the Fund for different types of property.**

The General Assembly created the Restitution Fund in 2004 to provide a means to reimburse crime victims for their losses with upfront payments

instead of forcing them to seek payment from criminal offenders who are often unwilling or unable to pay. The Fund is capitalized by a special assessment that is imposed on every criminal fine, traffic ticket, and civil offense paid in Vermont. In order to ensure that the Fund is not depleted by especially costly offenses, there is a \$10,000.00 cap on the amount that each individual victim can collect from the fund for a particular crime. However, there are no limits on the types of property losses that may be reimbursed by the Fund.

The testimony heard by the Committee about the declining resources of the Fund suggests that this may be an appropriate time to consider changes to its pay-out system. For example, the \$10,000.00 cap has been in place since the Fund's creation and may need to be lowered in response to current budgetary pressures. In addition, where private insurance options exist, the reimbursement could be limited to the amount of an average deductible, a measure that would not only reduce expenses but would also eliminate disincentives for purchasing or accessing private insurance. Limits should also be considered for losses of particular types of personal property. The limits could vary depending on the type of property involved, with lower caps for discretionary items such as jewelry and higher caps for necessities such as automobiles.

It is important to note that even if Fund payments are subject to additional guidelines, crime victims and the Restitution Unit always have the authority to collect from the offender any additional restitution not paid by the Fund. The Restitution Fund exists to ensure that all crime victims receive at least some reimbursement for their losses. In order to maintain this commitment to victims, some modifications to the Fund's payment system may be necessary.

### **3. The Vermont Network Against Domestic and Sexual Violence and the Vermont Association of Hospitals and Health Services (VAHHS) should jointly develop a proposal for achieving cost savings for rape examination procedures.**

Vermont's outstanding Sexual Assault Nurse Examiner (SANE) Program provides rape examinations and other care to victims of sexual assault. SANE offers an invaluable resource of care and services to victims, and it has clearly been of immense benefit to many victims of sexual violence. As the program has developed, at least two possible cost savings opportunities have been presented.

First, it appears that in many cases that the Compensation Fund is reimbursing hospitals for rape exam costs that could be covered by the victim's health insurance. For example, the Fund paid approximately \$100,000.00 to Fletcher Allen Health Care in calendar year 2013 for the costs of providing rape exams for 59 victims, many of whom could have billed private health insurers. The Committee is very sensitive to the desire of many sexual assault victims to

remain anonymous and to their concern that reporting the assault to an insurer would result in a tremendous invasion of privacy. However, careful effort and thought should be able to produce a method to encourage billing of private health insurers for rape exams while preventing a victim's anonymity from being compromised. The Vermont Network Against Domestic and Sexual Violence and the VAHHS have agreed to undertake this effort, and to develop jointly a proposal that protects the victim's privacy and promotes billing a health insurer for the costs of a rape exam before billing the Compensation Fund.

Second, it is apparent that the costs charged for rape exams and associated SANE services vary from hospital to hospital. Whenever possible, SANE care should be provided at the victim's local hospital, but when this cannot occur, it appears to the Committee that the costs for rape exams should be reasonably similar since presumably they do not change solely by virtue of being conducted in a different location. It is difficult to determine precise data for these costs because there are no insurance codes for SANE services. However, as part of its proposal, the Network and VAHHS have agreed to consider how to promote statewide consistency for the costs of rape exams and whether it would be advisable to establish a fixed amount that hospitals can be reimbursed for them by the Victims' Compensation Fund.

Victims' Compensation Fund expenses could be reduced by promoting price consistency among hospitals conducting rape exams and establishing fixed reimbursement amounts for them, and by requiring that health insurance carriers generally be billed for the costs of a rape exam prior to billing the Fund without compromising victim privacy. The Committee looks forward to reviewing a proposal to accomplish these goals from the Vermont Network Against Domestic and Sexual Violence and the VAHHS during the 2014 legislative session.

**4. The Chittenden County Restitution Pilot Project offers a model of consistency and efficiency for purposes of determining and verifying a victim's losses and treating victims equally, and consideration should be given to expanding this model to other parts of the State.**

A major impediment to ordering restitution is the fact that less than one-half of cases requiring restitution are resolved at sentencing because the necessary information is not available for the court to determine how much restitution is owed. This means that evidence remains to be gathered and another hearing frequently has to be scheduled to document the amount of the victim's loss. This is particularly difficult to do because there is less incentive to encourage the parties to address outstanding restitution issues after the criminal charges have been resolved. As a result, long delays are created for victims while restitution orders remain unpaid.

The Chittenden County State's Attorney and the Restitution Unit have jointly established a pilot project that has achieved some success in reducing the number of restitution hearings and the associated delays in payments to victims, as well as in decreasing the frequency of inaccurate amounts in restitution orders. Started in 2011, the Chittenden County Restitution Pilot Project is based upon the Restitution Unit's early connection with the victim and the ability of the Unit to gather information about and verify the victim's crime-related losses. This information is then forwarded to the Chittenden County Victim Advocates to share with the prosecution and defense attorneys. This early contact allows information to be gathered and the numbers confirmed, treating all cases consistently, so the parties can reach an agreement before sentencing. A defendant who does not agree always has the right to contest restitution at a hearing, but the early evidence suggests that the Pilot Project has resulted in fewer hearings being needed. As a result, the victim's experience is substantially improved because he or she receives restitution in a timely fashion without being revictimized through prolonged additional litigation, and the process is made more efficient by minimizing the need for further court and attorney resources. An additional benefit to the project is that the Restitution Unit receives the police affidavit and consequently has access to offender information that often speeds up the process after a restitution order is sent to the Unit for enforcement.

The Committee believes that other Vermont Counties could benefit from the successes of the Chittenden County Restitution Pilot Project. The Committee therefore recommends that information about the Project be disseminated to other State's Attorneys, and that the General Assembly consider steps it could take to encourage appropriate use of the Project's techniques and procedures in other areas of the State.

#### D. Revenues May be Enhanced by Improving Procedures Related to Collection of Restitution from Offenders.

##### **1. The Restitution Unit should be provided with more tools to obtain restitution owed by offenders, potentially including assessing interest or bringing contempt proceedings against offenders who willfully refuse to make timely restitution payments.**

There is a significant amount of restitution that is ordered by the court and either not paid by the offender or only paid long after the order is issued. It should go without saying that refusal to comply with a restitution order cannot be tolerated and must result in serious consequences for the offender. Restitution is not a debt in the ordinary sense of the word, but is by law part of a criminal sentence, so that enforcement of an offender's restitution obligation is inherently part of the enforcement of his or her criminal sentence. Some consequences for nonpayment, such as the ability of the Restitution Unit to sue the offender, do exist in current law, but more severe steps may be necessary to

obtain payment from offenders who are able but unwilling to fulfill their restitution obligations.

Some states assess interest and other penalties on unpaid restitution judgments. This approach has the potential not only to reduce delinquent payments but also to help offset the additional costs of collection through the increased interest revenue. However, under the Vermont restitution statute, any restitution award must be limited to the material losses that the victim incurred as a direct result of the defendant's crime, so the assessment of interest or penalties is not permitted. 13 VSA § 7043; *State v. Kevin*, 191 Vt. 30 (2011). A statutory change to allow for imposing interest and fees on an offender who refuses to pay restitution should be considered.

Other states also hold nonpaying offenders in contempt of court, with the potential for incarceration for an offender who continues refusing to pay. In Vermont, the Office of Child Support (OCS) has this authority with respect to a person who willfully refused to pay child support. There may be value in this approach because the threat of imprisonment could encourage payment by offenders who might otherwise refuse. Attention would, however, need to be paid to the Vermont Constitution, which forbids imprisonment of a person for debt. Courts in states with similar constitutional provisions have generally held that a person may be incarcerated for failing to pay restitution only if the person had the ability to pay and willfully refused, so a Vermont statute would need to be crafted to meet this standard. Whether such a policy is viable in light of the current pressures on the Department of Corrections' budget is another question, but the Committee believed the option should be noted in its report so that it could be considered along with any other enhanced penalties the General Assembly feels are appropriate for failing to pay restitution.

The OCS additionally has statutorily granted information gathering authority that could help the Restitution Unit's collection efforts. OCS is designated as a law enforcement agency "for the sole purpose of requesting and obtaining access to motor vehicle information and other information needed to identify or locate a person, including access to information maintained by the National Criminal Information Center." 33 V.S.A. § 4107. In addition, OCS is entitled to obtain from other state agencies any information bearing on the identity and whereabouts of parents or alleged parents or their assets or income. 33 V.S.A. § 4105. It would appear to make sense for the Unit to have similar authority. It is often difficult for the Unit to find offenders and keeping up with their frequent address and cell phone changes. Offenders are required to notify the Unit within 30 days of any employment or address change, but this rarely happens. The Unit should have access to all available tools for finding offenders and locating assets, so the General Assembly should provide the Unit with information gathering authority similar to that of OCS.

The General Assembly should also consider providing the Unit with the authority to conduct random investigations of an offender's income and ability to make payment in compliance with a restitution order. There is little doubt that some offenders understate their income and assets in order to avoid paying restitution, but the resources do not exist to verify the financial status of every offender. If the Unit were given the authority to conduct random income verifications, similar to audits, offenders could be encouraged to make more accurate financial reports that result in more restitution payments to victims.

There may be other opportunities to encourage offenders to make restitution payments as well. Nonviolent offenders who complete timely restitution payments could be made eligible for early release, for example. Or the fact that an offender has completed payment of restitution could be a required factor to consider when the Court makes a sentencing decision or the Parole Board responds to a request for parole. Providing incentives for offenders to make restitution payments should be part of a system that imposes consequences on offenders who do not make payments.

One way in which current Vermont law attempts to ensure that offenders pay restitution is by requiring that applicants for professional and recreational licenses sign a statement that they are "in good standing with respect to any restitution order." 13 V.S.A. § 7043a(b). However, there is no way to know if the assertion is accurate because there is no verification system currently in place. The Committee recognizes that establishing such a system could require new resources, but the option should be considered since the inability to obtain a license could provide a strong incentive for a person to pay restitution.

Another collection tool used in some states is an assessment on the wages earned by prison inmates. Although this particular approach is unlikely to work in Vermont because Vermont inmates have very few earnings, there may be other opportunities to ensure that inmates maximize restitution payments. The Department of Corrections and the Restitution Unit could establish a system for automatic payment when technology permits, for example. Surcharges could be imposed on purchases made through prison commissary accounts and the revenues transmitted to the Unit. Although more time is needed to consider alternatives, the Committee encourages DOC and the Unit to develop proposals that would encourage and facilitate the payment of restitution by inmates.

**2. The restitution enforcement process should be simplified and made less costly by making the restitution order an enforceable civil judgment that does not require a new case to be opened.**

Currently, when an offender refuses to comply with a restitution order issued in a criminal case by the Criminal Division of the Superior Court, the Restitution Unit can only obtain judicial enforcement of the order under 13 V.S.A.

§ 7043(j) by opening a separate case in the Civil Division. It makes little sense to require that an entirely new case be opened to enforce an order that was already fully litigated and in most cases was issued very recently. The additional attorney time required to prepare and file a new case are unnecessary expenses for CCVS, and the General Assembly should consider amending 13 V.S.A. § 7043(j) to make the restitution order enforceable in the Civil Division without requiring that a new case be opened. The Committee recognizes that such a process might be unusual in the court system, and representatives of the Judiciary should be consulted in order to determine how it would be best accomplished.

### **3. The statutory preference for payment of restitution at the time of sentencing should be followed more frequently.**

13 V.S.A. § 7043(d)(1) clearly expresses a preference that restitution be ordered at sentencing. Nevertheless, it is often the case that sentencing proceeds without a restitution order. The Committee recognizes that the nature of criminal proceedings can to some degree explain why restitution orders are often not issued at sentencing. Approximately 95 percent of criminal matters are resolved through plea agreement rather than trial; frequently the plea agreement is not reached until just before the scheduled trial date and sentencing then occurs very soon afterward. With negotiations continuing until virtually the end of the proceedings, it is understandable that the prosecution and defense attorneys are more focused on issues related to guilt, innocence, and possible incarceration than they are on the offender's restitution obligations.

However, as difficult as it is for the attorneys to focus on restitution before sentencing, it is even more difficult for victims to be subject to what must appear to them an unresponsive offender and a never-ending restitution process. The victim is in effect revictimized by having to continually litigate matters related to the crime. The process is also prolonged because it is often difficult for victims' advocates to convince defense attorneys to respond to inquiries about restitution. When that occurs, the Committee believes there is merit to the Chittenden County State's Attorney's view that it may be appropriate to file a summary judgment motion as a means of forcing a response and bringing the matter to closure.

Given the impacts on victims, and in spite of the challenges for the attorneys and the courts, it must be a priority of all parties in the criminal justice system to ensure that restitution orders are issued at the time of sentencing. The State's Attorney and the defense attorney have a responsibility to provide the court with the information necessary to issue the order, and use of summary judgment motions should be encouraged if that information is not provided. The Chittenden County Restitution Pilot Project discussed previously also offers a model for developing information early in the process so that

restitution orders may be issued at sentencing. With these measures and the efforts of counsel, the Committee believes that issuing more restitution orders at sentencing and reducing the number of restitution hearings is an achievable goal.

E. The Center could reduce costs and improve efficiency if its outdated IT system were updated or replaced.

The Restitution Unit makes payments to hundreds of victims each month and manages over 5,000 individual offenders, many of whom are involved in more than one case and have multiple offenders and multiple victims. This creates a complex information management challenge that the Unit's current IT system is ill equipped to handle. For example, the Unit's database is not easily adaptable to handle codefendants efficiently, which prevents the unit from properly doing credit reporting, an important tool in keeping offenders compliant. Because of the IT system's limitations, case managers must do a considerable amount of manual intervention to produce letters, post payments, and enter case notes. Every case in which restitution is paid by the offender rather than the Fund produces a paper statement which must be sorted, added, entered into Vision (the State's accounting system), and then filed.

The tremendous amount of information managed by an outdated database makes it challenging and sometimes impossible to pull necessary reports from the database, which in turn requires more staff time to create spreadsheets and manually track information. It could be a significant improvement in efficiency and use of resources if the Unit were provided with an updated IT system, ideally one that was accessible to the Department of Corrections, the State's Attorneys, and the courts so that the Unit could better partner on information sharing with other State agencies.

F. Including Victims' Advocates in Pay Act Coverage Would Annually Save CCVS \$30-40,000.00.

Currently, the 22 Victims' Advocates are considered State employees. They are supported with Victims' Compensation Special funds and federal VOCA funds. Due to these funding sources, the Center for Crime Victims Services has not historically received annual Pay Act funds to support the cost of pay increases. Pay Act funds are General and Transportation funds that have been appropriated each year in the budget to distribute to State agencies and departments to defray the cost of State employee pay increases. In the case of the 22 Victims' Advocates, since they are not funded with General or Transportation funds, they do not receive any Pay Act funds. The cost of the pay increases has to be found within the Victims' Compensation Special Fund or the federal VOCA funds. This need to support the pay increases creates an annual pressure of an estimated \$30,000.00 to \$40,000.00 on the Special Fund.



The Committee believes this should be addressed by finding a way to use Pay Act funds to cover the costs of pay increases for Victims' Advocates.

G. The General Assembly Should Consider Repayment of the \$2,000,000.00 that it Borrowed from the Vermont Center for Crime Victims Services.

In order to avoid a deficit in the General Fund in fiscal year 2009, the General Assembly transferred \$2,000,000.00 from the Restitution Fund to the General Fund. The transfer was made in 2009 Acts and Resolves No. 192, Sec. 4.002.1(a)(1), which included language specifying that it was the intent of the General Assembly that the Restitution funds be repaid. The specific language is set out below.

Sec. 4.002.1. ONE-TIME FUND TRANSFERS FOR FISCAL YEAR 2009  
DEFICIT AVOIDANCE AND ECONOMIC RECOVERY  
AND OPPORTUNITY

(a) In order to avoid a deficit in the general fund in fiscal year 2009 as a result of the April 2008 official revenue forecast revision and notwithstanding all applicable statutes to the contrary, in addition to other transfers and appropriations in this act, the following amounts are transferred to the general fund from the funds indicated:

(1) \$2,000,000 from the restitution fund established by 13 V.S.A. § 5363. It is the intent of the general assembly that the restitution fund be repaid.

\* \* \*

Although the Committee recognizes that General Fund resources are extremely limited this year, it may make sense to include repayment of these one-time funds as a use of one-time surpluses. The payment of these funds would not be a long-term solution to CCVS' financial problems but could provide a cushion while some of the other suggestions in this report have time to develop impacts. The Committee therefore recommends that the Committees on Appropriations consider this issue during the budget development process.

## VI. CONCLUSION

The evidence demonstrates clearly that in the near future the Vermont Center for Crime Victim Services' sources of funding will be insufficient to meet the needs of crime victims. However, after careful study, the Committee believes that some combination of the steps identified in this Report would stabilize the Center's finances for the foreseeable future. As a result, the Committee recommends that the General Assembly consider and pass a package of measures during the 2014 legislative session that secures the necessary funding for CCVS to accomplish its mission of providing crime victims with the support they need.

**2013 Report of the Study Committee on Future Funding for the  
Vermont Center for Crime Victims Services to the Vermont General Assembly**

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*Representative James W. Masland, Chair*

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*Senator Timothy R. Ashe, Vice Chair*

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*Representative Peter J. Fagan*

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*Senator Richard W. Sears*

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*Representative Michelle Fay*

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*Senator Richard A. Westman*

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*Heather Campbell, Budget and  
Management Analyst  
Agency of Administration*

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*Judith Rex, Executive Director  
Vermont Center for Crime Victims  
Services*