



Testimony

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Federal Courts

Differences Exist in Ordering Fines and Restitution

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Federal Courts: Differences Exist in Ordering Fines and Restitution

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the results of our review of the imposition of fines and restitution in federal criminal cases. My statement will outline the results presented in our recently completed report, Federal Courts: Differences Exist in Ordering Fines and Restitution (GAO/GGD-99-70, May 6, 1999).

For that report, you asked us to (1) identify the percentages of those offenders who were ordered to pay fines and restitution in fiscal year 1997 and those who were not, (2) identify differences across judicial circuits and districts in the percentages of those offenders who were ordered to pay fines or restitution and those who were not, and (3) provide officials' opinions about possible reasons for these differences. We also documented changes in the rate at which offenders were ordered to pay fines and restitution before and after the Mandatory Victims Restitution Act (MVRA),¹ which was enacted April 24, 1996.

To answer your questions, we used 1997 data from the United States Sentencing Commission (USSC). USSC maintains a computerized data collection system, which forms the basis of its clearinghouse of federal sentencing information. We performed a statistical analysis of this data base for all 12 judicial circuits and 94 districts for offenders ordered to pay fines and restitution. We performed multivariate statistical analyses to determine which factors affected the likelihood of offenders being ordered to pay fines or restitution. We did not determine whether fines or restitution ordered were actually paid. We discussed our results with officials of the Department of Justice (DOJ), the Administrative Offices of the U.S. Courts (AOUSC), USSC, and with chief judges, chief probation officers, and representatives of U.S. Attorneys offices in seven judicial districts. A complete description of our scope and methodology can be found in our report.

Background

Individuals convicted of a federal crime can be ordered by the court to pay a fine or restitution at sentencing. Criminal fines, which are punitive, are to be paid in most cases to DOJ's Crime Victims Fund. USSC Guidelines provide guidance on the minimum and maximum fine amounts to be imposed by the courts, based on the offense. In establishing the USSC, Congress sought, as one objective, uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar criminal offenders. Fines may be waived if the

¹ Title II of Public Law 104-132.

offender establishes that he or she is unable to pay and is not likely to become able to pay a fine. MVRA reformed restitution law and now requires the court to order full restitution in certain cases to each victim in the full amount of each victim's losses, without regard to the offender's economic situation. Previously, as with fines, the court could waive restitution, in most cases, based on offenders' inability to pay.

The Importance of the Judicial Circuit or District in the Likelihood of an Offender's Being Ordered to Pay a Fine or Restitution

While many factors influenced whether an offender was ordered to pay a fine or restitution, the judicial circuit or district where the offender was sentenced was a major factor during fiscal year 1997. This variation among judicial circuits and districts occurred overall for all federal offenders sentenced under USSC Guidelines during that year; and, although occurring less, this variation persisted when we performed multivariate statistical analysis for federal offenders sentenced for four types of offenses.

Most of the approximately 48,000 federal offenders sentenced under USSC Guidelines in fiscal year 1997 were not ordered by the courts to pay a fine or restitution. About 19 percent were only fined by the courts, and about 20 percent were only ordered to pay restitution. Of the offenders sentenced, about 2 percent were ordered to pay both fines and restitution. The total amount of fines and restitution ordered was over \$1.6 billion dollars.

The percentage of offenders ordered to pay fines or restitution varied greatly across the 12 federal judicial circuits and 94 federal judicial districts. Across districts, for example, the percentage of offenders ordered to pay fines ranged from 1 percent to 84 percent, and the percentage of offenders ordered to pay restitution ranged from 3 percent to 49 percent. The likelihood of an offender's being ordered to pay fines or restitution could have been three or more times greater in one federal judicial district than in an adjacent district.

An important factor in determining whether an offender was ordered to pay a fine or restitution was the type of offense committed. While 6 percent of offenders sentenced for immigration offenses were ordered to pay a fine, almost one-third of property offenders were ordered to pay fines. Similarly, while 1 percent of drug offenders were ordered to pay restitution, almost two-thirds of fraud offenders were ordered to pay restitution.

Besides the type of offense committed, other factors, based on our statistical analysis, that were associated with whether an offender was

ordered to pay included sex, race, education, citizenship, length of sentence, and type of sentence imposed, such as prison, probation, or an alternative.

We controlled for all those factors for four specific types of offenses in our multivariate statistical analysis, and the judicial circuit or district in which the offender was sentenced continued to be a major factor in determining whether an offender was ordered to pay a fine or restitution. For example, offenders convicted of fraud in the Eastern District of Pennsylvania, which includes Philadelphia, were 13 times more likely to be ordered to pay a fine and 3 times more likely to be ordered to pay restitution than fraud offenders in the Eastern District of New York, which includes Brooklyn. Other examples include the following:

- Offenders convicted of fraud offenses in the Middle District of Florida, which includes Orlando, were four times more likely to be ordered to pay restitution than those convicted of the same offense in the Central District of California, which includes Los Angeles.
- Offenders convicted of drug trafficking offenses were 99 times more likely to be ordered to pay a fine in the Western District of Texas, which includes San Antonio, than they were in the Southern District of California, which includes San Diego.
- Offenders convicted of larceny offenses were 177 times more likely to be ordered to pay a fine in the Middle District of Georgia, which includes Macon, than in the Southern District of Florida, which includes Miami.

Some court officials and prosecutors provided explanations of why differences existed among the districts. Some attributed the differences to the nature and type of offenses committed or types of offenders sentenced in the districts. Some officials believed that the culture, or management style, in the judicial district among the prosecutors and court officials contributed to whether offenders were fined or ordered to pay restitution. The culture included how prosecutors and court officials worked together to identify victims and their losses, among other factors.

The Effect of Mandatory Restitution Has Been Mixed, but Overall the Percentage of Offenders Ordered to Pay Has Declined

Although the imposition of restitution for certain offenses became mandatory with the passage of MVRA, the percentage of offenders, overall, ordered to pay restitution during fiscal year 1997 actually declined to 12 percent for those who were covered by MVRA's provisions, down from 26 percent for those who were not. During fiscal year 1997, about 45 percent of offenders sentenced under USSC Guidelines were subject to MVRA's provisions, and 55 percent were not.

MVRA's amendments are to be, to the extent constitutionally permissible, effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment, which was April 24, 1996. However, because of an *ex post facto* issue, DOJ has issued guidelines that any provisions of MVRA for determining whether to impose restitution or the amount of restitution would be applied only prospectively to offenses committed on or after April 24, 1996. In general, the *ex post facto* clause of the U.S. Constitution has been interpreted to prohibit the application of a law that increases the primary penalty for conduct after its commission. For our analysis, we used DOJ's guidelines in determining whether an offender was or was not subject to MVRA's provisions.

While the overall percentage of offenders ordered to pay restitution declined, our multivariate statistical analysis showed the following inconsistent results across the three types of offenses we analyzed:

- The likelihood of an offender's being ordered to pay restitution for a larceny offense decreased by almost half;
- The likelihood of an offender's being ordered to pay restitution for a robbery offense increased by almost half; and
- The likelihood of an offender's being ordered to pay restitution for a fraud offense decreased slightly.

In discussing our results, some court officials and prosecutors said that it was still too early to assess the full impact of MVRA. Some officials commented that time was needed to become familiar with and implement MVRA, especially on the part of the Assistant U.S. Attorneys who prosecute cases covered by MVRA. Prosecutors in one district acknowledged that they were not yet fully implementing the law. In their written responses to a draft of our report, both the Executive Office of the U.S. Attorneys and USSC cited training efforts planned for court officials and prosecutors on MVRA. DOJ, in their comments, acknowledged that,

while a number of steps have been taken, more remains to be done to increase the number of cases in which restitution is imposed.

Although we selected larceny, fraud, and robbery because of the likelihood of a victim's being due restitution, a substantial percentage of offenders—about one-third to two-thirds of offenders sentenced—were still not ordered to pay restitution, even when their crimes were committed after MVRA became effective. Court officials and prosecutors provided some reasons why restitution might not have been ordered in these cases. In some cases, stolen money or assets might have been recovered. In other cases, an offender might have paid the restitution prior to sentencing, removing the need for a restitution order. Another reason cited by officials was that the offense might have been an attempted fraud or attempted robbery for which the offender was arrested prior to obtaining money from the victim. Some officials also cited an exception to MVRA in ordering mandatory restitution, such as in cases where the number of victims is so large that it makes paying restitution impracticable. One district had a number of telemarketing schemes in which large numbers of victims were defrauded of small amounts. It was not practical to identify all victims and obtain restitution for them.

Conclusions

Although offender characteristics, type of offense, and the nature of the sentence played a role, the judicial circuit or district where an offender was sentenced was a major factor in determining the likelihood of an offender's being ordered to pay a fine or restitution during fiscal year 1997. This variation among judicial circuits and districts occurred overall for all federal offenders sentenced under sentencing guidelines during that year; and, although occurring less, this variation persisted when we performed multivariate statistical analyses for federal offenders sentenced under sentencing guidelines for four types of offenses. The large statistical variation among circuits and districts raises a question, on a broad level, about whether the goal of uniformity in the imposition of fines and restitution is being met. Under current conditions, offenders could be much more likely in some jurisdictions than in others to be ordered to pay a fine or restitution for the same type of crime.

Although MVRA was intended to eliminate much of the discretion judges previously had in waiving restitution for certain types of crime, the overall percentages of offenders ordered to pay restitution has declined. Of the three offenses we analyzed, the percentages of robbery offenders ordered to pay restitution increased, while the percentages of larceny and fraud offenders decreased. However, there may be mitigating circumstances,

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such as recovery of stolen money that help explain why restitution was not ordered in a particular case.

This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions you or other Members of the Subcommittee may have.

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